IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE "C" BENCH, BANGALORE

Before Shri Waseem Ahmed, Accountant Member
and
Shri Soundararajan K., Judicial Member

ITA No. 640/Bang/2024 (Assessment Year:2014-15)		
Gangapura Nagaraja Iyer Srinivasa No. 3002/a, Srinivasa Nilaya 2nd Cross, New Extension Kolar 563101 PAN – AAGPI5509J	vs.	ACIT, Circle - 4(2)(1) BTMC Building, 80 Ft. Road 6th Block, Koramangala Bengaluru 560095
(Appellant)		(Respondent)

Assessee by:	Shri R. Chandrasekhar, Advocate
Revenue by:	Shri V. Parithivel, JCIT-DR

Date of hearing:	20.06.2024
Date of pronouncement:	04.07.2024

O R D E R

Per: Soundararajan K., J.M.

This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre, Delhi (CIT(A)) dated 15.02.2024 in respect of Assessment Year (AY) 2014-15.

2. The brief facts of the case are that the assessee is doing the business of erecting cement poles and high tension towers for distribution of electricity. The assessee purchased the materials locally and used the same in the erection work. Apart from that the assessee had incurred labour charges. The assessee filed his return of income on 28.09.2014. The return was processed and the case was selected for limited scrutiny under CASS and notice under Section 143(2) the Income Tax Act, 1961 (the Act) was issued on 31.08.2014 and

thereafter notice under Section 142(1) r/w Sec129 of the Act was also issued to the assessee and the AR of the assessee appeared and submitted the required details. The AO found out discrepancy in the purchase values and sought for reconciliation. The assessee appeared and produced self made vouchers for the purchases without details and therefore the AO disallowed the expenditure and added the same to the income.

3. The assessee preferred an appeal before the CIT(A) and contended that the order of the ld. AO is not correct since the percentage of profit declared by the assessee for the current year is about 6.65% as against that of 6.01% for the earlier year which was accepted by the AO and, therefore, the assessment made for the current year by disallowing the expenditure by treating the same as inflated purchase is to be set aside. The assessee further contended that if the finding of the ld. AO is accepted then the profit margin would be about 18.45% and therefore contended that the entire assessment is bad in law. The ld. CIT(A) had considered the issue in detail and dismissed the appeal for the reason that no proper bills were produced for the purchases and the earlier years result would not be a reason for making an assessment for the current year.

4. Against the order of the CIT(A) the assessee has preferred the present appeal before the Tribunal with the following grounds: -

> *"1. The learned Commissioner of Income Tax (Appeals)/ NFAC erred in confirming the addition of Rs.80,30,597/- made in the appellant's case for the assessment year 2014- 15 on the ground that the handmade vouchers in respect of Cement, Sand and Jelly prepared by the appellant cannot be relied upon.*
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> *2. The learned Commissioner of Income Tax (Appeals)/ NFAC did not consider the net profit results for the assessment year 2013-14, which was given for comparison and without any other comparable cases disallowance was confirmed.*
>
> *3. The learned Commissioner of Income Tax (Appeals)/ NFAC ought to have considered the nature of business of the Appellant as well the plea of the appellant that on account of disallowance on the*

ground of the expenses are supported only by handmade vouchers, would result improbable income.

4. *The learned Commissioner of Income Tax (Appeals)/ NFAC ought to have considered that in cases where section 44AD of the Act is invoked, the maximum profits that could be estimated only at 8% however, on account disallowance the determination of profit will shoot up to 18.45%, which is highly not possible in the line of business.*

5. *The Appellant submits that the nature of work executed that of erecting cement poles for supply/distribution of electricity in rural areas and the materials needs to be purchased in smaller quantity to the nearest point of place of erecting poles, which has not been considered by the learned Authorities below.*

6. *The learned Commissioner of Income Tax (Appeals)/ NFAC erred in confirming the levy of interest u/s 234B of the Act."*

5. The assessee has also filed a paper book containing the statement of accounts for the assessment years 2013-14 to 2015-16 along with sand and cement ledger extracts and jelly purchase ledger extracts. The learned A.R. had mainly relied on the results of the earlier years and on that basis he made a submission that the profit declared in the current year tallies with the earlier years profit margin and therefore, prayed to accept the return for the current year and allow the appeal.

6. The learned D.R. argued that the assessment order as well as the appellate order are made after considering the issue in detail and also the disallowance made by the authorities are in accordance with the order of the ITAT Chennai Bench in the case of *Mohan Breweries & Distilleries Ltd. v. ACIT* [2022] 197 ITD 466 (Chennai Trib) and prayed to dismiss the appeal.

7. We have heard the arguments of both sides and perused the assessment order, appellate order and the documents available in the paper book and also the order relied on by the learned D.R. in support of his argument.

8. It is seen from the assessment order the assessee appeared before the ld. Assessing Officer (AO) pursuant to the notice issued u/s 142(1)of the Act and

produced the P&L account, purchase statement with details of VAT paid and TIN. On perusing the same the AO found that there is a difference between the purchases reported in the P&L a/c and in the ROI and sought for the explanation. At that time the assessee submitted a new P&L a/c as per the value mentioned in the ROI. Therefore the AO asked the assessee to reconcile the discrepancies and directed to produce the bills for the purchases of Rs 80,30,507. The assessee submitted bills for Rs 81,15,597 with handmade, petty vouchers without any details. Not satisfied with this the AO issued a show cause notice seeking proper explanations. The assessee explained that in villages there is no possibility to get the bills and accepted that he was not able to furnish any proof about the details of the vendors. The AO found that the vouchers are self made without mentioning the name of the seller, number or mode of payment and therefore he was not able to conduct further enquiries to ascertain the genuineness of the purchases. In view of the above said facts the AO arrived at the conclusion that the expenses have been inflated to reduce the profit and added the expenditure to the income. From the above it is clear that the AO had disallowed the expenditure for the reason that the assessee was not able to give valid proof. In fact the handmade vouchers produced by the assessee do not contain any details and therefore the AO was not able to verify the genuineness of the claim. Even before the CIT(A) and before us the assessee not produced any valid documents. When there is no basic record, filing of the ledger extract will not be of any use. Therefore we agreed with the findings of the AO and upheld the disallowance of the expenditure incurred towards the purchases.

9. We have also considered the other argument of the learned A.R. that the profit margin in respect of earlier years are also similar to the profit margin declared for the current year and, therefore, the disallowance need not be made for the current year. We are not in agreement with the above argument. In the present case the assessee was not able to prove his case with genuine bills or

vouchers and therefore the AO disallowed the expenditure. Even in respect of the bills made for huge amounts, the name of the seller and the quantity of the materials purchased were absent and, therefore, the AO had rightly disallowed the expenditure. The assessee had also not produced any records/documents before us to take a different view. Therefore the assessee had failed to prove their case and therefore the disallowance made by the ld. AO is correct.

10. We have also perused the order of the ITAT, Chennai Bench relied on by the learned D.R. and found that the same is on similar facts and circumstances and the findings of the Tribunal are as follows: -

> *"7. From the facts, it emerges that the assessee was subjected to search action u/s 132 11-5-2012 wherein certain incriminating documents were found and seized. Apart from this, a huge difference in cash was found. Accordingly, the responsible representative of the assessee-company Shri T. Krishnamurthy (CFO) was required to explain the same and his statement was recorded on oath u/s 132(4). The facts as emerging out of this statement have been elaborated in preceding paras-5.2 to 5.4. It was admitted that cash was given to sales force for distribution in market on secondary sales carried out at Tasmac Depot & Tasmac Retail outlets. The payments were made with the knowledge of the assessee on monthly basis. Besides this, the assessee has paid incentive to its own sales force also. The incentive was paid on secondary sales on monthly basis to depot managers/retail outlet employees of Tasmac on the basis of category of brand. The scheme is stated to have covered all the 42 depots throughout Tamil Nadu. It also emerges that all such payments are made in cash since the cash was handed over to head of marketing department who, in turn, would hand over the cash to Area sales officers which is thereafter paid to depots managers/retail employees based on targets fixed by the assessee. The monthly expenditure was stated to be in the range of Rs. 20 Lacs to Rs.25 Lacs. The incentive paid to own sales force was stated to be in the range of Rs. 1 Lac per month. The only explanation adduced was that these payments were made as per trade practices notwithstanding the facts that the same were paid in gross violation of provisions of sec.40A(3) and also in violation of TDS provisions which mandate tax deduction at source on such payment. The argument that these were mere reimbursements could not be accepted in the light of the fact that such payments constitute expenditure for the assessee and has been debited in the Profit & Loss Account. Another argument that there was increase in*

> *turnover would also not be relevant, in this regard. In another statement recorded during the course of assessment proceedings, the position as aforesaid was maintained. The statement of Area Sales Manager further confirmed the modus operandi of such payments.*
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> *8. Proceeding further, it could also be noted that the assessee is not able to identify the payees of such payments. No details of payees could be submitted and the quantification of the expenditure remained elusive. Nothing was shown that the payments so made were offered to tax by the payees thereof. The only supporting document given by the assessee was self-made vouchers without their being any supporting third-party vouchers."*

In the above order, it was clearly held that the expenditure incurred as a trade practice could not be allowed when the assessee is not able to identify the payees of such payments. Further, the Tribunal also held that the increase in turnover also could not be a relevant one for allowing the expenditure. The Tribunal had come to the above conclusion solely on the ground that the assessee was not able to identify the payees and no details of the payees were submitted and, therefore, held that the proofs were inadequate for allowing the expenditure.

11. In the instant case also the assessee was not able to identify the sellers and no details of the sellers were furnished and the vouchers/invoices produced also lack of details and therefore no proofs were made available by the assessee before the AO to verify the genuineness. Further the assessee initially filed one P&L A/c with different purchase value and when the discrepancy was pointed out, the assessee filed a new P&L A/c in line with the return of income filed by the assessee. This creates doubts in the mind of the AO and therefore the AO sought for the copies of the bills for the purchases. The assessee produced self made vouchers/bills with no proper details. Even before this Tribunal the assessee has not produced any details in respect of the suppliers from whom they have obtained vouchers/bills so that the ld. AO can verify the genuineness of the claim. In such circumstances we are unable to accept the arguments of the ld AR and held that the order of the ld. AO in

disallowing the expenditure is in order and it is also in accordance with the view expressed by the ITAT, Chennai Bench in the order cited supra.

12. In the result we find that the order of the AO disallowing the purchase expenditure is in order and therefore we dismiss the appeal filed by the assessee.

Order pronounced in the open Court on 4th July, 2024.

Sd/-	Sd/-
(Waseem Ahmed)	**(Soundararajan K.)**
Accountant Member	**Judicial Member**

Bengaluru, Dated: 4th July, 2024
n.p.

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2. *The Respondent*
3. *The CIT, concerned*
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By Order

//True Copy//

Assistant Registrar
ITAT, Bengaluru