

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 1105/Del/2016
(Assessment Year: 2011-12)

Shri Kedar Nath Babbar, Prop M/s. International Refrigeration Corp., 7, Netaji Subash Marg, Darya Ganj, New Delhi (Appellant) PAN: AAAPB2849J	Vs. Income Tax Officer, Ward-30(2), New Delhi (Respondent)
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Assessee by :	Shri K. R. Manjani, Adv Shri Tarun Aswani, Adv
Revenue by:	Shri Siddharth B. S. meena, Sr. DR

Date of Hearing	01/11/2023
Date of pronouncement	19/01/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.1105/Del/2016 for AY 2011-12, arises out of the order of the Commissioner of Income Tax (Appeals)-16, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. 71/2014-15 dated 01.02.2016 against the order of assessment passed u/s 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.03.2014 by the ITO, Ward-48(2), New Delhi (hereinafter referred to as 'ld. AO').

2. The assessee has raised the following grounds of appeal :-

1. The Ld. CIT(A) has erred on facts as well as in law in setting aside to the Ld. A.O. for deciding the following grounds for making enquiries, which is beyond power of the Ld. CIT(A):

(i) Addition of Rs.60,75,000/- in respect of alleged rent which was neither due nor received inspite of fact that confirmation of tenant is also filed before the CIT(A).

(ii) Addition of Rs.1,90,000/- even though as per copy account filed, the amount was received in last year.

(iii) Addition U/s. 40(i)(ia) even though confirmation of parties, copies of returns, certificates of their C.As. were also filed with the CIT(A).

2. The Ld. CIT(A) has erred on facts as well as in law in sustaining addition of Rs.1,12,613/- even though the profit allowed to M/s. Rovani food Pvt. Ltd. sister concern was Rs.19,800/- that is hardly 1.3% of purchases from it.

3. The Ld. A.O. as well as the Ld. CIT(A) have erred on facts as well as in law in making and confirming addition of Rs.2,50,000/- U/s. 40A(3) even though there is no doubt about genuineness of transaction and is also covered by exceptional circumstances.

4. The Ld. CIT(A) has erred on facts as well as in law in sustaining addition of 1/5th of travelling expenses even though it does not involve any personal element.

5. The Ld. CIT(A) has erred on facts as well as in law in sustaining 20% of all telephones expenses, all vehicle running and maintenance expenses, interest and depreciation. At any rate it should be in respect of proprietor's personal telephone and car used by the proprietor and for all cars. Looking to turnover and extensive business and that it is the case of proprietor, disallowance should not be more than 10% of telephone and car used by him.

3. Ground No. 1(i) raised by the assessee is challenging the action of the Ld CIT(A) in confirming the addition of Rs. 60,75,000/- on account of alleged rental income.

4. We have heard the rival submissions and perused the material available on record. The assessee is an individual and proprietor of M/s. International Refrigeration Corporation and filed his return of income for AY 2011-12 on 29.09.2011 declaring taxable income of Rs. 4,74,720/-. The assessee is engaged in the business of trading of refrigeration equipment, kitchen equipment, shoes

and connected goods. During the year under consideration, the assessee declared rental income from property situated at B-19, Okhla Industrial Area, Phase-1, New Delhi of Rs. 91,12,500/- as under:-

Portion of the property	Period	Rent Per month	Gross Rent
Basement	April, 2010 to Dec, 2010	Rs. 5,00,000	Rs. 45,00,000
Basement	Jan, 2011 to March, 2011	Rs. 5,25,000	Rs. 15,75,000
Ground Floor	April, 2010 to Dec, 2010	Rs. 2,50,000	Rs. 22,50,000
Ground Floor	Jan, 2011 to March, 2011	Rs. 2,62,500	Rs. 7,87,500
Total			Rs. 91,12,500

5. The assessee submitted that M/s. UPS SCS (India) Pvt. Ltd were given 13000 sq ft in basement area on rent of Rs. 5,00,000/- per month with a escalation of 5% effective from January , 2011. Accordingly, for basement portion, the assessee received rent as under:-

April, 2010 to December, 2010- Rs. 5,00,000 X 9= Rs. 45,00,000/-

January, 2011 to March, 2011- Rs. 5,25,000 X 3= Rs. 15,75,000/-

6. The same tenant wanted portion of ground floor from the assessee on lease. Accordingly, vide agreement dated 01.02.2010, the assessee gave the ground floor also on rent at a monthly rent of Rs. 2,50,000/- which is subject to escalation of 5% from January, 2011. Accordingly, the rental derived by the assessee for the portion of ground floor was as under:-

April, 2010 to December, 2010 - Rs. 2,50,000 X9=Rs 22,50,000/-

January, 2011 to March, 2011 - Rs. 2,62,500X3=Rs. 7,87,500/-.

7. The Id AO observed on perusal of the rental agreement, the assessee has not rented the property on the ground floor and observed that the lease deed mentioned property let out in respect of basement and first floor. The Id AO accordingly show caused the assessee as to why the rental income should not be added for the first floor portion. In response, the assessee submitted that there is no first floor constructed on the subject mentioned property at all. It contains

only basement, ground floor and open terrace. The basement and ground floor had been duly given on rent to the aforesaid tenant and rental income derived thereon had been duly offered to tax. The assessee also placed evidence of the schedule of property from the sale deed to prove the aforesaid contention. It was also submitted that no further construction was carried out by the assessee. The Id AO however did not agree to the aforesaid contentions and proceeded to add the alleged rental income for the first floor portion and made an addition of Rs. 60,75,000/- in the assessment. The assessee submitted the photographs of the building on record. The assessee also submitted the confirmation dated 20.08.2015 from the tenant stating that lease deed had wrongly mentioned the fact of first floor being leased out by way of typographical error. Physical inspection was sought to be carried out by the Inspector of Income Tax on the subject mentioned property who also categorically confirmed that there is no first floor at all in the property. The mezzanine floor was constructed in AY 2012-13 by the assessee which fact is evident from pages D to Q containing the details of amounts spent at construction together with the bills thereon in the PB dated 16.06.2023. Further, the assessee also has filed an affidavit on 12.06.2023 before us confirming all the aforesaid facts. This affidavit is enclosed in pages A to C of the PB dated 16.06.2023. When these documents are staring on us, we hold that there cannot be any addition that can be made on account of alleged rental income for first floor when factually there was no first floor at all in the subject mentioned building. Hence, the addition made on account alleged rental income of Rs. 60,75,000/- for the first floor which was not in existence is hereby directed to be deleted. Accordingly, ground 1(i) raised by the assessee is allowed.

7. Ground No. 1(ii) raised by the assessee is challenging the action of the Id CIT(A) in confirming the addition of Rs. 1,90,000/- in the hands of the assessee.

8. We have heard the rival submissions and perused the material available on record. During the year under consideration, the assessee has shown a receipt of Rs. 1,90,000/- from M/s. VeeKay & Co. of Gurugaon. The Id AO observed that the assessee has neither supplied any goods nor rendered any services to the said

party and no confirmation was filed from the said party proving the nature and source of credit thereon. Accordingly, the sum of Rs. 1,90,000/- was treated as unexplained cash credit in the hands of the assessee u/s 68 of the Act.

9. It was submitted that M/s. VBG Silicon, Chandigarh had sent goods for storage on warehouse on 02.09.2009 vide their letter dated 28.08.2009. The assessee passed all these goods to VeeKay & Co on 21.12.2009. For this, M/s. VeeKay & CO. made on account payment of Rs. 1,90,000/- between 23.09.2010 to 05.02.2011. Since no settlement is yet done with M/s. VBG Silicon by M/s. VK Company till 31.03.2014 and more than three years been expired, the assessee had written back this amount as its income in AY 2014-15. This point is duly verified by us from the profit and loss account for the year ending 31.03.2014 and the ledger account of 'unclaimed credits written back' for the year ended 31.03.2014 together with the computation of total income and ITR acknowledgement for AY 2014-15 dated 21.11.2014 which are enclosed in pages IV to VIII of the PB. Hence, it is proved that assessee had duly offered the receipt of Rs. 1,90,000/- as its business income for AY 2014-15. We find however that a sum of Rs 1,90,000/- is found credited in the books of the assessee during the year under consideration. It is a fact that no satisfactory explanation has been given by the assessee before the lower authorities and before us also. Hence, the said receipt of money credited of Rs. 1,90,000/- which is found credited in the books of the assessee is to be added as unexplained credit u/s 68 for the year under consideration. However, in order to avoid double taxation, we hereby direct the Id AO to delete the very sum of Rs. 1,90,000/- for AY 2014-15 which has been voluntarily offered to tax by the assessee in the return of income for AY 2014-15. Accordingly, ground No. 1(ii) raised by the assessee is disposed of in the above mentioned terms.

10. Ground No. 1(iii) raised by the assessee is challenging the disallowance made u/s 40(a)(ia) of the Act.

11. We have heard the rival submissions and perused the material available on record. During the year under consideration, the assessee paid processing

charges of Rs. 6,65,936/- to Religare Bank and Rs. 6,17,078/- to M/s. Bajaj Finance Ltd as closure charges without deduction of tax at source. Similarly, the assessee had not deducted tax at source on payment of Rs. 4,05,936/- to Bajaj Finance Ltd and Rs. 50,000/- as exhibition expenses to Smt Ruchika Khurana. Accordingly, the Id AO proceeded to disallow the said expenses u/s 40(a)(ia) of the Act. Before the Id CIT(A), the assessee submitted that the payees have duly included the receipts in their respective hands and paid due taxes and certificate from their Chartered Accountants to this effect were placed on record. In respect of Smt Ruchika Khurana, the assessee submitted that payment made to her does now warrant deduction of tax at source. The assessee submitted the ledger account copy in respect of his arguments. The Id CIT(A) had directed the Id AO to verify the aforesaid claim of the assessee in respect of all the payments and if the payees have shown the amount in their income tax returns and paid requisite tax, then the same should not be subject matter of disallowance in the hands of the assessee u/s 40(a)(ia) of the Act. The Id AR before us pleaded that let this aspect be verified by the Id AO. We find that the direction given by the Id CIT(A) is in consonance with 2nd proviso to section 40(a)(ia) of the Act which had got retrospective effect and accordingly we hold that if the payees have included the subject mentioned receipt in their respective returns and paid taxes, then no disallowances should be made in the hands of the assessee u/s 40(a)(ia) of the Act. Accordingly, the ground No. 1(iii) raised by the assessee is allowed for statistical purposes.

12. Ground No. 2 raised by the assessee is challenging the addition made in respect of transactions with M/s. Rovani Foods Pvt. Ltd which is sister concern of the assessee.

13. We have heard the rival submissions and perused the material available on record. The assessee submitted before the lower authorities that it had imported certain goods and if the same are sold during the year, it would be entitled to get refund 4% of custom duty. During the year, the assessee had stocked up goods to the tune of Rs. 14.18 lakhs. Out of this, goods worth Rs. 1,11,825/- were sold

to M/s. Rovani Food Pvt Ltd. Further, since the assessee got some other client for these goods, goods were purchased back from M/s. Rovani Foods Pvt. Ltd with a small margin of Rs. 800. Similarly, goods of Rs. 13,69,519/- were sold to M/s. Rovani Foods Pvt. Ltd on 30.12.2010 immediately after the sale, assessee got the new client and consequently these goods were repurchased from M/s. Rovani Foods Pvt. Ltd by giving them margin of Rs. 19,000/-. Accordingly, it was pleaded that the assessee by doing purchase and sale transaction with M/s. Rovani Foods Pvt Ltd had merely enabled Rovani Foods Pvt. Ltd to earn margin of Rs. 19,800/-. The Id AO further did not agree to this contention and disallowed the purchase made from M/s. Rovani Foods Pvt. Ltd amounting to Rs. 15,01,397/- as bogus transaction. It was also submitted by the assessee that out of goods repurchased from M/s. Rovani Foods by the assessee, those goods were sold by the assessee to 3rd parties and assessee had earned a profit of Rs. 73,971/-. The assessee furnished the complete details of purchase and sales made to M/s. Rovani Food Pvt. Ltd and details of sales made to outside customers. The Id CIT(A) however, observed that the assessee had made sales to M/s. Rovani Foods Pvt. Ltd only to claim refund from custom authorities with a malafide intention. Hence, the entire loss actually incurred by the assessee on the transaction with M/s. Rovani Foods Pvt. Ltd amounting to Rs. 1,12,613/- (Rs. 15,01,397-14,81,345/-) requires to be disallowed as against the total disallowance on 15,01,397/- made by Id AO.

14. No arguments whatsoever were made by the Id AR with regard to the categorical finding given by the Id CIT(A) in its order that the sale transaction with Rovani Foods Pvt. Ltd made by the assessee were done with a malafide intention to claim refund of custom duty. We find that despite the fact that the transaction has been carried out by the assessee with Rovani Foods Pvt. Ltd with a malafide intention of claiming refund of custom duty, the Id CIT(A) had been magnanimous enough to grant deduction of purchase value and disallow only the loss arising out of total purchase and sales transaction with Rovani Foods Pvt. Ltd. Once, the element of malafide intention or fraud is proved beyond doubt, then no further concession need to be given to the assessee. In the instant case,

the assessee had already obtained more than eligible relief from the Id CIT(A). Hence, the ground No. 2 raised by the assessee is hereby dismissed.

15. Ground No. 3 raised by the assessee is challenging the disallowance of salary u/s 40A(3) of the Act.

16. We have heard the rival submissions and perused the material available on record. The assessee paid salary to Gaurav Babbar to the tune of Rs. 2,50,000/- in cash on 31.03.2011. Scanned copy of the ledger statement of the said employee together with the confirmation of receipt of the salary was placed on record. The Id AO observed that since salary was paid on a single day in cash in excess of Rs. 20,000/- the same would be liable for disallowance u/s 40A(3) of the Act. This action was upheld by the Id CIT(A) on the ground that Mr. Gaurav Babbar is related to the assessee stationed in Delhi where bank branches are available in every nook and corner and no business exigency of making payment in cash has been demonstrated by the assessee.

17. Before us, the Id AR argued that genuineness of expenditure had not been doubted by the revenue. We find that the Id CIT(A) had categorically given his finding that Gaurav Babbar is related to the assessee stationed in Delhi and no business exigency of incurrence of the expenditure in cash has been demonstrated by the assessee. We find from the ledger account reproduced at page 10 of the assessment order that the assessee has paid salary of Rs. 3 lakhs to Gaurav Babbar and out of which, a sum of Rs. 2,50,000/- alone has been disallowed by the Id AO. Hence, the genuineness of the payment of salary has been accepted by the Id AO. In the instant case, the identity of the payee is established and transaction with Gaurav Babbar is hereby held to be genuine. But in order to make the assessee's case fall under the exception provided in the proviso to section 40A(3) of the Act, the assessee is duty bound to explain that the place where the payee is stationed does not have bank facilities and the assessee had pressing emergency to make the said payment in cash out of business exigencies. In the instant case, it is not in dispute that Gaurav Babbar (payee) is stationed in Delhi where bank facilities are available in every nook and

corner of Delhi as rightly observed by the Id CIT(A). Further, the assessee was not able to demonstrate the business exigencies which warranted him to make payment of salary in cash. Hence, the assessee's case does not fall under the ambit of exception provided in proviso to section 40A(3) of the Act. Further, the assessee's case does not fall under any of the exceptions provided under Rule 6DD of the Income Tax Rules. Hence, the disallowances made u/s 40A(3) of the Act is hereby confirmed. Accordingly, ground No. 3 raised by the assessee is dismissed.

18. Ground Nos. 4 and 5 raised by the assessee is challenging disallowance of 20% of travelling expenditure, telephone expenditure, vehicle and maintenance expenditure, interest and depreciation.

19. We have heard the rival submissions and perused the material available on record. During the year under consideration, the assessee claimed travelling expenses to Shri Dinesh Kumar of Rs. 4,333; Pushpinder Singh of Rs. 12,002/- and Mrs. Vandana Babbar of Rs. 1,46,477/-. The Id AO observed that these persons are not employees with assessee. Further, Mrs. Vandana Babbar is the wife of the assessee and is into altogether separate business. Accordingly, the Id AO disallowed the travelling expenses of Rs. 1,62,812/- in respect of aforesaid three persons as not relatable to the business of the assessee. Further, with regard to telephone and vehicle running maintenance expenditure, interest on car loan and depreciation of car totaling to Rs. 16,02,657/-, the Id AO observed that assessee had not maintained log book and certainly the vehicle and telephone could be used for personal purposes also and accordingly disallowed 20% of the same amounting to Rs. 3,20,531/- in the assessment. Before the Id CIT(A), the assessee submitted that Dinesh Kumar to whom travelling expenses incurred is an expert in repairing of coffee machines. The assessee had sold coffee machines in Ranchi, there is a complaint from the client needing repairs for the said machine. Accordingly, Dinesh Kumar was sent to repair the same for which travelling expenses, boarding and lodging expenses were incurred by the

assessee. It was submitted that this this expenditure is related to business of the assessee.

20. Similarly, travelling expenditure of Pushpinder Singh was also meant for the purposes of business who was sent to Chennai and Jaipur for meeting the business requirement. Further, Mr. Pushpinder Singh had taken employment with the assessee in subsequent years. With regard to traveling expenses of Mrs. Vandana Babbar, it was submitted that she was an interior decorator, who went to Goa to convince the party M/s. Sampuran Foundation and got the sale order for the assessee for Rs. 37 lakhs which was duly supplied in December, 2011 after importing goods from China. Accordingly, it was pleaded that the said travelling expenses are meant for the purpose of business. Further, she went to Amritsar to meet M/s. Rolls Snackers Pvt. Ltd who wanted coffee machines, grinder, stick blender, slush machines, sandwich griller double, dough mixture, softy machines, mixture, meat minser, fryer double, spiral mixture and potato peeler and wanted to purchase these machines from point of view of interior decoration. She had gone on 27.04.2010 and procured order worth Rs. 10 lakhs which was supplied by the assessee by 20.07.2010 and 31.08.2010. Accordingly, it was pleaded that this travelling expenses was also meant for the purpose of business.

21. The assessee pleaded that his business activity is split over Daryaganj to two buildings in Okhla Industrial area and residence in Sainik Farms. Accordingly, the assessee submitted that the disallowance should not be more than 3% of one telephone No. 9811020270 and 10% of 1 car Mahindra Zylo for personal element. The Id CIT(A) upheld the disallowance of 20% made on account of telephone and vehicle related expenses including interest and depreciation and also restricted the disallowance on account of travelling expenses to 20% on account of personal element involved thereon.

22. We have also narrated the facts with regard to purpose of travelling made by parties (supra) and find that none of the facts mentioned therein were controverted by the revenue before us. Hence, we hold that the entire travelling

expenses are to be allowed as business expenditure and no disallowance should be made thereon.

23. With regard to disallowance of expenditure on account of telephone and vehicle related expenditure including interest on car loan and depreciation, in our considered opinion, the disallowance should be restricted to 10% as against 20% made by the Id CIT(A) on account of personal element. Accordingly, the ground No 4 raised by the assessee is allowed and ground No. 5 raised by the assessee is partly allowed.

24. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 19/01/2024.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 19/01/2024
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi