

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1286/Bang/2024
Assessment Year: 2014-15

Danayya Shavaputranya Math D S Math Contractor Daneshwari Nilaya, Lingad Road Vijayapur 586 101 Karnataka PAN NO : AKBPM6212B	Vs.	ACIT Circle-1 Vijayapur
APPELLANT		RESPONDENT

Appellant by	:	Smt. Pratibha R., A.R.
Respondent by	:	Sri V. Parithivel, D.R.

Date of Hearing	:	08.08.2024
Date of Pronouncement	:	08.08.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2014-15 dated 26.6.2024. The assessee raised following grounds:

- 1. On the facts and in the circumstances of the case, the ld. CIT(A) erred in upholding the order passed under sec 143(3) of the Act by the learned assessing authority is opposed to law and not valid and accordingly liable to be cancelled*
- 2. The ld. CIT(A) erred in confirming the disallowance/ addition made by AO towards the Labour payment and hire and water charges paid on estimation basis without considering the facts of the case*
- 3. The ld. CIT(A) ought to have appreciated that the Appellant is a civil contractor and most of the payments were made to various persons and at various sites where he had done work being a civil contractor. The Ld. CIT(A) further ought to have appreciated that the Appellant has submitted*

all the self-made vouchers and relevant documents which shows the genuine transaction. Thus, the addition made has to be deleted.

4. *The learned CIT(A) ought to have appreciated the submission of Appellant that to produce the confirmation for vouchers is not possible and in the absence of the same, to buy peace with department the Appellant requested that to estimate profit at 10% as estimated in work agreement. Thus, the without appreciating the facts of the case the Ld. CIT(A) upheld the order of the AO is bad in law and has to be cancelled.*
5. *The learned CIT (A) erred in confirming the order of the AO by not considering the fact of the case and not giving further opportunity to make a submission.*
6. *The CIT(A) ought to have appreciated that the addition or disallowance cannot make without affording proper opportunity to the Appellant. Accordingly, a fresh opportunity has to be given to considered the request made by the Appellant that that to estimate profit at 10% as estimated in work agreement. Accordingly, it is prayed.*
7. *The Id. CIT(A) erred in confirming the interest levied by AO.*
8. *Without prejudice, the disallowance as made in excessive and arbitrary and liable to be deleted.*
9. *For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed.*

2. The assessee raised following additional grounds:

1. *On the facts, the ld. CIT(A) erred in confirming the addition made on estimation without rejecting the appellant's books of accounts u/s 145 of the Act.*
2. *The ld. CIT(A) ought to have appreciated that the appellant is following mercantile system of accounting from the beginning. Thus, the addition on estimation basis has to be deleted."*

3. We have heard the both the parties on admission of additional grounds. In our opinion, all the facts are already on record and there is no necessity of investigation of any fresh facts for the purpose of adjudication of above grounds. Accordingly, by placing reliance on the judgement of Hon'ble Supreme Court in the case of NTPC Vs. CIT 229 ITR 383 (SC) we inclined to admit the additional grounds for the purpose of adjudication as there was no

investigation of any fresh facts otherwise on record and the action of the assessee is bonafide.

4. At the time of hearing, the assessee has not pressed ground Nos.4 to 6. Accordingly, these grounds are dismissed as not pressed.

5. Now we will adjudicate ground Nos.1 to 3 along with additional grounds of appeal in a collective manner as this is relating to disallowance made by ld. AO on adhoc basis at Rs.1,30,98,709/-.

6. Facts of the case are that the assessee had filed his return of income 27.11.2014 declaring total income at Rs. 54,08,315/-. The case of the assessee was for scrutiny through CASS for limited scrutiny with the reason "Large other expenses claimed in the Profit & Loss A/c". Notice u/s 143(2) was issued on 28.08.2015 and duly served upon the assessee. The notices u/s 142(1) were issued from time to time. Assessment order 143(3) of the Act was passed on 23.12.2016 assessing the total income at Rs. 1,85,07,024/- after disallowing Rs. 1,30,98,709/- being 25% expenses of Rs. 5,23,94,837/-. Aggrieved, the assessee filed appeal before NFAC who has confirmed the addition. Against this assessee is in appeal before us.

7. The ld. A.R. submitted that the Appellant is a civil contractor, carrying on contract work of various government and others, during the AY 2014-15 (FY 2013-14). The Appellant had filed return of income after getting his accounts audited u/s 44AB of the Income Tax Act 1961, along with audit report and statements. The Appellant case was selected for scrutiny for limited scrutiny under CASS for AY 2014-15 to verify large expenditure debited to profit and loss account. The learned AO called for the details towards the expenditure claimed and in response to the notice the Appellant has filed the self-made vouchers and ledger extract were produced before him for verification. Without appreciating the submission of the Appellant, the learned AO proceeded to make a disallowance of

expenditure claimed in profit and loss account on estimated bases at 25%.

7.1 She drew our attention to the financials of assessee for these assessment years.

Particulars	AY 2013-14	2014-15
Sales	82186989	112180248
Labour Charges	25265450	42491859
Net Profit	3765804	5484411
Profit Ratio	3.01%	6.09%

7.2 Further she submitted that the AO has no jurisdiction to make addition on estimated basis without rejecting audited books of account. For this purpose, she placed reliance on the judgement of jurisdictional High Court in the case of CIT Vs Anil Kumar &Co. (386 ITR 702) (Karn.) wherein held that jurisdiction to estimate assessee's income is not available when books of account have not been rejected. Hence on the basis of above submission the addition cannot be sustained and deleted in toto. Further the AO has accepted the books of account of the assessee during previous year and subsequent year. Though res-judicata does not apply to income tax proceedings even then if the same facts of the case are there, consistency has to be maintained by the AO before completing the assessment. Accordingly, she submitted that the addition made without rejecting the audited books of account is to be deleted.

8. The ld. D.R. submitted that the above impugned expenditure is only supported by self-made vouchers. Hence, the lower authorities disallowed the above amount and same to be sustained.

9. We have heard the rival submissions and perused the materials available on record. The main reason for disallowance is that the expenditure is that this expenditure is only supported by

self-made vouchers and there was every chance of inflating the expenditure. However, we find that assessee's books of accounts are duly audited by qualified Chartered Accountant u/s 44AB of the Act. The books of accounts of assessee have not been rejected by the Id. AO. Without rejecting the books of accounts, the Id. AO cannot make any adhoc disallowance of any expenditure. The rate of net profit declared by assessee has been increased to 6.09% from 3.01% as compared to AY 2014-15 and 2013-14, which is higher in assessment year 2014-15.

9.1 Further, this issue is covered by the order of this Bench in case of Hassan Hajee & Company, Mangalore in ITA Nos.170 & 171/Bang/2023 for the assessment years 2015-16 & 2016-17 dated 25.5.2023 wherein the Tribunal held as under:

"3. After hearing both the parties, we are of the opinion that similar issue came for consideration before this Tribunal in assessee's own case in ITA No.1358 to 1363/Bang/2015 vide order dated 22.9.2022 wherein held as under:

"6. We have heard the rival submissions and perused the materials available on record. The assessee claimed the expenditure in these assessment years as follows:-

	A.Yr	Disallowance by AO	Restricted to 10%
1	2006-07	Nil	Nil
2	2007-08	Rs.1,74,38,149/-	Rs.17,43,815/-
3	2008-09	Rs.35,52,611/-	Rs.3,55,261/-
4	2009-10	Rs.40,40,000/-	Rs.4,04,000/-
5	2010-11	Rs.33,27,170/-	Rs.3,32,717/-
6	2011-12	Rs.50,71,250/-	Rs.5,07,125/-
7.	2012-13	Rs.1,81,74,006/-	Rs.4,54,350/- (Restricted to 2.5%)
8	2013-14	Rs.2,52,34,742/-	Rs.6,30,869/- (Restricted to 2.5%)

6.1 The main reason for disallowance by AO was that payment Labour Charges supported by self-made vouchers and have no signature of recipients. These expenditures mainly pertain to iron ore loading and unloading transit/site marshalling charges and other casual labour charges. According to the assessee, these expenditures incurred at various stages of iron ore movements. These expenses are pertaining to wages paid to various parties, such as workers manually handling iron ore from lorries/railway vehicles to the exporter's yard, those engaged to counter pilferage of iron ore at railway yards, export yards and other casual labourers engaged for cleaning purposes. It was explained before us that the

assessee has been carrying voluminous quantity of iron ore and large number of workers who were illiterate and have no commercial knowledge and it is not possible to take down the signatures of those persons and in such circumstances, the vouchers were blank and for the accounting purposes assessee prepared vouchers and they were duly accounted in the books of accounts of the assessee and books of accounts were audited by the statutory auditors and no adverse comments has been made by them. The A.O. alleged in the first page of the assessment order that incriminating evidence has been seized which reveals that the assessee has been engaged in inflation of expenditure substantially. This statement of the AO in the first page of the order shows that he has opened the file with pre-determined mind that assessee has inflated the expenditure. It was so alleged by the AO even without rejecting the books of accounts. Before making allegation that assessee has inflated expenditure, it is incumbent upon the AO to reject the audited books of accounts maintained by the assessee, he should challenge the entries in the books of accounts by duly rejecting the same. In other words, it is evident that the AO considered the income declared by the assessee, thereafter, he made disallowances of expenditure after accepting the books of accounts. The total disallowance made by the AO is only on conjectures and surmises. The claim of labour charges in these assessment years commensurate with the nature of volume of business carried on by the assessee and there is no sudden or steep increase in the claim of assessee as compared to year to year. However, the AO opted to disallow the expenditure on the reason that these are supported by self-made vouchers and were written by common persons. In our opinion, when the self-made vouchers are prepared inhouse, it must be prepared by inhouse persons only and as such, it has common pattern and that cannot be reason to doubt the genuineness of the payment. The assessee cannot carry on this business without incurring the expenditure. The allegation of the AO is that the vouchers are prepared at a stretch on one or two days during the financial year. There is no basis for this kind of allegation made by the AO and he has not brought anything on record to establish this contention of him. Being so, we have to reject this plea of the revenue authorities. In our opinion, considering the nature of the business of the assessee, we can take the judicial notice of the fact that if the AO had any doubt with regard to genuineness of any one of the voucher produced by the assessee, he could have drawn sample vouchers and called upon the assessee to produce the concerned recipient to establish the genuineness. Without doing so, making any adhoc disallowance is not legally sustainable. If the Ld. CIT(A) also without carrying on any enquiry, certain percentage of the labour payment at 10% in assessment years 2007-08 to 2011-12 and 2.5% in assessment years 2012-13 & 2013-14 was sustained. This act of Ld. CIT(A) is not justified. In our opinion, the impugned expenditure in fact claimed to have been incurred by the assessee wholly and exclusively for the purpose of its business and it cannot be said that this expenditure is bogus or fictitious and cannot be said that it has not been incurred by the assessee for the purpose of business. We do not see remotely there is any mention of rationale in arriving at the percentage of disallowance in the present case, and secondly, we find force in the claim of assessee that devoid of any specific infirmity in the books of accounts of the assessee, disallowance of labour charges expenditure by the lower authority is not proper and the adhoc disallowance made by authorities in most ordinary manner. In our opinion, to estimate any disallowance the first and foremost thing is that the A.O. has to reject the books of accounts by observing that books of accounts are not reliable and not verifiable. Then he has to specify the

each entry which are to be considered as bogus or unverifiable and only to that extent he can make disallowance. In the present case, in a wholesome manner the A.O. made disallowance on estimate basis without rejecting the books of accounts. However, Ld. CIT(A) sustained this addition to the tune of 10% in A.Y. 2007-08 to 2011-12 and 2.5% in A.Y. 2012-13 & 2013-14. This is having no legal sanction. For this purpose, we rely on the judgement of Hon'ble Karnataka High Court in the case of Shri Ganesh Shipping Agency in ITA No.366 of 2015 dated 6.2.2021, wherein held as follows:-

*“5. We have considered the submissions made on both sides and have perused the record. From perusal of the order passed by the authorities, it is evident that the authorities have accepted the books of accounts produced by the assessee. The Assessing Officer, in its order, has admitted that the payment of speed money is a trade practice which is followed by the assessee and similar business concerns functioning for speedy completion of their work. However, the disallowance of 20% of the expenses is made solely on the ground that the assessee had produced the self-made cash vouchers which showed that the payment was made by cash to each gang leader and the identity of the gang leader is not verifiable and the recipients are not assessee's employees. The aforesaid finding has been affirmed by the Commissioner of Income Tax (Appeals) as well as by the Tribunal. However, it is pertinent to note that the books of accounts have not been touted by any of the authorities under the Act. A Bench of this Court vide judgment dated 24.03.2015 passed in ITA No.22/2015, has held that admittedly the normal practice in the line of business of the assessee is to pay certain extra amounts to port labourers as speed money for promptly and speedily carrying out the labour work of handling cargo beyond working hours and has placed reliance on, the decision rendered by this Court in **KONKAN MARINE AGENCIES**, supra. It is pertinent to note that in **CLIFFORD D'SOZA**, supra, payment was made to the sub-contractors in cash as well as by Cheques. In the absence of any challenge to the entries made in the books of accounts by the authorities, in our opinion, the finding recorded by the Assessing Officer as well as the Tribunal that it denied the claim of the assessee for expenditure to the extent of 10% on account of payment of speed money, is perverse as the same is duly supported by the documentary evidence. Insofar as the submission made by the learned counsel for the revenue that in paragraph 4 of the order of the Commissioner the assessee himself had restricted the payment of speed money to 10% is concerned, it is pertinent to note that the restriction was made by the assessee in respect of Assessment Year 200405 and from the grounds of memorandum of appeal before the Tribunal, we find that the assessee had challenged the aforesaid finding which is evident from paragraphs 1 and 2, therefore, the aforesaid submission is of no assistance to the revenue.*

6. In view of aforesaid preceding analysis, the substantial question of law involved in this appeal is answered against the revenue and in favour of the assessee.”

Accordingly, we delete the addition and allow the ground taken by the assessee in these appeals and dismiss the ground taken by the revenue in these appeals.”

3.1 In view of the above order of the Tribunal, taking a consistent view, we delete the above addition made by the AO in both assessment years.

4. In the result, both the appeals in ITA Nos.170 & 171/Bang/2023 are allowed.”

9.2 Further, Hon’ble jurisdictional High Court in the case of CIT Vs. Konkan Marine Agencies (313 ITR 308) held as under:

“Held, dismissing the appeal, that taking into consideration the assessee’s business and the prevailing practice in the trade, whereby payments had to be made by firms like the assessee in order to ensure that the work of handling goods was done within reasonable time and emergency operations of cargo handling were done beyond working hours, such payments were made either through labour or workers’ union. It could not be considered to be prohibited by law. The assessee could not be expected to take receipts from individual workers or make payment by way of cheques. The payment was made by the assessee for business purposes and the expenditure had been incurred in the ordinary course of business. Therefore, the deduction was allowable by way of business expenditure.”

9.3 In view of the above precedents, we are inclined to hold that the adhoc disallowance is not justified without rejecting the books of accounts of the assessee. Accordingly, the grounds of assessee are allowed.

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

Order pronounced in the open court on 8th Aug, 2024

Sd/-
(Keshav Dubey)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 8th Aug, 2024.
VG/SPS

Copy to:

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

By order

**Asst. Registrar,
ITAT, Bangalore.**