

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

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 8276/Del/2019
Assessment Year : 2015-16

M/S ADA CONSTRUCTIONS Vs. DCIT, CIRCLE 1(2), NEW DELHI
PVT. LTD.,
F-6B, 3RD FLOOR, HAUZ
KHAS ENCLAVE,
NEW DELHI - 110 016
(PAN: AAGCA2286B)
(Appellant) (Respondent)

Appellant by : Ms. Urvi Syal, Adv.
Respondent by : Shri Kanv Bali, Sr. DR.

Date of hearing : **01.08.2024**
Date of pronouncement : **06.08.2024**

ORDER

PER SAKTIJIT DEY, VP :

This appeal by the Assessee is against the order dated 29.08.2019 of Learned Commissioner of Income Tax (Appeals)-I, New Delhi for assessment year 2015-16.

2. The dispute in the present appeal is confined to disallowance of certain expenses.

3. Briefly stated, facts are, the assessee is a resident corporate entity engaged in construction business. In the year in dispute the assessee filed its return of income on 30.09.2015 declaring loss of Rs. 1,13,40,896/-. In the course of assessment proceedings, the Assessing Officer (AO) issued notice u/s. 143(2) of the Act calling

certain details. Subsequently, AO issued notice u/s. 142(1) of the Act alongwith questionnaire. However, as alleged, none of the notices issued were complied with by the assessee. Due to non-compliance by the assessee, the AO proceeded to complete the assessment u/s. 144 of the Act, to the best of his judgement. While doing so, he verified the balance sheet and profit and loss account of the assessee and noticed that assessee had debited expenses of Rs. 8,02,28,452/- comprising of the following:-

- Opening Stock & WIP Rs. 18,75,000/-
- Purchases Rs. 2,61,89,124/-
- Administrative expenses Rs. 5,21,64,328/-

3.1 In the absence of any response from the assessee, the AO ultimately disallowed 50% out of the aforesaid expenses, resulting in addition amounting to Rs. 4,01,14,226/-. Assessee contested the aforesaid addition before Ld. First Appellate Authority. In course of proceedings before Ld. First Appellate Authority, assessee furnished certain evidences and made written submissions as well. The submissions made and evidences furnished were forwarded to the Assessing Officer for verification and submission of Report. After considering the Report of the Assessing Officer, Ld. First Appellate Authority declined to admit the evidences on the ground that assessee could not justify the reasons for not furnishing them before the Assessing Officer. As regards the merits of addition made by the AO, Ld. First Appellate Authority reduced the quantum

of addition to 20% of expenses incurred towards purchase and administrative expenses. Whereas, he deleted the disallowance made out of opening stock and WIP. Accordingly, the addition was reduced to Rs. 1,56,70,692/-.

4. Before us, Ld. Counsel for the assessee limited her submissions only to the applicability of the rate of disallowance at 20%. She submitted that since the assessee is in construction business, the rate of profit would be far less, hence, the disallowance made at 20% is unreasonable. Whereas Ld. Departmental Representative strongly relied upon the order of Ld. First Appellate Authority.

5. We have considered rival submissions and perused the material available before us. Undisputedly, the disallowance disputed in the present appeal has been made purely on estimate basis, both by the Assessing Officer and Ld. First Appellate Authority. While, the AO has disallowed 50% of the expenses, Ld. CIT(A) has restricted it to 20%. It is further observed that though before the Assessing Officer the assessee did not appear, however, before Ld. First Appellate Authority assessee did appear and furnish certain evidences to justify the claim of expenses. Surprisingly, even though the evidences were forwarded to the AO for verification and to furnish a Report, however, ultimately Ld. First Appellate Authority declined to entertain the evidences. This, is in our view is unjustified. Be that as it may, ultimately Ld. First Appellate

Authority has found some merit in the submissions made by the assessee as well as evidences furnished, as he has deleted the disallowance made out of Opening Stock and WIP, whereas, he has restricted the disallowance of purchase and administrative expenses at 20% of the amount claimed. On perusal of record, we do not find any basis for applicability of either 50% or 20% rate of disallowance. Considering the fact that the assessee is in construction business, in our view, disallowance @5% of purchases and administrative expenses would meet the ends of justice. Accordingly, the AO is directed to do so.

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

Above decision was pronounced in the Open Court on 06TH August, 2024.

Sd/-

(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

SRB

Copy forwarded to: -

1. Appellant.
2. Respondent.
3. CIT
4. CIT(A)
5. DR, ITAT

Sd/-

(SAKTIJIT DEY)
VICE PRESIDENT

Assistant Registrar, ITAT, Delhi
Benches