

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

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No.55/JAB/2019
Assessment Year:2014-15

A.C.I.T., Circle- Sagar.	Vs.	Shri Rishabh Kumar Jain, H. No. 28/1, Sagar. PAN:AMWPJ0852F
(Appellant)		(Respondent)

Appellant by	Shri Ayush Gupta
Respondent by	Shri Ravi Mehrotra, Sr. D.R.
Date of hearing	30/11/2023
Date of pronouncement	01/12/2023

ORDER

PER YOGESH KUMAR U.S.:J.M.

The present appeal has been filed by the Revenue against the order of learned CIT(A)-1, Jabalpur dated 29/03/2019 pertaining to assessment year 2014-15. In this appeal the Revenue has raised the following grounds:

"1. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the addition Rs.19726190/- out of the total addition of Rs.20048809/- without appreciating the fact that assessee has failed to establish the genuineness of the expenses claimed.*"

2. The brief facts of the case are that assessee filed return of income on 09/12/2014 declaring total income at Rs.43,43,570/- for the A.Y. 2014-15. The case was selected for scrutiny through CASS and notice u/s 143(2) of the I.T. Act, 1961 was issued and duly served upon the assessee. The

assessee a civil contractor and derives income from civil construction. During the scrutiny of Profit & Loss Account, it was observed by the AO that the assessee had furnished incomplete bill and vouchers in respect of other expenses. Issue was confronted to the assessee and was asked to establish the genuineness of the expenses, however assessee failed to do so and therefore the Assessing Officer was of the view that personal expenses cannot be denied and thus the Assessing Officer added the amount of Rs.2,00,48,000/- to the total income of the assessee.

3. Aggrieved by the assessment order, the assessee preferred appeal before the CIT(A). The learned CIT(A) vide order dated 29/03/2019 deleted the addition of Rs.1,97,26,190/- out of the total addition of Rs.2,00,48,809/-. Aggrieved by the above deletion of addition, the Department of Revenue preferred the present appeal on the grounds mentioned above.

4. Learned D.R. vehemently contended that learned CIT(A) committed error in deleting the addition without appreciating the fact that the assessee had failed to establish the genuineness of the expenditure claimed.

5. On the contrary learned counsel for the assessee submitted that the assessee had produced all the documents in support of the expenditure, therefore, the order of learned CIT(A) rightly restricted the additions, which require no interference.

6. We have heard both the parties and have perused the materials available on record. The learned Assessing Officer rejected some of vouchers produced by the assessee on the ground that they are self-made and disallowed 50% of other expenses amounting to Rs.2,00,48,809/-.

The other expenses of Rs.4,12,49,060/- were claimed by the assessee in the concerned years audited profit & loss account which comprises following:

<i>Particulars</i>	<i>Amount</i>
<i>Bank Commission</i>	<i>61,633</i>
<i>Bill Form</i>	<i>100</i>
<i>D.L.</i>	<i>3,90,893</i>
<i>Bhaada</i>	<i>69,704</i>
<i>Generator Rent</i>	<i>1,10,792</i>
<i>Tractor Rent</i>	<i>10,54,750</i>
<i>Labor Welfare</i>	<i>1,80,550</i>
<i>Labor Equipment</i>	<i>2,50,130</i>
<i>Labor Deduction</i>	<i>6,99,317</i>
<i>Labor Charges</i>	<i>3,11,64,117</i>
<i>Loading Charges</i>	<i>2,59,170</i>
<i>Office Expenses</i>	<i>2,02,733</i>
<i>Other Deductions</i>	<i>30,64,923</i>
<i>Royalty</i>	<i>17,55,222</i>
<i>Stationery</i>	<i>25,430</i>
<i>Tender Fees</i>	<i>79,387</i>
<i>Other Taxes</i>	<i>78,475</i>
<i>Vehicle Maintenance</i>	<i>6,60,605</i>
<i>Water Tax</i>	<i>11,41,140</i>
<i>TOTAL</i>	<i>4,12,49,060</i>

7. The assessee produced some vouchers regarding the expenses. However, the Assessing Officer accepted the vouchers of bank commission and rejected other expenses. Learned CIT(A) while restricting the addition held as under:

i. Labour Expenses

The labour register was produced before the Assessing Officer and no adverse comment was made except one entry which is a typographical error.

ii. Tractor Expenses

The AO has not appreciated that while doing the work of road in the interior areas the appellant required tractor to shift the

material from one place to another and tractor from local persons were used and expenses claim is reasonable i.e. of Rs.10,54,750.

iii. Water Expenses

The AO has not appreciated that while doing the work of road water is essential factor and expenses claim is reasonable.

iv. Vehicle maintenance

The AO has not appreciated that while doing the work vehicles are required and as appellant/workers is doing work in interior areas and looking to the work expenses claim is reasonable.

The AO made the huge disallowance of Rs.2,00,48,809 without rejecting the books of account and without invoking section 145(3). He disallowed the 50% of the expenses without any basis.

The assessing officer has made the above additions without rejecting the books of account. Thus, when the assessing officer has accepted the books result no addition can be made on presumption. When the books of appellant were treated as genuine and accounts were audited and verified by the assessing officer, the above additions cannot be made simply on account of self-made vouchers.

The Section 145 has a direct bearing on the controversy, therefore, for proper appreciation of fact section 145 is quoted as below;-

145(1) Income chargeable under the head 'Profits and gains of business or profession' or 'Income from other sources' shall, subject to the provisions of sub-section (2), be computed in accordance with either cash or mercantile system of accounting regularly employed by the assessee.

The Central Government may notify in the official gazette from time to time accounting standards to be followed by any class of assessee's or in respect of any class of income.

Where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee,

or where the method of accounting provided in sub-section (1) or accounting standards as notified under sub-section (2), have not been regularly followed by the assessee, the Assessing Officer may make an assessment in the manner provided in section 144."

6.1.6. Therefore, the AO is not justified in disallowing 50% of the expenses without rejection of the books of account. It will be appropriate to adopt 5.67% net profit as shown by the appellant in the assessment year 2015-16. The Appellant has shown the net profit rate @ 5.67%. Therefore, the net profit during the year under consideration is Rs 46,66,189/- (Rs.8,22,96, 103/- X 0.0567). The appellant has shown net profit at Rs.43,43,570/-. Therefore, the addition to the extent of Rs.3,22,619/- (Rs.46,66,189 – Rs.43,43,570/-) is Confirmed. The appellant will get the Relief of Rs.1,97,26,190/-. Therefore, the appeal on this ground is Partly Allowed."

8. It is found that the learned Assessing Officer made disallowance of Rs.2,00,48,809/- without rejecting the books of account and without invoking section 145(3) of the Act and disallowed 50% expenses. It is found that the learned CIT(A) while holding the tractor expenses of Rs.10,54,750/- as reasonable, has not relied on any of the documents. Considering the above facts and circumstances, we find reasonable to restrict the disallowance to Rs.2,00,000/- instead of Rs.10,54,750/- and the other expenses, which were deleted by the learned CIT(A) require no interference considering the net profit for the assessment year 2015-16. Accordingly, we partly allow the ground of appeal of the Revenue.

9. In the result, the appeal of the Revenue is partly allowed.

(Order was pronounced in the open court on 01/12/2023)

Sd/.
(DR. B.R.R. KUMAR)
Accountant Member

Dated:01/12/2023

*Singh

Sd/.
(YOGESH KUMAR U.S.)
Judicial Member

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R.,

Asstt. Registrar