

**THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 612/KOL/2024
Assessment Year: 2013-2014**

***Raghvendra Pratap Singh,..... Appellant
C/o. Subash Agarwal & Associates,
Advocates,
Siddha Gibson,
1, Gibson Lane, Suite 213, 2nd Floor,
Kolkata-700069
[PAN: AMAPS3456L]***

-Vs.-

***Assistant Commissioner of Income TaxRespondent
Circle-28, Kolkata,
Aayakar Bhawan Dakshin,
2, Gariahat Road, Kolkata-700068***

Appearances by:

*Shri Siddharth Agarwal, Advocate, appeared on behalf of
the assessee*

*Shri Subhendu Datta, CIT, D.R., appeared on behalf of the
Revenue*

Date of concluding the hearing : June 19, 2024

Date of pronouncing the order : July 02, 2024

O R D E R

Per Dr. Manish Borad, Accountant Member:-

The present appeal is directed at the instance of assessee against the order of ld. Commissioner of Income

Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 28th February, 2024 passed for A.Y. 2013-14.

2. Brief facts of the case are that the assessee is an individual and carries on the business of goods transportation and cargo lifting at Ports under the proprietorship concern M/s. TRS Lift & Shift Services Pvt. Limited. Income of Rs.78,97,890/- for A.Y. 2013-14 declared in the e-return filed on 23.09.2013. The same was revised on 13.02.2015 keeping the same income as declared in the original return. After the case selected for scrutiny assessment under CASS, valid notices under sections 143(2) and 142(1) were issued and served upon the assessee. Thereafter various details were called for, which were duly furnished. However, the ld. Assessing Officer concluded the assessment after making following additions on account of disallowance of expenses, addition for sundry creditors, etc. assessing income at Rs.8,03,04,942/-:-

Income as per ROI	Rs. 78,97,890/-
Disallowance of Oil & Fuel in para 3 at page 2-5	Rs.2,79,78,302/-
Addition of Sundry creditors in the name of Roadwings International in para 4 at page 6-7 above	Rs.2,85,73,142/-
Disallowance of finance charges as discussed in para 5 at page 7 above	Rs. 12,60,000/-

Disallowance of finance charges under section 40(a)(ia) of the Act as discussed in para 6 at page 7-8 above	Rs. 33,83,885/-
Disallowance of truck hiring charges under section 40(a)(ia) of the Act as discussed in para 7 at page 8	Rs. 15,49,500/-
Disallowance of labour charges, supervision charges, tyres charges and repairs and maintenance charges u/s 40(a)(ia) in para 8 at page 8-9 above	Rs. 66,89,134/-
Disallowance of depreciation on dumpers as discussed in para 9 at page 10-11 above	Rs. 2,80,400/-
Disallowance of depreciation as discussed in para 10 at page 10-11 above	Rs. 19,07,212/-
Addition u/s 69C of the Act as discussed in para 11 at page 11 above	Rs. 6,23,207/-
Addition as discussed in para 12 at page 11-12 above	Rs. 1,62,270/-
Net taxable income	Rs.8,03,04,942/-

3. Dissatisfied with the additions made by the ld. Assessing Officer, the assessee preferred appeal before the ld. CIT(Appeals), but partly succeeded. Now on the addition confirmed by the ld. CIT(Appeals), the assessee is in appeal before the Tribunal raising following grounds:-

1.(a) For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have held that the A.O. was not justified in not rejecting the books of the assessee and consequently, not making a reasonable estimate of the net profit.

(b) For that without prejudice to the above, the Ld. CIT(A) ought to have himself rejected the books of the assessee and made reasonable estimate of the assessee's net profit.

2.For that the Ld. CIT(A) ought to have held that the assessment framed by the A.O. was barred by the law of limitation and, as such, liable to be quashed.

3.For that the Ld. CIT(A) was not justified in confirming the estimated disallowance of Rs.2,79,78,302/- made by the A.O. on account of oil and fuel.

4.For that the Ld. CIT(A) was not justified in confirming the action of the A.O. in making estimated disallowance of Finance charges to the extent of Rs. 12,60,000/- in respect of interest free advance made to M/s Falcon Steel Corporation.

5.(a) For that the Ld. CIT(A) was not justified in confirming the action of the A.O. in disallowing Finance charges to the extent of Rs. 33,83,885/- u/s 40(a)(ia) which were paid to M/s Tata Capital.

(b) For that the Ld. CIT(A) failed to appreciate that no addition u/s 40(a)(ia) can be made for under - deduction of TDS.

6.(a) For that the Ld. CIT(A) was not justified in confirming the action of the A.O. in disallowing Truck Hire Charges to the extent of Rs. 15,49,400/- u/s 40(a)(ia).

(b) For that the Ld. CIT(A) failed to appreciate that no addition u/s 40(a)(ia) can be made for under - deduction of TDS.

7.For that the Ld. CIT(A) was not justified in confirming the action of the A.O. in in making estimated disallowance on account of labour charges, supervision charges, tyre charges and repairs and maintenance charges totaling to Rs.66,89,134/- u/s 40(a)(ia) as under-

(a)Labour Charges: Rs. 16,21,585/-

(b)Supervision Charges: Rs. 15,45,276/-

(c)Tyre Expenses: Rs. 20,43,919/-

(d)Repairs & Maintenance: Rs. 14,78,354/-

Rs. 66,89,134/-

8.(a) For that the Ld. CIT(A) was not justified in confirming the action of the A.O. who made addition on account of Sundry Creditors of Rs. 2,85,73,172/- by wrongly invoking the provision of section 68.

(b) For that the Ld. CIT(A) was not justified in holding that the addition made erroneously u/s 68 by the A.O. was liable to be added u/s 41(1) of the Act.

9.The appellant craves leave to add further grounds of appeal or alter the grounds at the time of hearing.

4. Id. Counsel for the assessee made submission for each of the grounds, which have been dealt in the subsequent paras, has also referred to the documents placed in the paper book containing 156 pages and also relied on the decisions of the Hon'ble Gujarat High Court in the case of *Ambica Mills Ltd. -vs.- CIT reported in 54 ITR 167*; decision of the Hon'ble Delhi High Court in the case of *CIT -vs.- Shri Vardhman Overseas Limited reported in 343 ITR 408* and decision of the ITAT, Ahmedabad in the case of *Nitin S. Garg -vs.- ACIT in ITA Nos. 169 to 172/AHD/2009 order dated June 4, 2010 reported in [2010] 5 taxmann.com 115 (Ahd. ITAT)*.

5. On the other hand, ld. D.R. vehemently argued supporting the order of lower authorities.

6. We have heard the rival contentions and perused the relevant material placed before us. Since Id. Counsel for the assessee has not made any specific argument on Grounds No. 1 & 2, therefore, the same are dismissed.

7. Ground No. 3 relates to disallowance of Rs.2,79,78,302/- made by the Id. Assessing Officer on account of oil and fuel expenses.

7(a). Brief facts relating to this issue are that the assessee in the original return claimed depreciation at Rs.10,24,95,476/- and oil and fuel expenses at Rs.13,41,28,167/-. However, in the revised return, depreciation claim was reduced to Rs.9,75,32,043/- and claim of oil and fuel expenses was increased to Rs.13,90,91,600/-. So net change in depreciation and oil & fuel expenses was exactly at Rs.49,63,433/-. This ignited the issue before the Id. Assessing Officer and he went ahead to examine the correctness of claim of oil and fuel expenses. He took the basis of the claim of expenses in the preceding financial year, where the said claim of oil and fuel expenses was 25.14% of the gross receipt from truck hire and handling charges. The Id. Assessing Officer observed that under the head "oil and fuel expenditure" during the year, the assessee has claimed to have incurred Rs.68,93,643.32 towards the bills raised by M/s. Roadwings International Pvt. Limited and similarly the

expenses were also booked in the name of M/s. Anju Fuels, Plaza Roadlines, Deccan Sales & Prem Automobiles. The ld. Assessing Officer also observed that most of the expenses are below Rs.20,000/-. Thereafter not receiving satisfactory reply to the notices issued under section 133(6) of the Act, he went ahead to estimate the expenditure. He considered the upward/downward variation by 3% and taking the base of the expenses of the preceding financial year and estimated the expenses on oil and fuel charges at Rs.11,11,12,298/- and accordingly disallowed Rs.2,79,78,302/-. The ld. CIT(Appeals) has also affirmed the view of the ld. Assessing Officer.

7(b). We, however, after considering the submissions made by the assessee before the lower authorities, contentions raised by the ld. Counsel for the assessee before us and also the ledger copy of fuel expenses, placed at pages 47 to 79 of the paper book, print-out of the website showing increase by 20% during the year, ledger account of the alleged parties, which have been referred by the ld. Assessing Officer towards oil and fuel expenses and copies of invoices placed at pages 47 to 106, observe that ld. Assessing Officer has merely estimated the expenses. Admittedly the assessee had changed the figure of depreciation and oil and fuel expenses in the revised return depicting the exact difference of Rs.49,63,433/- which clearly indicates that the assessee on finding that

wrong depreciation amount has been claimed, had declared the same amount of income in the revised return and difference is added in Oil & Fuel expenses. However, as regards few alleged vendors referred by Id. Assessing Officer namely Roadwings International Pvt. Limited, Anju Fuels, Plaza Roadlines and Prem Automobiles, we notice that the assessee had furnished ledger accounts of all these parties and regular transactions are being carried out through them. In most of the cases, payments have also been made through banking channel and they are having running accounts. We also notice that the assessee has a huge turnover of Rs.42.91 crores from gross freight and forwarding charges. For earning such gross receipt, expenditure has to be incurred. The Id. Assessing Officer after having dealt with certain expenses incurred in the name of few parties has thereafter estimated the expenditure. The estimation shows that he has taken an upward and downward variation of 3%. However, as per the print-out of the website showing the prices of diesel clearly indicates that they have increased by 20%. If we see the amounts of alleged disallowances, the same is also nearly 20.13% of the expenditure claimed in the revised return. It thus clearly shows that the variation of the prices, which Id. Assessing Officer has taken 3%, is incorrect and if the variation of 20% is taken into consideration based on the website data, then the expenses claimed by the assessee almost reach to the

amount claimed in the financial statement. Even the vendors which have been referred by the ld. Assessing Officer for making the impugned disallowances, all are having regular transactions with the assessee. However, ld. Counsel for the assessee was fair enough to accept that the increase of expenditure under the head “oil and fuel” at Rs.49,63,433/- may be sustained as a disallowance under the head of oil and fuel expenses. Considering this contention and also taking into consideration the documents filed before us and the increase in prices of diesel and the wrong estimation of ld. Assessing Officer in making *ad hoc* disallowance, we after sustaining the disallowance to the extent of Rs.49,63,433/- delete the remaining amount of disallowance under the head “oil and fuel expenses” at Rs.2,30,14,869/-. Accordingly, Ground No. 3 raised by the assessee is partly allowed.

8. Ground No. 4 is regarding disallowance of finance charges of Rs.12,60,000/- in respect of interest free advance given to M/s. Falcon Steel Corporation. We after considering the submission of the assessee and also considering the observations made by the lower authorities note that M/s. Falcon Steel Corporation is a partnership firm, in which the assessee is a partner. The alleged disallowance is towards estimated finance charges on investment made in the partnership firm by the partner at Rs.1.05 Cr. In our view, it is purely a transaction of

commercial expediency. Hon'ble Apex Court in the case of *S.A. Builders-vs.- CIT reported in 288 ITR 1* has dealt with this expression and has held to be an expression of wide import and includes such expenditure as a prudent businessman incurs for the purpose of business. The expenditure may not have been incurred under any legal obligation but it is allowable as business expenditure, if it was incurred on the grounds of commercial expediency. Thus, on the ground of commercial expediency itself, the impugned disallowance for estimating finance charges deserves to be deleted. Even otherwise, it has brought to our notice that the assessee has sufficient capital and interest free funds as on the last of the preceding year, which could cover up the investment made in the partnership firm. Accordingly, the finding of the Id. CIT(Appeals) is set aside and the addition of Rs.12,60,000/- is deleted. Ground No. 4 is allowed.

9(a). Grounds No. 5(a) & 5(b) relate to disallowance of finance charges to the extent of Rs.33,83,885/- paid to M/s. Tata Capital for non-deduction of tax at source of this disallowance made under section 40(a)(ia) of the Act. We find that the fact is that the assessee took loan from M/s. Tata Capital Ltd., which is a renowned Finance Company. The documents have been placed before the lower authorities to prove that unsecured loan was taken from Tata Capital Limited and regular instalments have

been given through banking channel. An amendment was brought in by Finance Act, 2012 in section 40(ia) of the Act, which provides that despite failure to deduct TDS, disallowance of expenditure ought not to be made if the payee has taken such sum as part of its gross receipt/income and paid taxes thereon. In the instant case, sum has been paid to M/s. Tata Capital Limited and one cannot doubt that such receipts have not been offered to tax by Tata Capital Limited or not forming it to be a part of gross receipt. In the case of *Shri Navubha J. Chavda - vs. - ITO in ITA No. 592/Rjt./2014 order dated 20.02.2017, Hon'ble ITAT, Rajkot* considering similar type of issue decided the issue after taking into consideration the judgment of the Hon'ble Delhi High Court in the case of *CIT -vs.- Ansal Land Mark Township P. Ltd. [(2015) 377 ITR 635 (Delhi)]*, and came to a conclusion that since the revenue has not been able to rebut the assertion of the assessee on factual position that the recipients have duly paid the taxes on the aforesaid amount and that the amount involved is meagre, there is no reason to doubt the claim of the assessee.

9(b). Respectfully following the above decision of ITAT, Rajkot Bench in the case of *Shri Navubha J. Chavda (supra)*, the same being squarely applicable to the facts of the instant case and since Revenue could not controvert the contention of ld. Counsel for the assessee that the alleged sum has been offered to tax as part of its revenue by the

recipient company M/s. Tata Capital Limited, finding of the ld. CIT(Appeals) is set aside and impugned disallowance of Rs.33,83,885/- made u/s. 40(a)(ia) of the Act is deleted. Grounds no. 5(a) & 5(b) are allowed.

10. Grounds No. 6(a) and 6(b) again relates to disallowance under section 40(a)(ia) of the Act at Rs.15,49,500/- on account of short deduction of tax. In the relevant year, the assessee paid Rs.34,99,500/- to few persons, namely Chandra Prabha Devi, Ramash Kumar Singh and Renu Singh on account of truck hire charges. On sum of Rs.34,99,500/-, tax was deducted at lower rate and ld. Assessing Officer allowed proportionate amount of expenses and disallowed the remaining amount of Rs.15,49,500/-. The alleged sum was paid to three persons, namely Chandra Prabha Devi, Ramesh Kumar Singh and Renu Singh and it is claimed by the ld. Counsel for the assessee that they have taken the alleged sum into consideration in the returns filed under section 139 of the Act and have also paid due taxes thereon. Reference made to certain judgment. In one of the judgments of Hon'ble Kolkata High Court in the case of CIT -vs.- S.K. Tekriwal (2014) 46 taxman.com 444, Hon'ble Court has held that in case of short deduction, the assessee can be declared as an assessee in default u/s 201 of the Act but no disallowance can be made u/s 40(a)(ia) of the Act. Respectfully following the same, since in the instant case

there is short deduction of tax, therefore, no disallowance is called for u/s. 40(a)(ia) of the Act at Rs.15,49,500/-. Accordingly finding of Id. CIT(Appeals) is set aside and Grounds No. 6(a) and 6(b) are allowed.

11. Ground No. 7 relates to estimated disallowance of Rs.6689,134/- for the following expenses:-

(a)	Labour Charges	Rs.16,21,585/-
(b)	Supervision Charges	Rs.15,45,276/-
(c)	Tyre Expenses	Rs.20,43,919/-
(d)	Repairs & Maintenance	Rs.14,78,354/-
		Rs.66,89,134/-

The Id. Assessing Officer made the alleged disallowances for want of proper vouchers and invoices and also since major expenses were incurred in cash. However, it is contended before us that all the expenses which have been incurred in cash are genuine and below the threshold limit of Rs.20,000/- and, therefore, section 40A(3) of the Act cannot be invoked in the given case. We also notice that out of the total expenditure of Rs.3,56,83,402/- incurred under the head of 'labour charges', 'supervision charges', 'tyre expenses' and 'repairs & maintenance', the expenditure incurred in cash under these heads is as below:-

Particulars	Total expenditure	Cash expenditure
Labour expenses	Rs.29,34,443/-	Rs.16,21,585/-
Supervision charges	Rs.37,83,885/-	Rs.15,45,276/-

Tyre expenses	Rs.2,51,89,241/-	Rs.20,43,919/-
Repair & Maintenance	Rs.37,75,833/-	Rs.14,78,354/-
Total	Rs.3,56,83,402	Rs.66,89,134/-

We note that Id. Assessing Officer has disallowed the total amount of cash expenditure as if there is a prohibition under the law to incur expenditure in cash. The nature of expenses namely labour expenses, supervision, tyre expenses, repair and maintenance indicate that truck drivers who are driving the truck/lorry from one corner of country to another place have incurred expenses at various stages. One cannot think of that all such expenses could be incurred only through banking channel. This hypothecation of the Id. Assessing Officer that cash expenses incurred by the assessee deserves to be disallowed is completely incorrect and is merely based on surmises and conjecture. The assessee has also placed sample copies of vouchers from pages 110 to 142 of the paper book about various labour charges, supervision charges, etc. incurred during the year. Ledger account of all these expenses also indicate the cash expenses incurred are below Rs.20,000/-. Taking into consideration the total turnover of the assessee and the returned income, we fail to find any justification in the finding of Id. Lower authorities making *ad hoc* disallowance. Thus, the finding of the Id. CIT(Appeals) is set aside and disallowance of Rs.66,89,134/- is deleted.

12. Grounds No. 8(a) & 8B), the issue is regarding addition under section 68 of the Act for sundry creditors of Rs.2,85,73,172/-.

13. The facts in brief relating to this ground are that the assessee is having transactions with M/s. Roadwings International Pvt. Ltd., Kolkata. In the balance sheet under the head of 'list of sundry debtors' Rs.1,10,17,540/- is the debit balance in the name of M/s. Roadwings International Pvt. Ltd. And on the liability side of sundry creditors credit balance of Rs.2,85,73,142/- is mentioned against the name of M/s. Roadwings International Pvt. Ltd. During the course of assessment proceedings, the ld. Assessing Officer enquired/ collected information from Roadwings International, as per only the amount appearing in the list of sundry debtors was accepted by the said party but no confirmation was received regarding the credit balance appearing in the assessee's books. Based on this information, ld. Assessing Officer treated the sundry credit balance of Rs.2,85,73,142/- as unexplained and added in the hands of the assessee. The ld. CIT(Appeals) did not give any relief to the assessee.

14. Now before us, the assessee had furnished the letter of M/s. Roadwings International Pvt. Ltd. placed at page 143 of the paper book, which has been addressed to ld. ACIT, Circle-28, Kolkata and M/s. Roadwings International Pvt. Ltd. mentioned its PAN, financial

statement and ITR. Further ledger account in the assessee's books was also placed from pages 144 to 156 of the paper book. Perusal of these details firstly indicates that identity of the alleged sundry creditors is not in dispute as it is duly assessed to tax and has replied to the notices under section 133(6). Now coming to part of the debit and credit balance, the ld. Assessing Officer has accepted the debit balance appearing in the books. It is surprising that when identity is not in dispute, only the debit balance has been accepted but the credit balance is not accepted. It seems that ld. Assessing Officer had not examined the ledger account properly because the assessee maintains two accounts of the same person, one under the head 'sundry debtor' and another under 'sundry creditor'. There is no restriction in the Mercantile Accounting System to maintain two accounts of the same person because for the purpose of better accounting, one can maintain two accounts in the name of same person of transactions are of different nature. At page 144 of the paper book, the account of M/s. Roadwings International Pvt. Ltd. shows only truck running expenses and fuel charges. Against the opening debit balance of Rs.2,01,79,505/-, various expenses have been incurred during the year and the charging debit balance appears at Rs.1,10,17,540/-. On the other hand, the account appearing under the head 'sundry creditors' is concerned, copy of which is placed at page 153 of the paper book,

prima facie it seems to be an account of unsecured loans/funds inflow/ outflow account. Against the opening credit balance of Rs.4,78,18,775.85, there are certain transactions through bank and journal entries, the closing credit balance is Rs.2,85,73,142/-. One of the credit entries of Rs.70,00,000/- on 16.11.2012 is towards sale of Fantuzzi Reach Stacker for a consideration of Rs.70,00,000/-. We find that as a genuine account and transactions have been entered around the year. Since we find that transactions with Roadwings International Pvt. Ltd. are genuine and since this party has accepted the transactions, which are appearing under the head 'sundry debtors', there remains no reason to dispute the remaining part of transactions entered with the assessee. Thus, the finding of Id. CIT(Appeals) is reversed and the impugned addition under section 68 amounting to Rs.2,85,73,142/- is hereby deleted.

15. The other ground is general in nature, which does not call for recording of any finding.

16. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 02.07.2024.

Sd/-
(Rajpal Yadav)
Vice-President

Sd/-
(Manish Borad)
Accountant Member

Kolkata, the 2nd day of July, 2024

*Copies to :(1) Raghvendra Pratap Singh,
C/o. Subash Agarwal & Associates, Advocates,
Siddha Gibson,
1, Gibson Lane, Suite 213, 2nd Floor,
Kolkata-700069*

*(2) Assistant Commissioner of Income Tax,
Circle-28, Kolkata,
Aayakar Bhawan Dakshin,
2, Gariahat Road, Kolkata-700068*

(3) CIT(A), NFAC, Delhi;

(4) CIT-

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.