

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'H' BENCH,
NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 1332/DEL/2021 [A.Y. 2016-17]
ITA No. 1346/DEL/2021 [A.Y. 2017-18]

The Dy. C.I.T. Vs. M/s Rajshyama Constructions Pvt Ltd
Central Circle P- 90B, Sanjay Nagar, Ghaziabad
Ghaziabad

PAN - AACCR 4982 R

(Applicant)

(Respondent)

Assessee By : Shri Ajay Wadhwa, Adv

Department By : Ms. Sapna Bhatia, CIT- DR

Date of Hearing : 02.04.2024

Date of Pronouncement : 05.04.2024

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned two separate appeals by the Revenue are preferred against two separate orders of the Id. CIT(A), Kanpur dated 08.06.2021 pertaining to A.Ys. 2016-17 and 2017-18 respectively.

2. Since both the appeals were heard together and involve common issues, they are disposed of by this common order for the sake of convenience and brevity.

ITA No. 1332/DEL/2021 [A.Y. 2016-17]

3. The first grievance of the Revenue is that the Id. CIT(A) erred in deleting the addition of Rs. 85,13,790/- on account of difference in credit balance of M/s Haryana Oil Corporation.

4. The underlying facts in the issue are that during the course of search and seizure operation conducted at the premises of the assessee, a seized document containing names of 13 creditors was found. When this list of creditors was confronted to Shri Tapesh Tyagi, Director of the assessee company, he surrendered an amount of Rs. 22,79,43,844/- on account of unverifiable expenses/creditors for the F.Y 2015-16 relevant to A.Y 2016-17.

5. The assessee also honored the surrender and offered the surrendered income in its return of income. During the course of scrutiny assessment proceedings and on careful perusal of the seized

ledger account, the Assessing Officer noticed that credit balance of creditor M/s Haryana Oil Corporation is Rs. 3,08,11,093/-. But, as per the ledger account of the creditor M/s Haryana Oil Corporation, total credit balance was Rs. 3,93,24,883/-, which resulted into a difference of Rs. 85,13,790/-.

6. The assessee was required to explain the difference. The assessee filed detailed reply which did not find any favour with the Assessing Officer who made the addition of Rs. 85,13,790/-.

7. The assessee challenged the addition before the Id. CIT(A) and explained that it has already surrendered credits on the basis of seized document amounting to Rs. 22.79 crores. It was strongly contended that the purchases have not been disallowed and since the purchases have been accepted, no further addition should be made and concluded by saying that none of these parties were bogus.

8. After considering the facts and submissions, the Id. CIT(A) was convinced with the contention of the assessee and observed that the Assessing Officer could not bring into record any finding which may

prove that the bills of Rs. 85,13,790/- are not genuine. Merely because the assessee made the disclosure cannot make all the purchases bogus. The ld. CIT(A) deleted the addition of Rs. 85,13,790/-.

9. Though the ld. DR strongly supported the findings of the Assessing Officer, but could not point out any factual error in the findings of the ld. CIT(A).

10. We have given thoughtful consideration to the findings of the authorities below. It is true that the assessee has offered Rs. 22.79 crores as unverifiable creditor. We are of the considered view that there is a difference between unverifiable credit entries and creditors not in existence. It is true that the Assessing Officer has not pointed out any error or defect in the bills of Rs. 85,13,790/- and no purchases have been disallowed. We, therefore, do not find any reason to interfere with the findings of the ld. CIT(A). Ground No. 1 is dismissed.

11. Ground No. 2 relates to addition of Rs. 10 lakhs on account of adhoc disallowance.

12. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed expenses under various heads in its profit and loss account and on perusal of the bills and vouchers, the Assessing Officer formed a belief that these vouchers are self-generated and went on to make adhoc disallowance of Rs. 10 lakhs.

13. Addition was challenged before the Id. CIT(A). It was strongly contended that the Assessing Officer has failed to cite any specific expenses which could not be verified and the entire adhoc disallowance has been made on the basis of a general and sweeping observation. The Id. CIT(A) was convinced with the contention of the assessee and deleted the adhoc disallowance of Rs. 10 lakhs.

14. We have given thoughtful consideration to the orders of the authorities below. It is true that the Assessing Officer has made general observation in so far as expenses under various heads are

concerned. It is equally true that the Assessing Officer has not pointed out any specific voucher which according to him, was not genuine.

15. It is also not the case of the Assessing Officer that the assessee has inflated its expenditure by Rs. 10 lakhs. Therefore, we are of the considered view that adhoc disallowance of Rs. 10 lakhs is without any basis. The Id. CIT(A) has rightly deleted the same which calls for no interference. Ground No. 2 also stands dismissed.

16. Ground No. 2 relates to the deletion of addition of Rs. 1,42,20,900/-.

17. On the basis of incriminating documents found at the time of search, the Assessing Officer formed a belief that the assessee company has made cash payments amounting to Rs. 1,42,20,900/-. The assessee was asked to explain the source of such cash payment.

18. The assessee filed detailed reply which did not find any favour with the Assessing Officer who made addition of Rs. 1,42,20,900/-.

19. The assessee challenged the addition before the ld. CIT(A) and strongly contended that the entire basis of the addition according to the Assessing Officer, the assessee could not explain the source of incurring the expenditure. It was brought to the notice of the ld. CIT(A) that the assessee has disclosed an amount of Rs. 22.79 crores and deserves benefit of telescoping.

20. The ld. CIT(A) was convinced with this contention of the assessee and deleted the addition of Rs. 1,42,20,900/-.

21. We have given thoughtful consideration to the findings of the ld. CIT(A). Firstly, the Assessing Officer proceeded by asking the assessee why the disallowance should not be made under provisions of section 40A(3) of the Act. When the assessee explained that it has never claimed any expenditure, the Assessing Officer changed the colour of transaction and made addition u/s 69C of the Act.

22. We are of the considered view that all that is expected from the assessee is to explain the source of Rs. 1,42,20,900/-. The undisputed fact is that the assessee has surrendered an amount of Rs. 22.79 crores and we are of the considered view that the assessee should get benefit

of telescoping and source of Rs. 1,42,20,900/- is the amount surrendered. Therefore, no addition is called for on this count. Ground No. 3 is also dismissed.

23. As a result, appeal of the Revenue stands dismissed.

ITA No. 1346/DEL/2021 [A.Y. 2017-18]

24. Perusal of the record reveals that the Memorandum of appeal does not contain any grounds of appeal under the signature of the Assessing Officer. Our records show that on 29.08.2022, the bench made the following noting in the order sheet:

"The Id. DR is directed to provide GOA to the Id. counsel for the assessee. Hearing of the appeal is adjourned to 28.11.2022 at the written request of the Id. counsel for the assessee. Both the sides informed in the open court."

25. Till date, the Revenue has not complied with the directions of the Bench. Since a substantial time has lapsed, we are left with no choice but to dismiss this appeal of the Revenue with a liberty to approach the Tribunal after complying with the directions of the Bench.

26. In the result, the appeals of the Revenue in ITA Nos. 1332 and 1346 /DEL/2021 are dismissed.

The order is pronounced in the open court on 05.04.2024.

Sd/-

**[SAKTIJIT DEY]
VICE PRESIDENT**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 05th APRIL, 2024.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	