

**IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH 'DB', JABALPUR**

Before Dr. B. R. R. Kumar, Accountant Member

Sh. Yogesh Kumar US, Judicial Member

ITA No. 43/JAB/2020 : Asstt. Year: 2014-15

Income Tax Officer, Ward-1, Katni, (MP)	Vs	Ganesh Prasad Vishwakarma, Prop-M/s Ganesh Minerals, 4/543, Vishwakarma Niwas, Gautam Lane, Ramnaohar Lohia Ward, Katni, (MP) 483501
(APPELLANT)		(RESPONDENT)
PAN No. ACXPV 9419 P		

**CO No. 4/JAB/2021 : Asstt. Year: 2014-15
(Arising out of ITA 43/JAB/2020)**

Ganesh Prasad Vishwakarma, Prop-M/s Ganesh Minerals, 4/543, Vishwakarma Niwas, Gautam Lane, Ramnaohar Lohia Ward, Katni, (MP) 483501	Vs	Income Tax Officer, Ward-1, Katni, (MP)
(APPELLANT)		(RESPONDENT)
PAN No. ACXPV 9419 P		

Assessee by : Sh. Dhiraj Ghai, CA

Revenue by : Sh. Ravi Mehrotra, JCIT-DR

Date of Hearing: 29.11.2023

Date of Pronouncement: 01.12.2023

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by Revenue and cross objection filed by the assessee against the orders of Id. CIT(A)-1, Jabalpur dated 23.09.2020.

2. The Revenue has raised the following grounds of appeal are as under:-

1. *Whether on the facts and in the circumstances of the case, the Ld CIT(A) has erred in deleting the disallowance u/s 40(a)(ia) of Rs 1,25,80,7541 - without appreciating the fact that no TDS has been deducted by the assessee.*

2. *Whether on the facts and in the circumstances of the case, the La CIT(A) has erred in appreciating the facts that the disallowance of Rs 88,01,4341 - under the head bogus transportation expenses was made because the assessee could not furnish detailed and credible evidences during the course of assessment.*

3. The assessee has raised the following grounds of appeal in cross objection are as under:-

1. *In the facts and circumstances of the case the Id CIT(A) was fully justified in deleting the disallowance made by Id AO in regard to transport expense of Rs. 1,25,80,754/- by applying the provision of section 40(a)(ia) of the Act.*

2. *In the facts and circumstances of the case the CIT(A) was not justified by not considering the assessment order bad in law on account of reason that the case of the appellant was not selected for limited scrutiny for non-deduction of TDS hence the Id AO erred in disallowing transport expense of Rs. 1,25,80,754/- by applying the provision of section 40(a)(ia) of the Act. and without complying the CBDT instruction in this regard.*

3. *In the facts and circumstances of the case the Id CIT(A) was fully justified in deleting the addition of the transportation of Rs. 88,01,434/- done by 8 parties named in the assessment order to the income of the appellant.*

4. *In the facts and circumstances of the case the CIT(A) was not justified by not considering the assessment order bad in law on account of reason that the case of the appellant was not selected for limited scrutiny for examination and disallowance of transportation expenses of Rs. 88,01,434/- hand without complying the CBDT instruction in this regard hence the disallowance is bad in law.*

Non-deduction of TDS:

4. The case has been selected for examination of large amount of sundry creditors and mismatch in sales turnover as per the Audit Report and the ITR. The AO during the course of assessment proceedings found that appellant has claimed balance of Rs. 2,32,00,696/- under the head 'sundry creditors'. The sundry creditors are as under:-

1. S.C. Consimation
Prop. Shri Virendra Kumar Tiwari
2. Arrow Enterprises, Prop.
Shri Mohit Vishwakarma
3. Kartik Engineering Works
Prop. Shri Laxmi Prasad Vishwakarma
4. Vaishnav Enterprises
Prop. Shri Ravi Kumar Vishwakarma
5. Surya Earth Movers Prop.
Shri Kodu Kol
6. Sunderam Consimation
Prop. Shri Ramsharan
7. Sundram Earthmovers Prop.
Shri Ram Khilavan

5. The total amount credited to the above persons was to the tune of Rs. 1,25,80,754/-. The AO disallowed the payments u/s. 40(a)(ia) of the I.T Act, 1961. The limited scrutiny issue was verification of sundry creditors. By not making any addition on account of sundry creditors, the AO has implicitly accepted the existence of sundry creditors. The sundry creditors, if proved to be non-existing, the AO should have disallowed the entire expenses treating the sundry creditors as bogus. By resorting to provisions of 40(a)(ia), the Assessing Officer has exceeded the mandate given in the limited scrutiny which is verification of existence and genuineness of sundry creditors. Hence the addition made beyond mandate of the limited scrutiny is hereby directed to be deleted.

6. Out of the 27 sundry creditors, the following sundry creditors have not responded to the letters issued u/s.133(6) of

the I.T Act, 1961. After giving the opportunities and intimating to the assessee regarding the noncompliance to the notices issued by the AO to the sundry creditors, the Assessing Officer treated the following sundry creditors namely;

1. Earth Movers Associates, satna
2. Aircon Engg. Works, Rewa
3. Krishna Traders, Jabalpur
4. Shiveshwar Minerals, Narsingarh
5. Excel Earthmovers, Satna
6. Premier Consimation, Damoh
7. Mehta Const.
8. Murli Consimation, Narsingarh

as non-existing, fictitious and bogus.

7. Aggrieved the assessee appeal filed before the Id. CIT(A).
8. The Id. CIT(A) deleted the addition.
9. Aggrieved, the Revenue appeal filed before the Tribunal.
10. Heard the arguments of both the parties and perused the material available on record.
11. We find from the order sheet of the Assessing Officer, that after intimating to the assessee about non-compliance to the notices, the assessee has informed the new addresses of the sundry creditors. The Assessing Officer has not issued notices to the new addresses nor directed the assessee to produce the parties. The assessee before the Assessing Officer furnished details of PAN, address, transaction bills, details of payment given in next year etc. The appellant has also made payments to these creditors in earlier year also. The AO has never doubted payments made in earlier year to the same creditors, there lies no onus with the, AO to presume the same as bogus in the year under consideration. The AO has treated the entire

amount of Rs. 88,01,434/- as bogus transportation expenses merely on ground that summons issued u/s 133(6) returned unserved. Further, we find that the GP as disclosed by the assessee of 8.33% would shoot up to 37.94% if the sundry creditors are treated as bogus which in any case cannot be the case beyond the normal business profits.

12. Hence on going through the entire factual matrix, we are in consonance with the decision of Id. CIT(A) that the AO was not justified in presuming that the said creditors were bogus only on the basis that the notices returned unserved. In this case the sundry creditors have changed address and were not available at the time of delivery of notice, the assessee has already provided new addresses, hence the assessee cannot be found to be guilty even when payments have been made in earlier year, current year and upcoming years. The order of the Id. CIT(A) is hereby affirmed this ground.

13. In the result, the appeal of the Revenue is dismissed and the cross objection of the assessee raised at grounds no. 2 & 4 are allowed.

Order Pronounced in the Open Court on 01/12/2023.

Sd/-
(Yogesh Kumar U.S)
Judicial Member

Sd/-
(Dr. B. R. R. Kumar)
Accountant Member

Jabalpur Dated: 01/12/2023

NV, Sr. PS

Copy forwarded to:

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

ITA No. 43/JAB/2020
CO No. 4/JAB/2021
Ganesh Prasad Vishwakarma

**ASSISTANT REGISTRAR
ITAT JABALPUR**