

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE 'A' BENCHES :: PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER &
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

ITA No.1073/PUN/2023
(A.Y. 2014-15)

Nirmal Dagdulal Jain, 2228, Tilak Road, Nandurbar, Maharashtra-425412	vs	ACIT, Circle Dhule, Dhule
PAN: AAWPJ 6498 H		
Appellant		Respondent

Assessee by	:	Shri Hari Krishan, AR
Revenue by	:	Shri Ramnath P. Murkunde, DR
Date of hearing	:	01/04/2024
Date of pronouncement	:	03/04/2024

ORDER

Per PARTHA SARATHI CHAUDHURY, JM:

This appeal preferred by the assessee emanates from the order of National Faceless Appeal Centre [NFAC], Delhi, dated 08.08.2023 for A.Y.2014-15 as per the following grounds of appeal:-

- "1. The Id. CIT(A) has erred in confirming the disallowance of Rs. 1,71,572/- made by the AO purely on adhoc basis at 10% of the expenses.
2. The Id. CIT(A) has erred in upholding the addition of Rs. 65,36,260/- by invoking the provisions of sec.43CA of the Income Tax Act.
3. The assessee craves leave to add to, modify delete or amend any or all of the above grounds of appeal."

2. The first ground pertains to *ad hoc* disallowance of expenses @10% made by the AO and as confirmed by the NFAC of Rs.1,71,572/-. In this regard, the AO at paras 5 & 6 has held as

follows:-

"5. Separate Trading accounts are maintained for milk business and for plot trading, without quantitative details. In milk Trading account, on total sales of Rs.5,50,44,049/-, GP is shown at Rs.33,98,931/-, which comes to 6.17%. In plot trading account, on total sales of Rs.51,36,200/-, GP is shown at Rs.26,20,507/- which comes to 51%. For plot trading activities, the assessee has filed copies of Index-2. The GPs of both the trading account have been transferred to a single P & L account, wherein the NP is shown at Rs.29,13,853/-. Bills and vouchers have been produced, the same are verified on test check basis with reference to regular books of account.

6. On going through the P & L account, it is seen that the assessee has debited the following expenses.

1. Diesel expenses	Rs. 11,32,056/-
2. Interest on vehicle loan	Rs. 47,974/-
3. Shop expenses	Rs. 94,990/-
4. Travelling expenses	Rs. 51,552/-
5. Vehicle expenses	Rs. 3,89,150/-

Total	Rs. <u>17,15,722/-</u>

All the above expenses are not fully and properly supported with bills and vouchers. On many occasions self made vouchers have been utilized that too with number of defects. The self made vouchers do not indicate the purposes for which the vouchers has been prepared, in short, without description. Major expenses have been incurred in cash. Further, the inclusion of personal expenses of the proprietor and his family members cannot be denied. Vide this office letter dtd. 20.09.2016, the assessee was apprised the above facts. He was requested to explain as to why a reasonable amount should not be disallowed. The assessee vide his letter dtd 10.10.2016, has merely furnished the account extract of these expenditure account. No explanation has been furnished for the defects communicated as stated above. Hence, 10% of the above expenditure amounting to **Rs.1,71,572/-** are disallowed and added to the total income of the assessee."

3. The NFAC, at page No.11 in para 5.1, had upheld the disallowance made by the AO without bringing out the reasons and sanctity for such disallowance.

4. We have perused the assessment order as well as the order of the NFAC and we find that the nature and character of the disallowance made has to be categorized as *ad hoc* disallowance since there is no specific examination and verification of documents on record and there is no reason specifically spelt out for disbelieving the evidences placed by the assessee. Similarly, the assessee had also not conclusively proved that those evidences are entirely genuine. In these circumstances, in all fairness, we are of the considered view that the ends of justice would meet if the disallowance are restricted to 5%. We order accordingly. This ground is partly allowed.

5. That, in the next ground, the assessee is aggrieved with the decision of NFAC in upholding the addition of Rs. 65,36,260/- by invoking the provisions of sec. 43CA of the Act.

6. At the time of hearing, ld. counsel for the assessee demonstrated through the paper book filed, wherein the submissions of the assessee before the NFAC has been placed on record and therein at page No.45, the assessee had requested that so far they had not received valuation report from the Assistant Valuation Officer. It is the grievance of the assessee that even without waiting for the report from the Valuation Officer, the NFAC has passed the order. Ld. counsel submits that the valuation report is of immense importance in deciding the rights and liabilities in this case, and therefore he submits that the matter may be remitted to the file of NFAC to consider the said report of the

Assistant Valuation Officer and decide the matter as per law.

7. Ld.DR conceded that this issue may be remanded to the file of the NFAC for *de novo* adjudication.

8. Considering the submissions of the parties herein, we set aside the order of NFAC on this issue and remand the issue back to its file for *de novo* adjudication after considering the report from the Assistant Valuation Officer and pass order as per law complying with the principles of natural justice. The assessee is also directed to submit the relevant details/evidences before the NFAC and present the issue on merits. This ground of appeal is allowed for statistical purposes.

9. Ground No.3 is general in nature, hence, no adjudication is required.

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

Order pronounced in open Court on 03rd April, 2024.

Sd/-
(DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Dated : 03rd April, 2024

vr/-

Copy to :

1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The DR, ITAT, "A" Bench Pune.
5. Guard File.

By Order

// TRUE COPY //

Senior Private Secretary
ITAT, Pune.