

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“B” BENCH: BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT  
AND SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.243/Bang/2024
Assessment Year : 2017-18

Mr. Nama Venkataramanaswamy Narayan Babu, Chowdareddypalya Main Road, Chintamani, Chikkaballapur-563 125.  <b>PAN – ABXPN 0888P</b>	Vs.	The Asst. Commissioner of Income Tax, Circle - 6(3)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri V Srinivasan, Advocate
Revenue by	:	Shri Subramanian S, JCIT (DR)

Date of hearing	:	09.05.2024
Date of Pronouncement	:	16.05.2024

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

This is an appeal filed by the assessee against the order passed by the office of the Addl/JCIT (A) -12, Mumbai dated 10/01/2024 in DIN No. ITBA/APL/S/250/2023-24/1059549617(1) for the assessment year 2017-18.

2. The only issue raised by the assessee is that the Id. CIT(A) erred in confirming the disallowance of Rs. 16,12,265.00 being 20% of Rs. 80,61,363.00 on an ad-hoc basis and in an arbitrary manner.

3. Briefly stated facts are that the assessee in the present case is an individual and filed his return of income declaring income of Rs. 1,49,51,120/- under the head 'house property', 'business income' and 'other sources.' The assessee in the year under consideration has claimed certain expenses as details below:

- Freight: Rs.15,18,973
- Custom Duty: Rs.13,94,681
- Interest: Rs.17,85,660
- Wages: Rs. 33,62,049

4. The AO required the assessee to produce the documentary evidence in support of the expenses stated above but the assessee failed to do so. Thus, the AO has made an ad-hoc disallowance of Rs. 16,12,265/- by observing as under:

*"In the interest of natural justice and equity, 20% of the said amount is being disallowed on account of want of documents. In the absence of any proof of TDS deducted or of the expense actually incurred for the stated purpose and the evasive nature of submissions, the amount of Rs.16,12,265 is being disallowed for AY 17-18."*

5. Aggrieved, the assessee preferred an appeal to the Id. CIT(A), who partly allowed the appeal of the assessee by observing as under:

*"5.1. In this regard the AO is directed to verify whether the statutory payment of custom duty of Rs. 13,94,861/- is reflected in the GST returns filed by the appellant and grant relief if applicable. The AO is further directed to make sure the custom expenses are routed through bank transaction and verify the same with bill of entry which is being claimed to have been already provided to the department. Therefore, this contention of the appellant regarding payment of statutory customduty is allowed for statistical purposes.*

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*5.4. The AO had no other recourse, but to complete the proceedings based records available with him as the onus of furnishing the required documents was not discharged by the appellant during the assessment proceedings.*

*5.5. Therefore, in absence of any proof for payment of freight, interest and wages the AO had rightly disallowed 20% of the amount of freight, interest and wages and the order of the AO requires no interference.”*

6. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

7. The Id. AR before us filed a paper book running from 1 to 45 pages and a comparative chart of the impugned expenses claimed by the assessee in the earlier years. The Id. AR before us fairly agreed that the assessee failed to furnish the supporting evidence for the expenses disallowed by the AO on an ad-hoc basis. But as per the Id. AR, disallowance has been made by the AO in arbitrary manner and non-scientific basis. According to the Id. AR, the gross profit and net profit of the assessee have increased manifold in comparison to the earlier years, which can be verified from the tax audit report, the relevant detail is placed on page 30 of the paper book. As per the Id. AR this fact has not been noted by the AO and merely made disallowance in arbitrary manner in the absence of documentary evidence on ad-hoc basis, which is not desirable under the provisions of law.

8. It was also pointed out by the Id. AR that similar expenses were also claimed by the assessee in the earlier years which were allowed by the Revenue. The Id. AR has filed a chart to this effect depicting the expenses of the earlier years, in relation to the turnover which is available on record.

9. On the other hand, the Id. DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, there is no provision under the Act for making the disallowance on ad-hoc basis.

However, the Revenue has been left with no other option but to make the disallowance on an ad-hoc basis where the assessee fails to furnish the supporting evidence. Undeniably, the primary onus lies upon the assessee to furnish the supporting evidence. But the assessee in the present case has not furnished necessary details in support of the expenses discussed above. Be that as it may be, in our considered view, even if the assessee does not co-operate or does not furnish the necessary details yet any disallowance if warranted, it has to be based on a scientific and rational basis. It is also not out of the place to mention that while making the disallowance in the absence of documentary evidence, some guess work is involved, but the same should be made after considering the financial data of the assessee of the earlier and later years. In the present case, the Revenue had financial data of the assessee of the earlier years, which in our considered view, should have been taken into consideration, while making the disallowance on ad-hoc basis but the revenue failed to do so. As such, we do not find any basis in adopting the disallowance at the rate of 20% of the expenses as stated above.

11. Coming to the expenses under the head 'wages', we note that these expenses have increased slightly in relation to the sales in comparison to earlier years. But the fact of an increase in the labour cost/ charges cannot be ignored. Accordingly, considering the slight increase in the labour charges in relation to sale and to put an end to the dispute, we find that an ad-hoc disallowance of Rs. 1 lac shall render justice to the assessee and the Revenue.

12. Regarding the 'freight expenses', we note that such expenses are almost in the same proportion to sales as incurred by the assessee in the earlier years in relation to the sales. Therefore, we do not find any

reason to uphold the finding of the Id. CIT(A) for the disallowance of freight charges.

13. Regarding interest expenses, we find that the assessee has also claimed similar interest expenses on the money borrowed from the same 3 parties in the earlier year and nothing has been brought on record before us that there was any disallowance of interest expenses in the earlier years. Thus, we are of the view that no disallowance of interest expense is warranted with respect to the 3 parties.

14. Regarding the fresh loan obtained by the assessee from the 4<sup>th</sup> party, we note that the interest rate is the same in comparison to the other borrowings. Furthermore, it appears that loan from the 4<sup>th</sup> party has been obtained from the family member only. The genuineness of the loan has not been doubted. Accordingly, we do not find any reason to make the disallowance of such interest expenses. But considering the fact of non-submission of the supporting documents, and to put an end to the dispute, we find that an ad-hoc disallowance of Rs. 20000.00 shall render justice to the assessee and the Revenue. In view of the above and after considering the facts in totality, we set aside the finding of the CIT(A) to the extent discussed above and direct the AO to delete the addition made by him. Hence, the ground of appeal raised by the assessee is partly allowed.

15. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in court on 16<sup>th</sup> day of May, 2024

Sd/-

**(GEORGE GEORGE K)**

Vice President

Bangalore,

Dated, 16<sup>th</sup> May, 2024

Sd/-

**(WASEEM AHMED)**

Accountant Member

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore