

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A': NEW DELHI**

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No.2497/Del/2024
(ASSESSMENT YEAR 2017-18)**

Alexis Global Private Limited B-24/3, Phase-2 Okhla Industrial Area New Delhi-110020 PAN:AAMCA 2161M (Appellant)	Vs.	Asst. CIT Circle-2(2) Delhi (Respondent)
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Assessee by	Sh. Ajay Wadhwa, Adv. & Ms.Rajini Handa, Adv.
Respondent by	Shri Kanv Bali, Sr. DR

Date of Hearing	16/07/2024
Date of Pronouncement	31/07/2024

ORDER

PER S.RIFAUR RAHMAN, AM:

1. This appeal has been 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 02/05/2024 for Assessment Year 2017-18.
2. The brief facts of the case are, assessee filed its return of income for Assessment Year 2017-18 declaring an income of Rs.98,30,721/- on 11/10/2017. The return was processed u/s

143(1) of the Income Tax Act, 1961 ('the Act' for short). Subsequently, the case was selected for scrutiny under CASS and notices u/s 143(2) and 142(1) along with questionnaire were issued and served on the assessee. In response the assessee filed relevant information through electronic mode.

3. The assessee is in the business of providing transportation, consultancy, commission and warehousing services. The Assessing Officer observed in the assessment order that the case was selected for the reason that "*Large payments made under section 194C to persons who have not filed return of income*". During the assessment proceedings, the Assessing Officer observed that assessee has made payments of Rs.4,67,39,654/- towards contract expenses and deducted TDS u/s 194C of the Act on the amount of Rs.3,26,70,838/-. He further observed that the person to whom the payments were made failed to file the return of income. Therefore, certain details were requisitioned from the assessee, however, the assessee failed to provide the same. In view of non submission of the details as called for, a notice was issued dated 03/12/2019 calling for information.

4. In response, assessee filed letter dated 05/12/2019 and submitted that the liability of the assessee is only to deduct TDS as per the provisions of Income Tax Act, 1961, therefore the assessee fulfilled his duty. The payee filed the return of income or not, it is not the concern of the assessee in any manner. After considering

the submissions of the assessee, the Assessing Officer observed that it is not acceptable that it is not the duty of the assessee to ascertain whether the payee has filed the return or not, but the assessee is bound to provide the confirmations in respect of the payee as the assessee is the one who have made the payments to the parties. Therefore, the Assessing Officer came to the conclusion that the assessee failed to prove the genuineness of the transaction/payments made with the parties as the onus is always on the assessee to prove the genuineness of any transaction made by him. With the above observations, the Assessing Officer proceeded to make the addition u/s 69C of the Act as unexplained expenditure.

5. Aggrieved with the order, the assessee preferred an appeal before NFAC, Delhi and raised the grounds of appeal and filed detailed submissions before the Ld. CIT(A). The same is reproduced by the Ld. CIT(A) at page 4 to 10 of the order. After considering the detailed submissions of the assessee, the Ld. CIT(A) partly allowed the effective ground raised by the assessee on the addition made u/s 69C of the Act. For the sake of brevity, the same is reproduced below:-

“8.1 The submission made by the appellant is perused. The assessment in the case of appellant was selected for scrutiny under CASS to verify the large payments u/s. 194C to persons who have not filed return of income. Therefore, in order to verify the genuineness of the payments, the details of payments made u/s.194C of the Act were called for from the appellant. Since the appellant has failed to provide the details called, a show cause notice was issued to the appellant on 3/12/2019 as to why the expenses should not be disallowed and added to the total income. In response to the

show cause, the appellant has sought one week time for the details sought by the Assessing Officer, however the assessment order was passed on 8/12/2019. The appellant further stated that during the assessment proceedings, the appellant has made a submission in 8 annexures vide letter dated 29/11/2019 before the Assessing Officer and without considering the adjournment letter, the Assessing Officer has completed the assessment in haste.

8.2 It is seen from the Paper Book (PB-1 to PB 9) which contain the details submitted before the Assessing Officer in 8 Annexures during the assessment order that the Annexure 1 to 5 contains lease deed entered by the appellant with various vendors, the annexure 6 contain Invoices raised by the appellant and the Annexure 7 contains the details of warehousing charges paid by the appellant to various parties. The Annexure 8 contains details of TDS deducted and deposited u/s.194C of the Act. In these details, the appellant has given expenses of Rs.58,72,996/- covered u/s.194C of the Act giving the PAN, name of the party with address, nature of expenses, amount and TDS deducted. Apart from these details the appellant has not furnished any details of the contract expenses covered u/s.194C of the Act. It is seen from the assessment order that the total expenses covered u/s.194C of the Act is at Rs.4,67,39,654/-, whereas the appellant has furnished the details of expenses covered u/s. 194C of the Act of Rs.58,72,996 only. It is very much evident from the details submitted by the appellant on 29/11/2019 that the Assessing Officer has called for the details of expenses covered u/s 194C of the Act and the appellant has not furnished the complete details. During the appellate proceedings, the assessee was given sufficient opportunity to furnish the submission along with supporting documentary evidence but the appellant has failed to submit the documentary evidence to prove the genuineness of the contract expenses incurred by the appellant during the relevant financial year. It is also evident from the submission of the appellant that the appellant has sought one weeks' time to provide the date but the assessment was completed without giving any further adjournment. In such circumstances, the appellant could have furnished the data called for by the Assessing Officer during the appellate proceedings. However, inspite of providing numerous opportunities, the appellant has failed to furnish the complete details of expenses covered u/s. 194C of the Act. As per Rule 46A, additional evidence can be produced at the first appellate stage when conditions stipulate in the Rule 46A are satisfied and a finding is recorded in a case

(a) where the Assessing Officer has refused to admit evidence which ought to have been admitted.

(b) or where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Assessing Officer.

(c) where the appellant was prevented by sufficient cause from producing before the Assessing Officer any evidence which is relevant to any ground of appeal.

(d) where the Assessing Officer has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

8.3 The appellant in the submission has stated that an adjournment was sought to furnish the details and the assessment was passed without giving the adjournment as such the evidence/details could have very well submitted during the appellate proceedings, but the appellant has not made any attempt by furnishing the documentary evidence during the appellate proceedings. Further the appellant is aware that the assessment was selected for scrutiny for the reason that the parties to whom contract payments made are non-filers and the appellant should have followed the fundamental rule which is valid in all branches of law, including Income-tax Law that the assessee should adduce the entire evidence in his possession at the earliest point of time. This ensures full, fair and detailed enquiry and verification at the initial state. In this case the appellant has failed to establish the genuineness of the expenses which is covered for deduction of TDS u/s.194C of the Act by furnishing the name of the party to whom paid, their PAN, amount and nature of expenses. If these details were submitted during the assessment proceedings, the Assessing Officer could have carried out appropriate enquiry regarding the genuineness of the expenses. It appears that the assessee has deliberately not provided the details during the assessment proceedings as well during the appellate proceedings to avoid any further verification. In the circumstances, the ground raised by the assessee that the entire addition made u/s.69C of the Act be deleted is not acceptable..

8.4 It is seen from the Paper Book that the appellant has provided the details of TDS deducted and deposited u/s.194C of the Act in respect of expenses of Rs. 58,72,996/-. In these details, the appellant has provided the name of the party, address and PAN and therefore, it was incumbent on the Assessing Officer to verify the genuineness of the expenses by issuing summon or notice u/s. 133(6) of the Act to these parties. However, the Assessing Officer has not carried out any independent enquiry regarding the genuineness of expenses of Rs.58,72,996/-. Merely on the ground that the parties to whom payments made are non-filers the Assessing Officer cannot disallow the expenses. Since the assessee has

furnished the details of expenses of Rs.58,72,996/- during the assessment proceedings and the Assessing Officer has not given any finding on these details, transaction cannot be doubted and be treated as non-genuine without making proper enquiry. Therefore, the Assessing Officer is directed to allow the expenditure of Rs.58,72,996/- out of the total expenditure of Rs.4,67,39,654/- disallowed and added to the total income u/s.69C of the Act. Accordingly, the ground is partly allowed.”

6. Aggrieved with the above order, the assessee is in appeal before us raising following grounds of appeal:-

“1. That on the facts and circumstances of the case and in law, the order dated 02.05.2024 passed by the Learned Commissioner of Income Tax (Appeals) (hereinafter referred to as "Ld. CIT(A)") under section 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") is patently illegal, erroneous and bad in law and facts.

2. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the disallowance made by the Learned Assessing Officer (hereinafter referred to as "Ld. AO") of Rs. 4,08,66,658/- on account of payment made to contractors as unexplained expenditure under section 69C of the Act.

3. Without prejudice, the entire expenditure has been recorded in the booked of account, hence disallowance under section 69C of the Act as unexplained expenditure is not maintainable.

4. That on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in only allowing the expenditure of Rs.58,72,996/- despite the fact that the Appellant had filed documentary evidences and submissions with respect to entire payments to contractors of Rs.4,67,39,654/- during assessment and appellate proceedings. Both the authorities have failed to consider the evidence filed before them, and have proceeded on incorrect facts and findings and by disregarding the evidences/submissions filed by the Appellant and in violation of principles of natural justice.

5. That on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the disallowance made by the Ld. AO despite the fact that the Ld. AO had failed to bring on record any evidence to prove that the payment was made to bogus parties.

6. That on facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the disallowance made by the Ld. AO despite the fact that the Ld. AO had failed to mention as to which parties had not filed

their returns which the Ld. AO seemed to consider as bogus transaction bogus parties.

7. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in sustaining the disallowance made by the Ld. AO, for the reason that the persons to whom payment was made are non-filers of return despite the fact that payment has been made through banking channels and is backed by invoices.

8. That the penalty proceedings initiated under section 271AAC of the Act are invalid.

9. That on the facts and circumstances of the case and in law, the Ld. CIT(A) have erred in sustaining the interest u/s 234A, 234B, 234C and 234D of the Act.

10. That the grounds of appeal are independent and without prejudice to each other.”

7. At the time of hearing, the Ld. AR submitted elaborately before us and also filed a written submissions, which is reproduced as under:-

“1.SOURCE ESTABLISHED AS PAYMENTS DULY RECORDED IN BOOKS OF ACCOUNT AND MADE THROUGH BANKING CHANNEL OUT OF FUNDS SHOWN IN BOOKS; At the very outset, it is humbly submitted that the addition made by the Ld. AO under section 69C of the Act is grossly illegal and without jurisdiction. The Ld. AO has sought to make the addition under section 69C of the Act as unexplained expenditure whereas these payments are duly recorded in the books of account and reflected in the audited financial statements. The payments were paid through banking channels and sourced out of clear identifiable funds and backed by supporting evidences. Thus, source of such expenditure stands established as having been incurred out of the funds shown in the books of account. Refer clause 34 of tax audit report at page 33 of paperbook.

2. SECTION 69C NOT APPLICABLE AS SOURCE ESTABLISHED AND EXPENDITURE IS ACCOUNTED FOR: The disallowance made is contrary to the provisions of the Act. The provisions of Section 69C contemplate that any expenditure not accounted for or there is no source behind incurring such expenditure, then only section 69C can be invoked. Section 69C is reproduced below

”[Unexplained expenditure, etc.

69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year:]

[Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.]"

However, such is not the case of the Ld. AO as he failed to point out any expenditure incurred without source or which is unrecorded. Hence, provisions of Section 69C were wrongly Invoked as there was no unaccounted expenditure.

3. THE FOCUS OF SECTION 69C IS ON THE "SOURCE" OF SUCH EXPENDITURE AND NOT ON THE AUTHENTICITY OF THE EXPENDITURE ITSELF: What the Ld. AO and the Ld. CIT(A) attempted to do was to go into the authenticity of the expenditure and returned a finding that the expenditure was not authenticated by supporting evidence, the genuineness of the payments made to the parties was not established, payment were made to bogus parties and consequently, the expenditure was disallowed as unexplained expenditure under Section 69C of the Act. The source of such expenditure or part thereof is not in dispute. What is in dispute is the genuineness of incurring the expenditure. In the absence of any allegation towards unexplained source of expenditure, Section 69C does not apply at all.

4. NO DEFECT POINTED OUT IN BOOKS. BOOKS NOT REJECTED AND GROSS PROFIT ACCEPTED:

1. The books of account of the Assessee have not been discarded nor has any defect been found.

ii. Nowhere has it been found that Assessee has made purchases outside the books;

iii. The entire finding of the Ld. AO and the Ld. CIT (A) hinges upon the fact that the expenses under consideration are paid to bogus parties and the genuineness of the expenditure is in doubt without even appreciating that if the source of expenditure are from the books and through banking channel, then how such expenditure can be treated as un accounted.

iv. Since gross profit has been accepted including the trading account then no such addition can be made.

v. No discrepancy in books found by the auditor-refer page 6, 25 of paperbook

5. SECTION 69C IS A DEEMING FICTION AND IS TO BE CONSTRUED STRICTLY: Deeming fictions are to be strictly construed and if the facts of the case do not fall within the four corners of the deeming fiction, the addition cannot be sustained. This has been so held by various Courts across the Country.

6. Reliance is placed on the following decisions for the following propositions:

1. if expenditure is recorded in books, the source is explained and the provisions of Section 69C are not applicable;
- ii. The focus of Section 69C is on the "source" of such expenditure and not on the authenticity of the expenditure itself;
- iii. Books not been discarded or any defect has been found, then purchases/ expense as debited in the books cannot be added u/s 69C because nowhere it has been found that assessee has made purchases outside the books;

iv. Section 69C is a deeming provision and therefore, it has to be interpreted strictly;

a. PCIT v. B. G. Shirke Construction Technology (P.) Ltd. [2019] 108 taxmann.com 338 (SC)

"1. Delay condoned.

2. We are not inclined to interfere with the impugned order passed by the High Court"

Hon'ble Bombay High Court CIT-1 v. B.G. Shirke Construction Technology (P.) Ltd. [2018] 96 taxmann.com 608 (Bombay)

"4.... Under the circumstances, the CIT(A) inter-alia record in its order as under:

"The primary requirement for application of section 69C is that assessee should incur expenses out of unexplained source of income. The section cannot apply if the source of income for making expenses is explained. This section refers to the source of expenditure and not to the expenditure itself. No evidence of any unexplained expenditure has been brought on record either by search party or by the AO. None of the seized material or document indicates that the appellant has incurred any unexplained expenditure out of books. Section 69C is a deeming provision. Therefore, it has to be interpreted strictly. Onus was on the AO to prove that the appellant had incurred expenses out of books of account. The AO has not brought on record any material to show that the appellant Incurred expenses out of books of account.

The only material on the basis of which he made addition u/s.69C was the valuation report...."

5.... In the aforesaid facts, the Tribunal held that in the absence of any material being brought on record to show that the valuation done as on 31.3.2009 is incorrect, no occasion to apply Section 69C of the Act can arise. The Tribunal further holds that Section 69C of the Act would not be applicable to the facts of the present case as there is no evidence of any unaccounted expenditure. The difference was only on account of estimation of the value of Work in Progress by the site engineers in November, 2008 and actually arriving at the value on physical verification which is reflected in the return of Income as on 31.3.2009. In the above circumstances, no occasion to apply Section 69C of the Act would arise.

7... In the aforesaid facts, unless it is first established by the Revenue that there is unexplained expenditure, no occasion to apply Section 69C of the Act can arise. The Revenue has not challenged the concurrent findings of the CIT (A) as well as of the Tribunal that the Work in Progress as disclosed during the time of search was on provisional basis and it was taken into consideration while determining the Work in Progress as on 31.3.2009. The proposed question that the Tribunal held that there is a difference in the book value and the physical value of the Work in Progress is factually not correct. We did point out this to the counsel for the Revenue but he insisted on pressing this question. However, during the course of his submission, he was not able to substantiate the above presumption in the question as framed.

8. In the above view, in the facts of this case, question as proposed is academic, unless the Revenue first challenges finding of fact arrived at by the Tribunal. The finding of fact is that, there is no excess work in progress than that declared by the Respondent-Assessee as on 31.3.2009 and the valuation done of the work in-progress as on 31.11.2008 was only on provisional basis."

b. Hon'ble Delhi High Court in case of PCIT (Central)-2 v. Param Dairy Ltd. [2022] 139 taxmann.com 546 (Delhi)

7. The assessee challenged the order before the ITAT. The ITAT after considering the entire material on record and submissions of the parties, inter alia, held that the purchases under the head "tanki" have been duly recorded in the books of account and is reflected in the audited financial statements. The total purchases including Milk Tanki purchases have been debited to the profit and loss account and the entire source of purchases are duly recorded in the books of account thus source of such purchase/expenditure stands established as having been incurred out of the funds shown in the books of account. ITAT further held that therefore at the threshold. addition under section 69C cannot be resorted to...

11....The reading of the order of ITAT does not reveal any perversity or manifest error. We consider that the ITAT has returned the findings of facts based S.K JAIN on the material on record. Thus, there is no substance in the appeal. Hence, the same is dismissed.

c. Hon'ble Delhi High Court in case of CIT-V v. M/S RADHIKA CREATION ITA 692/2009 5 "S. Insofar as the first aspect of the matter is concerned, we find that Section 69C clearly stipulates that where, in any financial year, the assessee has incurred an expenditure and he offers no explanation about the source of such expenditure or part thereof", or the explanation, if it is offered by him, is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year. Thus, the focus of Section 69C is on the "source" of such expenditure and not on the authenticity of the expenditure itself. It Is an admitted position that the expenditure was shown by the assessee in its regular books of accounts and it is because of this reason that the Income-tax Appellate Tribunal had observed: "As the expenditure was accounted in the regular books, the source is obviously explained. The provisions of Section 69C are not applicable as there was no unaccounted expenditure."

6. What the Assessing officer attempted to do was to go into the authenticity of the expenditure and he returned a finding that the expenditure was not authenticated by vouchers and consequently, he added the said expenditure as unexplained expenditure under Section 69C. We are in agreement with the observations and findings of the Commissioner of Income-tax (Appeals) as well as that of the Income tax Appellate Tribunal that this is not a case which falls under Section 69C. Clearly. Section 69C refers to the source of the expenditure" and not to the expenditure itself. Consequently, the Assessing Officer was clearly wrong in treating the said expenditure as unexplained expenditure under Section 69C of the said Act and the lower appellate authorities were right in their conclusions in deleting the said addition."

d. Mandeep Singh Anand v. ACIT [2024] 159 taxmann.com 1225 (Delhi - Trib.)

6. From the above narration of facts which are undisputed, it could be seen that the lower authorities had categorically agreed that a sum of Rs.30.753/- paid to HDFC by M/s Spring Travels Pvt. Ltd. by regular banking channels and the same was claimed as business promotion expenses by M/s Spring Travels Pvt Ltd. The same was treated as an unexplained expenditure in the hands of the assessee by the Ld. AO. Once it is proved that the sald expenditure is reflected in the books of Spring Travels Pvt. Ltd. and

sourced out of regular banking channels from the funds of the said company, the same cannot be added as unexplained expenditure in the hands of the assessee u/s 69C of the Act.....

e. Feather Infotech (P.) Ltd v. DCIT [2024] 161 taxmann.com 441 (Delhi - Trib

"21. On the similar footings. Section 69C also do not apply since Section 69C is confined to a situation where source of expenditure incurred could not be objectively explained to the satisfaction of the AO. In the instant case, what being disallowed is the expenditure incurred and not the source of payment towards such expenditure. Neither Section 68 nor Section 69C is applicable in the present case. Alongside, we also observe that the CIT(A) has modified and broadened the charge to encompass application of Section 68 of the Act. While doing so, no opportunity was given to the assessee to counter such proposal. The exercise of purported co-terminus power in such manner is not permissible in law. On this ground also, the action of CIT(A) needs to be set aside."

f. Manoj Sharma v. ITO. Ward-39(5), New Delhi [2019] 103 taxmann.com 105 (Delhi-Trib.) "10. Once the quantity of opening stock and purchases on the debit side; and sales and closing stock in the credit side in the books of account has been accepted, then to hold that the some quantity of purchases recorded in the books are unexplained or outside books of account, is very difficult proposition to accept. Because the quantitative details of stock, purchases, sales have not been discarded or any defect has been found, then purchases as debited in the books of accounts cannot be added u/s 69..... If all the entries in the trading account including the quantitative tally of purchases, opening stock, sales and closing stock are found to be correct and no discrepancy has been found, then no addition on account of unexplained purchases can be made, because nowhere it has been found that assessee has made purchases outside the books. The entire finding of the Ld. CIT (A) hinges upon the fact that there was material indicating purchase under consideration are bogus without even appreciating that if the source of purchases are from the books and through account payee cheque, then how such purchases can be treated as unaccounted. Since gross profit rate and gross profit has been accepted including the trading account then no such addition can be made. In the result on merits addition made by the AO is deleted and consequently assessee's appeal is allowed."

g. BABCOCK POWER (OVERSEAS PROJECTS) LTD. v. DCIT [2003] 131 TAXMAN 86 (DELHI) (MAG)

"7..... We have also seen further that whatever salaries were paid by the asses-see, they are accounted for in the regular books of accounts and no defect of any kind was pointed out by the Assessing Officer in the books of account maintained by the assessee in due course of business. Therefore, in view of all these facts and circumstances, we hold that the CIT (Appeals) was not justified in sustaining the additions made by the Assessing Officer for both of the years. Accordingly we delete both the additions for both of the years."

h. ACIT v. M/s Command Detective & Securities Pvt. Ltd.-I.T.A. Nos. 4129-4134/Del/2012 and C.O.

Nos. 338-343/Del/2012-para 8.2

1. DCIT v. Hind Industries Ltd. [2020] 79 ITR(T) 1 (Delhi - Trib.)-para 7

J. Smt. Sudha Loyalka v. ITO [2018] 97 taxmann.com 303 (Delhi-Trib.)-para 6

7. IF ADDITION HAS BEEN MADE BY INVOKING A PARTICULAR SECTION UNDER THE DEEMING PROVISIONS, THE ITAT HAS NO POWER AND JURISDICTION TO ASSESS IT UNDER ANY OTHER SECTION CONCERNING THE DEEMING FICTION:

We rely on the judgment wherein it has also been held that if an addition has been made by invoking a particular section under the deeming provisions, the ITAT has no power and jurisdiction to assess it under any other section concerning the deeming fiction. The Jurisdictional High Court in the case. Smt. Sarika Jain (407 ITR 254) (Allahabad High Court) holds so the relevant portion of which is reproduced as under:

"15. The use of the word "thereon" is important and it reflects that the Tribunal has to confined itself to the questions, which are arising or are subject matter in the appeal and it cannot be travelled beyond the same. The power to pass such orders as the Tribunal thinks fit can be exercised only in relation to the matter that arises in the appeal and it is not open to the Tribunal to adjudicate any other question or an issue, which is not in dispute and which is not the subject matter of the dispute in appeal.

16. In the present case. It is apparent that the subject matter of the dispute all through before the Tribunal in appeal was only with regard to the addition of alleged amount of the gift received by the appellant-assessee as his personal income under Section 68 of the Act and not whether such an addition can be made under Section 69-A of the Act.

17. In view of the above, it can safely be said that the Tribunal travelled beyond the scope of the appeal in making the addition of the said income under Section 69-A of the Act. It may be worth noting that the Tribunal has recorded a categorical finding that "It is clear that under the provisions of Section 68, the addition made by the Assessing Officer and sustained by the CIT (Appeals) cannot be sustained, meaning thereby that the Tribunal was of the opinion that the Assessing Officer and the CIT (Appeals) committed an error in adding the aforesaid amount in the income of the appellant-assessee under Section 68 of the Act.

18. In view of the above, when the said income cannot be added under Section 68 of the Act and the Tribunal was not competent to make the said addition under Section 69-A of the Act, the TANVI entire order of the Tribunal stand vitiated in law."

Hence, from the aforesaid, it is clear that the addition made as unexplained expenditure is not sustainable in law and the Hon'ble Income Tax Appellate Tribunal cannot change the section to tax it under any other provision of the Act. This is as per the binding decision of the Jurisdictional and various other decisions in the matter.

11. GROUND NO. 4. 1 AND 2: THE LD. CIT(A) FAILED TO CONSIDER THE EVIDENCE FILED-OUT OF 3 PAGES OF ANNEXURE TOTALLING TO Rs. 3.26.70.838/- ONLY FIRST PAGE TOTALLING TO RS. 58.72.996 WAS CONSIDERED:

1. In spite of the evidence filed before both the Ld. AO and the L.d. CIT(A), the Ld. CIT(A) failed to even record that evidence is filed before them and have proceeded on Incorrect facts and findings and by disregarding the evidences/details filed by the Assessee and in violation of principles of natural justice.

2. The following would show that all details were given and were not considered by the Ld. AO and CIT(A).

i. Party wise details of TDS deducted u/s 194C along with PAN, party name, address, nature of expense, amount, TDS deducted of expenses of Rs. 3,26,70,838/--refer Annexure 8 of reply dated 29.11.2019 filed before the Ld. AO at page 89,93-95 of PBK

ii. The Assessee stated before the Ld. CIT(A) that it provided the list of vendors from which value added services had been sought and TDS was deducted vide reply dated 29.11.2019 filed before the Ld. AO who did not even mention the replies, documents and annexures submitted -refer page 8 & 9 of the CIT(A) order

iii. The Assessee also filed before the Ld. CIT(A), the submissions made on 29.11.2019 filed before the Ld. AO-refer last para at page 8 of the CIT(A) order

iv. The Ld. CIT(A) held that vide Annexure 8, the Assessee has given details of PAN, name of the party with address, nature of expenses, amount and TDS deducted of expenses of Rs. 58,72,996 only out of the total expenses covered u/s 194C being Rs. 4,67,39,654/- refer para 8.2 and 8.4 at page 11-13 of the CIT(A) order

v. The Ld. CIT(A) also held that the Assessee has not made any attempt by furnishing the documentary evidence during the appellate proceedings refer para 8.2 and 8.3 at page 12-13 of the CIT(A) order.

vi. The Ld. CIT(A) also held that the Assessee failed to establish the genuineness of expenses covered for deduction of TDS u/s 194C of the Act by furnishing the name of the party to whom paid, their PAN amount and nature of expenses and that if these details were submitted during the assessment, the Id. AO could have carried out appropriate enquiry- refer para 8.3 at page 13 of the CIT(A) order

3. The CIT(A) by only looking at the first page of the annexure where total details of payments amounting to Rs. 58,72,996 on which TDS under section 194C was deducted allowed expenditure of Rs. 58,72,996 out of total expenditure of Rs. 4,67,39,654/-. He failed to even look at the entire annexure where total details of payments amounting to Rs. 3,26,70,838 on which TDS under section 194C was deducted was given.

III. GROUND NO. 5, 6 AND 7: NON APPLICATION OF MIND BY THE LD. AO

Without prejudice, the Ld. AO had failed to bring on record any evidence to prove that the payment was made to bogus parties. The Ld. AO had failed to mention as to which parties had not filed their returns which the Ld. AO seemed to consider as bogus transaction bogus parties.

8. On the other hand, the Ld. DR submitted that the case of the assessee was selected for scrutiny mainly on the basis of large amount of TDS deducted u/s 194C of the Act and none of the deductees have filed their return of income. Since, none has filed their return of income, the assessee has not proved the genuineness

of the transaction. In this regard, he brought to our notice findings in the assessment order wherein AO has found that the genuineness of the transactions were not proved, therefore, he submitted that the Assessing Officer is justified to make the addition u/s 69C of the Act. He also brought to our notice findings of the Ld. CIT(A) at para 8.2 to 8.4 of the appellate order and he submitted that the Ld. CIT(A) has analyzed the transactions and rightly allowed the appeal to the extent of details submitted the assessee. In this regard, he relied on the decisions of the Hon'ble Karnataka High Court in the case of *P. M. Abdulla vs. ITO [2016] 380 ITR 125 (Kar.)* and brought to our notice para 12 of the order wherein the Hon'ble High Court had decided the issue in favour of the Revenue that genuineness of the sundry creditors were not proved, accordingly, the matter was remitted back to the file of Jurisdictional Assessing Officer (JAO). In this case also he submitted that this issue may be remitted back to the file of JAO for proper verification.

9. In the rejoinder, the Ld. AR brought to our notice page 67 of PB to highlight that the assessee had submitted complete details of the deductees along with their PAN Number and further he submitted that the same are reflected in Form 26AS also. He further submitted that the case laws referred by Ld. DR are distinguishable to the facts to the present case. He submitted that in the case of *P.M. Abdulla (supra)*, the Tribunal has found a factual scrutiny that sundry creditors indicate books of account of the

assessee was not proved in its entirety and the same being a question of fact, therefore, this was remitted back to the file of Ld. Assessing Officer whereas in the present case, all the details were submitted before the lower authorities and Ld. CIT(A) has partly accepted the information submitted before him and it is relevant to note that he has seen only first page of the submissions of the assessee and not considered the rest of information submitted before him. Therefore, there is no mistake apparent from record. As far as assessee is concern, it has already proved the onus upon it by filing the relevant information before both the authorities.

10. Considered the rival submissions and material placed on record, we observed that assessee is in the business of providing logistic services and warehousing services. It is brought to our notice that in the line of business of the assessee, the assessee has to give sub-contracts to various parties to render the services of logistics and carry on the business of end to end services. The assessee has made payment of Rs.46,73,39,654/- to various parties and deducted TDS on the amount of Rs.32670838/- u/s 194C of the Act and rest of the amount, the assessee has not deducted TDS as the same are not required to be deducted tax at source. We observed that the Assessing Officer has also noticed that assessee has deducted TDS and respective deductees have not filed their return of income. Since, deductees have not filed their return of income, the Assessing Officer came to the conclusion that the genuineness of the transactions are not proved. With the above

observations, the Assessing Officer has not made any verification of the transactions and proceeded to disallow the whole amount of expenditure claimed by the assessee, however, we observed that the Ld. CIT(A) has acknowledged the transactions and partly allowed by referring to first page of the Explanation submitted by the assessee and restricted the claim of the assessee to the extent of the information submitted before him/ to the extent observed by him. However, it is brought to our notice that the assessee has submitted the details of tax deducted at source before the CIT(A), which contained in three pages, which was also submitted before AO also, the same are placed at page 93 to 95 of the PB in which assessee has furnished the details of PAN, name, amount, TDS deduction, their addresses and nature of expenses claimed by the assessee. We have noticed that the assessee has provided all the details of the deductees and some of the deductees are prominent service provider like DTDC, First Flight and other private service providers. Majority of the expenditures claimed by the assessee are towards the postage and carriers, packaging charges, transportation and securities charges. Since, the assessee has provided details of all the deductees before the tax authorities and we observed that the deductees include similar service provider in this line of business which include Blue Dart Express etc. One cannot presume that the deductees such as Blue Dart, First Flight etc. could not have filed the return of income. The Assessing Officer not even bothered to classify the deductees on the basis of who have filed the return of income and who had not filed the return of income. From the

majority of the deductees are as listed below, for the sake of clarity, we re-assort the same based on the volume as under:-

S. No.	PAN No.	Party Name	Amount	TDS
1	ACKFS6985N	S.B. ENTERPRISE	12,706,817	254,137
2	AARFB1291P	BRIGHT LOGISTIC	4,864,381	97,287
3	BADPS4186B	OM INTERNATIONAL ENTERPRISES	3,335,627	33,359
4	AAQFR8904E	RBT LOGISTICS	1,938,723	38,776
5	BKOPS5771B	THE PERFECT SERVICES	1,382,701	872,199
6	AZYPS3696R	SWIFT SERVICES	1,331,505	13,315
7	AAACF0841R	FIRST FLIGHT COURIER LIMITED	1,135,522	22,710
8	BOTPS2095K	THE PERFECT SERVICES	515,658	5,156
9	AAMFN8696B	NAMAN TRANSPORTATION COMPANY	460,751	9,216
10	ABIFS8912J	SAGAR SECURITY AGENCY	448,731	8,975
11	AABCE0565E	EAGLE HUNTER SOLUTIONS LTD	390,000	7,800
12	AAACD8017H	DTDC EXPRESS LIMITED	387,910	7,759
13	CAWPP6685G	CHI RAG SECURITY SERVICES	338,000	3,380
14	AHWPD2502R	BABA CONSTRUCTION	294,519	2,946
15	AAHCP9285C	PROGRESSIVE SECURITY SERVICES PVT LTD	286,965	5,740
16	BGAPS6780G	PRADEEP SINGH	266,669	2,666
17	AAACB0446L	BLUE DART EXPRESS LIMITED	253,486	5,070
18	AGFS2918J	SRI PROGRESSIVE PROJECTS	221,000	4,420
19	AAJPT0798H	SS4 SAFENET	209,000	2,090
20	AKYPG6367L	OMEGA BUSINESS SYSTEM	205,016	2,051
21	AHPPD1797H	ROYAL INDIA SECURITAUS	204,656	2,047
22	AAEPD1891Q	RAGHURAJ DAYAL	145,959	2,433
23	AALCS4687F	SHIVA PROTECTION FORCE PRIVATE	144,000	2,880

		LIMITED		
24	CPKPM5081A	DHANANJAY MOHAPATRA	126,618	1,266
25	AAACN6345A	NITCO LOGISTICS PRIVATE LIMITED	125,601	2,512
26	AJZPK3097P	NEW NICE CARRIER OF INDIA	120,900	1,209
27	AAACL7317C	LDS GUARDING SOLUTION PVT LTD	120,000	2,400
28	EJRPS3542B	LAX MI SECURITY GUARD SERVICES	118,850	1,189
29	ANSPK0563D	LOKESH KUMAR	107,633	1,077
30	AABCD1439Q	DHANAWAT CLEARING AND CARRIERS PVT LTD	90,366	1,809
31	CVGPS0426M	ARTH PACKERS	89,700	897
32	AAACI9505M	INSIGHT INDIA PRIVATE LIMITED	87,424	1,749
33	BKZPD7519M	ANIRUDH DAS	74,500	745
34	AAECS1548J	SCHINDLER INDIA PRIVATE LIMITED	73,289	1,466
35	ACEPD1401C	ABANIDAS	71,600	716
36	CBAPR9202C	HANSRAJ	66,800	668
37	CDBPD0259G	GAUTAM DAS	63,000	630
38	AFTPA2789N	SALOM TEMPO SERVICE	60,300	603
39	BGNPD2548A	MANAB DEKA	59,000	590
40	AATPS3308N	JET ROADWAYS	57,200	672
41	BLCPS5351Q	SHARMA ROADLINES	55,900	559
42	BAAPD8779C	JYOTIMOI DEORI	55,600	556
43	AGGPS7197E	RAMDULALSAHA	41,921	423
44	AILPN5414G	SKNASIRUDDIN	41,000	410
45	BJMPC7018J	CNS TRANSPORTS	37,300	373
46	AABCL6633J	LIONS WORKFORCE SOLUTIONS 1 PVT LTD	24,000	480

11. From the above chart, it can be seen that deductees who are in the capacity of individuals, who have provided services are in the range of 500 thousand to 24 thousand. As per the provisions of section 194C threshold limit is at Rs.1 lakh per annum or

Rs.30,000/- per transactions. By considering the earlier discussions and facts on record, we observed that Ld. CIT(A) clearly observed that Assessing Officer has not carried out any independent enquiry regarding the genuineness of the expenses by issue of notice u/s 133(6) of the Act to all the deductees, however, he restricted the amount to the extent of Rs.58,72,996/-, however, we observed that assessee has submitted complete details of all the deductees in three pages whereas the Ld. CIT(A) has noticed only first page and proceeded to adjudicate the issue, however, it is clearly brought to our notice, the assessee has submitted all the details of deductees before the authorities. Therefore, we are inclined to agree with the findings of the Ld. CIT(A) that during the assessment proceedings, the Assessing Officer has not given any finding on the details submitted by the assessee nor carried out any investigation to verify the genuineness of the transaction by calling information from the deductees, therefore, the transactions cannot be doubted particularly when the details of all the deductees were submitted before lower authorities, disallowance cannot be made without verifying the genuineness and without making proper enquiry. Further, we observed that the additions were made u/s 69C of the Act when all the details of the deductees are already placed on record and also audited books of accounts were submitted by the assessee before the tax authorities. When the assessee has submitted all the relevant information relating to payments made to various deductees and submitted before the

lower authorities and such explained expenditures cannot be treated and termed as unexplained expenditure u/s 69C of the Act.

12. As per the criteria for selection of this case is to verify the deductees who have not filed their return of income. In order to verify the same, AO can verify the transaction to establish the genuineness of the transaction and cannot be treated as unexplained expenditure, as held by Hon'ble Delhi High Court in case of CIT-V v. M/S RADHIKA CREATION (supra) as under:

"5. Insofar as the first aspect of the matter is concerned, we find that Section 69C clearly stipulates that where, in any financial year, the assessee has incurred an expenditure and he offers no explanation about the source of such expenditure or part thereof", or the explanation, if it is offered by him, is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year. Thus, the focus of Section 69C is on the "source" of such expenditure and not on the authenticity of the expenditure itself. It is an admitted position that the expenditure was shown by the assessee in its regular books of accounts and it is because of this reason that the Income-tax Appellate Tribunal had observed: "As the expenditure was accounted in the regular books, the source is obviously explained. The provisions of Section 69C are not applicable as there was no unaccounted expenditure."

6. What the Assessing officer attempted to do was to go into the authenticity of the expenditure and he returned a finding that the expenditure was not authenticated by vouchers and consequently, he added the said expenditure as unexplained expenditure under Section 69C. We are in agreement with the observations and findings of the Commissioner of Income-tax (Appeals) as well as that of the Income tax Appellate Tribunal that this is not a case which falls under Section 69C. Clearly, Section 69C refers to the source of the expenditure" and not to the expenditure itself. Consequently, the Assessing Officer was clearly wrong in treating the said expenditure as unexplained expenditure under Section 69C of the said Act and the lower appellate authorities were right in their conclusions in deleting the said addition."

13. Respectfully following the above decision of Hon'ble High court, we are inclined to delete the additions proposed by the AO under section 69C of the Act wherein the sources for the expenditure is already explained by the assessee by submitting the audited financial statements, therefore, the provisions of the section 69C are not applicable to the present case. Accordingly, the additions made by the AO are deleted.

14. In the final result, appeal filed by the assessee is allowed.

Order pronounced on 31st July, 2024.

Sd/-

(SUDHIR KUMAR)
JUDICIAL MEMBER

Dated: 31/07/2024

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI