

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

BEFORE SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER

ITA No.1013/Bang/2024
Assessment year : 2019-20

Moodbidri Mithun Chowter, 1-N-2-170/6/7, Hero Show Room, Kulur Ferry Road, Kottara, Mangaluru – 575 006. D.K. PAN : ACYPC 4461D	Vs.	The Deputy Commissioner of Income Tax, Circle 1(1) & TPS, Mangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri G. Sathyanarayana, CA
Respondent by	:	Shri V. Parithivel, Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	31.07.2024
Date of Pronouncement	:	21.08.2024

ORDER

Per Laxmi Prasad Sahu, Accountant Member

This appeal is filed by the assessee against the order dated 29.3.2024 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC], for the AY 2019-20.

2. The assessee has challenged only two issues regarding disallowance of Rs.1,99,291 towards motor car & Rs.29,345 on motor bikes; and adhoc disallowance towards salary, rent, machine charges & bonus.

3. Briefly stated the facts of the case are that the assessee filed return of income and the case was selected for scrutiny and statutory notices were issued to the assessee. The assessee submitted its reply. From the details submitted it was noted that assessee has not furnished any documentary evidence in support of incurring and payment of expenses in question and further the business nexus of expenses remained unstained and ownership was also not proved, accordingly AO made the disallowance of deduction claimed of Rs.16,06,942 and added back the total income to the assessee. Further, as per para 7, the assessee was asked to provide supporting documentary evidence in respect of incurring of payment of Rs.13,99,080 on salary, Rs.1,29,956 on bonus, Rs.1,40,625 on washing charges and Rent, Rs. 3,30,000, but the assessee did not submit any supporting evidence in respect of the expenses incurred. Only the ledger accounts were submitted. Therefore the AO disallowed 20%. AO also made other additions. Accordingly assessed income was determined at Rs.1,81,29,953. Aggrieved from the above order, the assessee filed appeal before the First Appellate Authority (FAA).

4. The Id. FAA in respect of addition towards motor car expenses restricted the addition of Rs.1,91,291 and in respect of motor bike expenses Rs.29,345 was upheld. Other adhoc additions were confirmed. He allowed other additions. Accordingly he partly allowed the appeal of assessee. Aggrieved, the assessee is in appeal before the ITAT.

5. The Id. AR reiterated submissions made before the lower authorities and submitted that in respect of motor car expenses assessee himself has disallowed 20% of the running expenses for personal purpose which comes to Rs.39,858, accordingly the actual addition is Rs.1,59,433 in respect of motor car (Land Rover). Further in respect of motor bike expenses of Rs.29,345 there was no personal use and it was used by employee of assessee. He further submitted that the expenses were incurred towards business purpose and there is no any personal benefit taken by the assessee. Further in respect of adhoc addition, the assessee submitted that the entire details were furnished during the course of appellate proceedings, however the Id. FAA has not accepted. He further submitted that the books of accounts were audited by CA and there was no defect pointed by CA and no books of accounts have been rejected by the AO, therefore no addition can be made u/s. 37 towards adhoc addition in respect of motor car expenses also.

6. The Id. DR relied on the order of lower authorities and submitted that the assessee himself has accepted that 20% of the motor car expenses has been used towards personal expenses, so therefore it is clear that the personal use of vehicles cannot be denied. The assessee did not furnish any evidence in respect of the expenses. Further in respect of adhoc addition, he relied on the order of lower authorities.

7. Considering the rival submissions, we note that assessee has not furnished the entire motor car expenses details and personal use cannot

be denied as the assessee himself has disallowed 20% of the expenses. The Id. AR was unable to produce any log book maintained. Therefore we confirm 50% of the disallowance made by the Id. FAA in respect of motor car and motor bike expenses accordingly the assessee gets relief of 50% of addition made on this account. However, credit should be given to the assessee of suo motu disallowance of 20% of expenses of Rs.38,958. Accordingly this ground is partly allowed.

8. Adhoc disallowances

8.1 Rent : The assessee has paid rent to the landlord. As per agreement made on 21.2.2018, the rent per month is Rs.27,500 and we note that the rent agreement was for 11 months from 01.01.2018 to 30.11.2018, but for the remaining period the assessee has not produced any rent agreement or any rent receipt. There is no dispute that business was carried on by the assessee on the same premises during the year and as per copy of the ledger, assessee has paid rent for whole the year and there is no dispute regarding payments made to the landlord. Therefore, the genuineness of the payment cannot be denied. Accordingly we allow this issue in favour of the assessee.

8.2 Salary: The assessee has paid salary of Rs.13,99,000. In this regard assessee has placed documents from pages 80 to 105 of PB and produced reconciliation of salary payment which is at page 81. We note from the details and salary sheet that assessee has paid ESI and salary payments. Therefore the genuineness of payment of salary cannot be denied. Accordingly this ground is allowed.

8.3 Washing Charges Rs.1,40,625 : During the course of assessment proceedings the AO made 20% disallowance of washing charges. In this regard, assessee has furnished cash vouchers. Further we note that entire payment is made through cash, therefore inflating of expenses and leakage of revenue cannot be denied. Accordingly we restrict the disallowance to the extent of 50% of the addition made by the AO. The assessee gets relief of 50%.

8.4 Bonus Rs.1,29,956: The assessee has produced details at PB page 106 to 108 and bonus has been paid in the month of March and payment sheet is also enclosed. We note that name of employees are tallied, but signatures of recipients do not match with salary sheet of recipients. Therefore we restrict the disallowance to the extent of 50% of the addition made by the AO and assessee gets relief of 50%.

9. We note at para 7 of the assessment order that AO asked assessee to furnish supporting evidence in respect of salary payment, washing charges, bonus which comes to Rs.19,99,661 (13,99,080 + 3,30,000+1,40,625+1,29,656). However AO has made total of Rs.32,65,295. Accordingly he disallowed 20% which comes to Rs.6,53,039, whereas the actual addition for the above four account heads are Rs.19,99,661 and 20% comes to Rs.3,99,932. Therefore this error may be kept in mind by the AO while giving effect to this order.

10. During the course of hearing, the Id. AR has relied on various judgments which are on different footing. Since in this case the assessee was unable to produce evidence, the case laws relied by the

Id. AR are not applicable in the present facts of the case. We also reject the argument of the Id. AR that tax audit has not pointed out any mistake. It was the duty of the assessee to produce evidence at the time of making assessment before the AO for substantiating its case, but the assessee has not done so. Therefore the other arguments of the Id. AR are also not accepted.

11. In the result, the appeal by the assessee is partly allowed.

Pronounced in the open court on this 21st day of August, 2024.

Sd/-

(KESHAV DUBEY)
JUDICIAL MEMBER

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 21st August, 2024.

/Desai S Murthy /

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.