

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'B' : NEW DELHI)

BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER

AND

SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 3261/Del/2019
(Assessment Year : 2013-14)

M/s. C & C Corporate Services Limited 74, Hemkunt Colony, New Delhi-110048 PAN : AADCC3058J	Vs.	Income Tax Officer, Ward-5(4), New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Amarjeet Singh, CA
Revenue by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of hearing:	05.09.2023
Date of Pronouncement:	30.10.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Assessee against the order dated 16.01.2019 of CIT(A)-2, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal No. 10271/2016-17 arising out of an appeal before it against the order dated 28.03.2016 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the ITO, Ward-5(4), New Delhi (hereinafter referred as the Ld. AO).

2. The assessee has raised following grounds ;

“1. That on the facts and circumstances of the case, Ld. Commissioner of Income-tax (Appeals) erred while confirming addition of Rs. 52,29,320/- out of write off of old stock of Uniforms.

2. That on the facts and circumstances of the case, ld. Commissioner of income-tax (Appeals) erred while confirming addition of Rs. 11,99,692/- on account of Mess Expenses included in Staff Welfare Expenses.

3. That on the facts and circumstances of the case, Ld. Commissioner of Income-tax (Appeals) erred while confirming addition of Rs. 21,00,000/- on account of Printing & Stationery Expenses.

4. That the appellant craves leave to add, amend, alter or vary the above grounds of appeal at or before the time of hearing.”

3. Heard and perused the records. The groundwise findings are as follows.

4. **Ground no 1;** The facts in brief are that the appellant company is in the business of manpower supply. It employs a number of workers and supplies them to a number of companies. During the year under consideration, the appellant company had debited a sum of Rs.67,98,479/- under the head Uniform Expenses. The AO added back a sum of Rs.52,29,320 - (Opening Stock Shown by the assessee) out of above said amount on the ground that previous year expenses cannot not be allowed during the year as the assessee follows mercantile system of accounting. CIT (Appeals) in its order held as under:

“Uniform Expenses are already claimed in the P&L A/c. These are revenue expenditure and all uniforms purchased have been claimed and have been allowed every year. Now it can't claim again the old uniforms written off being obsolete.

It is not even an expense of prior period because the expenditure is already claimed as uniform purchase in earlier years and the same is being claimed again as old and obsolete stock.”

4.1 Ld. AR submitted that AO, failed to consider that opening stock, though purchased in earlier years cannot be a prior period expenditure, as it is the closing stock of earlier years, out which unspent amount is carried forward to the next year. It was further submitted CIT (Appeals) has fallen in error in holding that Uniform Expenses have already been claimed as expenditure in P&L Account and the assessee is claiming again as old and obsolete stock.

4.2 In regard to ground no. 1 after considering the matter on record, we are of the considered view that Ld. CIT(A) seems to have fallen in error in making a factually incorrect observation in para 6.2 that Uniform expenses are already claimed in P&L a/c while Ld. AO had made a very specific finding as ascertained before us that no amount was debited against Uniform expenses during the previous years.

4.3 Ld. AO had made disallowance on his observation that they were previous years expenses, therefore, could not be allowed during the year as assessee is following mercantile system of accounting. The Bench is of considered view that since assessee had claimed the uniforms to be stock and certainly uniform have deplete in utility over the years then the assessee had right to write off the uniform stock. Only because some payments were received from the employees qua certain uniforms does not make it disallowable expense as assessee had decreased the value of stock to the extent of amount received from the employees. Ld. CIT (Appeals) failed to appreciate that every year deduction is claimed equivalent to the amount of

uniforms consumed and balance is carried forward to the next year. It is not a case that the assessee has claimed expenditure of the whole of the amount in a particular year and the same amount has been written off in the next years. Thus, the bench is of considered view that tax authorities below have fallen in error in making the addition. The ground is decided in favour of the assessee.

5. **Ground no. 2;** The issue arises out of disallowances of staff welfare expenses of Rs. 11,99,662/- for which assessee had claimed the same were on account of Mess expenses to the extent of 11,99,662/-. Ld. AO considered the same to be excessive as compared to previous assessment year while Ld. CIT(A) observed the same are not in accordance with the IT Rules. Ld. AR relied the Staff Welfare expenses ledger account available on page no. 55 to 59 of paper book to submit that all expenses are debited by the clients of assessee where the workers are employed. Clients have their own Mess and the workers of the company are allowed to eat lunch/ dinner at their Mess and the clients charge the appellant for the said amount and deduct the same from the bills raised by the appellant company. The appellant company recovers some amount from the workers at the time of payment of salaries to them and the net amount is debited to P&L account as expenditure.

5.1 It can be observed that the Mess Expenses have not been made by the assessee but were deducted by the clients to whom man power services were provided. Thus, the Ld. CIT(A) has fallen in error in considering that as per IT Rules, assessee was allowed lunch expenses per employee and same was not complied. Ld. CIT(A) has fallen in error in understanding the nature of business of assessee and the manner in which these expenses have

been accounted in the books of assessee, consequent to deductions made by the clients from the bills raised for services. Again only because expenses were recovered from some of the employees does not make the whole of the expenses disallowable. We are of the considered view that the genuineness of expenses has not been doubted and merely because of certain observations with regard to the manner in which there were accounted the disallowance has been made. In the light of aforesaid the ground is decided in favour of assessee.

6. **Ground no 3;** The ground arises out of disallowance under the head Printing and Stationary expenses of Rs. 21,00,000/- out of total expenditure of Rs. 22,63,148/- under the head "Printing and Stationary expenses". Ld. AO observed that the bills of Rs. 21,00,000/- are bogus and Ld. CIT(A) sustained the same. In written submissions assessee has put across following explanation;

"It is submitted that the appellant company had made purchases from M/s. International Print-o-Pac Ltd. (IPPL in short) amounting to Rs.21,00,000/- during the year under consideration. The amount was paid on 08.09.2012 from the bank account of the appellant company. M/s. IPPL had raised the bills on 30.09.2012. Copy of ledger account of M/s. IPPL in the books of the appellant company alongwith copies of bills are attached herewith for your kind perusal at Page Nos. 60 to 63. These bills are in the name of the group company - M/s. C&C Constructions Limited.

It is submitted that M/s. IPPL had issued the bills in the name of M/s. C&C Constructions Limited inadvertently as M/s. C&C Constructions have been buying goods from M/s. IPPL in earlier years. Hence, by mistake they issued the bills in the name of M/s. C&C Construction Ltd. The payment for these

purchases was made by the appellant company as the expenditure was intended for the appellant company. Copy of the Bank Statement, relevant portion only, of the appellant company is attached herewith for your kind perusal at Page No. 64 . We had submitted a duly notarized affidavit from M/s. C&C Constructions Limited to the A.O. stating that the expenditure was meant for the appellant company and M/s. C&C Constructions Ltd. never booked the said expenditure in its books of account. Copy of the said affidavit is attached herewith for your kind perusal at Page Nos. 65 to 66 .

Ld. A.O. further held that the appellant was unable to submit any evidence for placing the order by giving full advance. For the same, it is submitted that the A.O. cannot decide in which way the assessee has to do its business. Assessee has to run its business on its own prudence. Whether the assessee gives full advance or part advance, it is solely assessee's choice and decision and whims and fancies of any other persons cannot deter the assessee to take decisions for its business. There is no hard and fast rule with regard to giving of advance in full or part and settling the accounts of the creditors. This observation of the Ld. A.O. does not hold good.

Ld. CIT (Appeals) held that Invoice raised in the name of other group company becomes inter group issue and the appellant may pursue the recovery issue among the group itself and there is no remedy available under the IT Act for such omissions/commissions of errors. With regard to the observations of the Ld. CIT (Appeals), we have to submit that Ld. CIT (Appeals) took some other grounds and did not give its decisions on the submissions made by the appellant company. Appellant cannot pursue for recovery from the group company as the expenditure was incurred by the appellant company for its business purposes. Only the bills were issued in the name of the group company and this does not lead to recovery of the amount from

the group company as the goods purchased were utilized by the appellant company.

6.1 Giving thoughtful consideration to the aforesaid and matter on record we are of the considered view that if on the verification of VAT bills alone the CIT(A) concluded that the bill was bogus then an opportunity should have been given to the assessee to explain the same. Apart from if the bill was raised in the name of another group company while the material was used by the assessee for its own operations then assessee was required to establish the same by evidences. Accordingly, we are inclined to restore ground no. 3 to the files of Ld. AO to give a fresh opportunity of hearing to the assessee in the light of aforesaid findings.

7. Consequently, the appeal of assessee stand allowed with consequences to follow as per the grounds adjudicated above.

Order pronounced in the open court on 30th October, 2023.

Sd/-

(N.K.BILLAIYA)

ACCOUNTANT MEMBER

Date:- 30.10.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

AR, ITAT
New Delhi