

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, 'बी', अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" B " BENCH, AHMEDABAD

BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

ITA No.945/Ahd/2023  
Assessment Year : 2015-16

Chiragbhai Patel At Post Vasna, Tal. Khambhat Khambhat - 388 620 (Gujarat)	Vs	The Dy.CIT Circle-1(3) Vadodara
PAN: AGFPP 2960 D		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
------------------------	--	--------------------------

Assessee by :	Shri Vipul Khandhar, AR
Revenue by :	Shri Sudhendu Das, CIT-DR

सुनवाई की तारीख/Date of Hearing : 18/04/2024  
घोषणा की तारीख /Date of Pronouncement: 30/04/2024

**आदेश/ORDER**

**PER MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER:**

This appeal is filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)" for short], dated 09.10.2023 for Assessment Year (AY) 2015-16.

2. Grounds taken in this appeal are as under:

1. The Ld. CIT(A) erred in law and on facts in confirming the addition of Rs.3,82,87,633/- being 25% of material purchase.
2. The Ld. CIT(A) erred in law and on facts in confirming the addition of Rs.3,59,17,968/- being 25% of indirect expenses.

3. *Prayer:*

- (i) *To set aside the order u/s.259 of the Act, 1961 which is requested to be quashed.*
- (ii) *To drop the addition of Rs.3,82,87,633/- being 25% of material purchase.*
- (iii) *To drop the addition of Rs.3,59,17,968/- being 25% of Indirect Expenses.*

**Facts of the case:**

3. The assessee filed his return of income on 30.09.2015 declaring total income of Rs.73,64,840/-. The assessee is a Government Contractor, and his books of accounts were subject to audit u/s. 44AB of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). The case was selected for limited scrutiny under CASS and, accordingly, notice u/s 143(2) of the Act was issued to the assessee on 25.07.2016. Notice u/s.142(1) of the Act was sent to assessee on 29.09.2017. A notice u/s. 274 r.w.s. 271(1)(b) of the Act was also issued to the assessee on 27.10.2017. In response thereto, the assessee submitted the requisite details on 08.11.2017.

3.1. During the course of assessment, the assessee was asked to submit the details and evidence of the amount of Rs.15,31,30,553/- debited to Profit and Loss account on account of Material Purchase and Rs.14,36,71,872/- debited to profit and loss account of Indirect Expenses. In response thereto, the assessee submitted the copy of ledger account of material purchase and Indirect Expenses. The assessee was asked vide order sheet entry dated 14.11.2017 to submit the documentary evidence like, bills and vouchers relating to material purchase in support of Material Purchase of Rs.15,51,30,553/-. The assessee neither attended nor submitted any evidence as called for.

3.2. Further, notice u/s. 142(1) of the Act was issued on 01.12.2017 to the assessee for submitting the necessary relevant documentary evidence in support of material purchase. The assessee could not submit any documentary evidence except for the ledger, which can prove the genuineness of the purchase of Material. Therefore, after issuing show cause notice on 12.12.2017, the Assessing Officer made following additions:

- Rs.3,82,87,633/- being 25% of Material Purchase of Rs. 15,31,50,553/-
- Rs.3,59,17,968/- being 25% of Indirect Expenses of Rs. 14,36,71,872/-

While making these two additions, the Assessing Officer concluded that in the absence of any documentary evidence, the genuineness of expenses could not be verified.

4. Aggrieved with the said order of Assessing Officer, the assessee filed an appeal before Ld.CIT(A).

5. During the proceedings before Ld.CIT(A), the assessee failed to attend after repeated notices.

5.1. Relying on the judgement of the Hon'ble Apex Court in CIT v. B. N Bhattacharjee and Another (10 CTR 354), the Ld.CIT (A) dismissed the appeal.

6. Aggrieved by the order of the Ld.CIT(A), the assessee preferred the present appeal before us on the grounds mentioned above.

**On Merits:**

7. The assessee filed an Affidavit dated 12.03.2024 and contending that at the time of filing an appeal in form 35, e-mail ID of old Accountant was mentioned, who left the job and the e-mail address was not updated online. As all communications and notices of Ld.CIT(A) were sent on the e-mail address of old Accountant, who did not inform the assessee, he could not reply to the notices and could not attend the personal hearing.

7.1. In support of the grounds of appeal, the Assessee's Representative (AR) produced the details of expenses and sought the relief to delete the addition.

7.2. Considering the fact that the disallowance was made by the Assessing Officer on ad-hoc basis to the extent of 25% of the expenditure and the amounts were considerably large, the assessee was given an opportunity to submit more and concrete details to make it a good case to refer the matter back to the Assessing Officer. The Ld.DR did not object to this.

7.3. The AR produced copies of Audit Report u/s. 44AB of the Act in Form 3CB as annexed by Form 3CD, work orders, Sales Bills and copy of Assessment order under Gujarat Value Added Tax Act, 2003 for the period of 01.04.2014 to 31.03.2015. The AR also submitted the copy of Purchase Register along with supporting copies of purchase invoices in support of Material Purchase of Rs.15,31,50,553.50. The AR also submitted details of Indirect Expenses totalling to Rs.14,36,71,872/- along with ledger accounts of each expense and supporting vouchers.

8. We have heard both the parties and perused the material available on record. Looking to the facts of the case, we find that the assessee had not produced the complete books of accounts along with bills and vouchers and other documentary evidence to substantiate the claim of the assessee before the Assessing Officer. It is quite evident that the material referred by the assessee is relevant to determine the total income and tax liability of the Assessee correctly. Since the Assessee has produced the documents before the Tribunal in support of his claim, in the facts and circumstances of the case and as the lower authorities had no opportunity to verify the documents produced before us, without commenting anything on the merit of the case, we admit the additional documents produced by the Assessee and in the interest of justice, restore the matter to the file of the Assessing Officer with a direction to consider the documents produced by the assessee and adjudicate the issues, after giving due opportunity of being heard to the assessee. Accordingly, we partly allow the appeal filed by the assessee.

9. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

**Order pronounced in the Open Court on 30<sup>th</sup> April, 2024 at Ahmedabad.**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(MAKARAND V.MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

Ahmedabad, Dated 30/04/2024

*टी.सी.नायर, व.नि.स.।T.C. NAIR, SI. PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)- (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad