

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

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.597/Del/2019, A.Y. 2014-15

M/s. Indo Copters Pvt. Ltd. A-54, Kailash Colony, New Delhi-110048 PAN: AABCV9963B	Vs.	ACIT, Circle-12(1), New Delhi
(Appellant)		(Respondent)

Appellant by	Shri Amit Arora & Shri Vishal Mishra,CA
Respondent by	Sh. Om Parkash, Sr. DR

Date of Hearing	08/08/2024
Date of Pronouncement	28/08/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM:

This appeal filed by the assessee for the Assessment Year (hereinafter, the 'AY') 2014-15 is directed against the order dated 29.11.2018 passed by the Commissioner of Income Tax (Appeals)-22, New Delhi [hereinafter, the CIT(A)].

2. Following grounds are raised in this appeal: -

"1. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the disallowance of the deduction claimed on account of lease rentals paid by the Appellant during the year under consideration amounting to Rs.71,86,600/-without appreciating the fact that the same was rightly allowable as revenue expenditure, being paid by Appellant to the owner

of the leased assets for using those leased assets for the purpose of its business.

2. That, the Ld. CIT(A) on the facts and circumstances of the case and in law, has erred in uploading disallowance of 50% of the conveyance and telephone expenses to the extent of Rs.9,84,356/- without appreciating the details & evidences submitted by the appellant and that all the payments were legitimately made by Appellant based on bills/vouchers submitted by employees of the Appellant.

3. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the addition of suo-moto writing off the sundry creditors with the alleged static balances amounting to Rs.10,89,145, completely disregarding the submissions duly placed on record by the Appellant and disregarding the fact that in subsequent years, when such creditors were actually written off, the same was duly offered to tax by Appellant.

4. That on the facts and in the circumstances of the case and in law, the Ld. CIT(A) on erroneous and insufficient grounds and disregarding factual submissions and copy of TDS certificates furnished by the Appellant, has erred in upholding the disallowance of Rs.1,77,450, disallowed in earlier years in terms of the provisions of Section 40(a)(ia) of the Act and claimed as deduction during relevant AY on deposit of TDS.”

3. Briefly, the facts of the case, relevant for deciding this appeal are that the appellant/assessee, engaged in providing all helicopter support requirements, such as; maintenance, repair, overhauling and guidance for leasing, operating and selling of helicopters, etc., filed its Income Tax Return (hereinafter, the 'ITR') on 28.11.2014 declaring loss of Rs.6,66,72,506/-. The case was picked up for scrutiny. The consequential assessment was completed at income of Rs.14,45,709/-vide order dated 29.12.2016 passed under section 143(3) of the Income Tax Act,

1961 (hereinafter, the 'Act'), wherein the Assessing Officer (hereinafter, the 'AO') held sundry creditors of Rs.10,89,145/- as non-genuine liability and disallowed (i) conveyance & telephone expenses of Rs.19,68,712/-, (ii) foreign exchange (Forex) loss of Rs.5,76,96,308/-, (iii) lease rent of Rs.71,86,600/- and (iv) expenses of Rs.1,77,450/- under section 40a(ia) of the Act. Aggrieved, the appellant/assessee filed appeal before the CIT(A), who upheld the (i) taxability of sundry creditors of Rs.10,89,145/-, (ii) disallowance of conveyance & telephone expenses of Rs.9,84,356/-, (iii) disallowance of lease rent of Rs.71,86,600/- and (iv) expenses of Rs.1,77,450/- under section 40a(ia) of the Act and deleted the disallowance of Forex loss.

4. The Ld. Authorized Representative (hereinafter, the 'AR') submitted that the appellant/assessee had taken helicopters on lease from SREI Equipment Finance Private Limited (SREI) and had paid lease rent. However, the lease rent had not been debited in the regular books of accounts treating the same as a finance lease though the same was claimed, in the ITR, as deduction in the computation of income. It was further submitted that a lease is a 'finance lease' if all rights, risks & rewards incident to ownership, except the title of ownership, are transferred substantially; whereas a lease is classified as an 'operating lease' if it does not transfer substantially all the risks and rewards incident

to ownership. It was contended that the finance lease was accounted for as per the AS-19. In the present case ownership of the helicopter was transferred in 2021 in the name of appellant/assessee. Further, it was argued that the AO had not doubted the genuineness & incurrence of expenditure and the inference emerged from the finding of the AO was that this lease rent was allowable if the same would have been debited in the regular books of account. The AO; nowhere, had given any finding that the lease rent was not genuine. The disallowance was made only on the reasoning that it was not debited in the books of account. Further, it was brought to our notice that similar expense/lease rent had been allowed in the subsequent year, in scrutiny assessment, by the AO.

4.1 The Ld. AR contended that the AO was not justified in taxing the lease rent even if the same was not debited in the Profit & Loss Account. Admittedly, the appellant/assessee had claimed this expenditure in the ITR in the computation of income statement. In support of the argument, the Ld. AR, placing reliance on the decisions of the Hon'ble Supreme Court in the case of Kedarnath Jute Mills Ltd. (82 ITR 363), the Delhi ITAT in the case of Ernst & Young Ltd. (order dated 31.05.2018 in the ITA Nos.6561 & 6562/Del/2016) and the Mumbai Bench of the Tribunal in the case of British Bank of Middle East (Order dated 19.10.2016 in the

ITA No.3925 /Mum /1999), submitted that as long as the expenditure was actually incurred and was otherwise deductible, the deduction could not be declined by the AO on the reasoning that the same was not debited in the books of account.

5. The second issue is in respect of disallowance of bogus conveyance & telephone expenses. The AO disallowed Rs.19,68,712/- out of conveyance & telephone expenses, which was restricted to Rs.9,84,356/- by the CIT(A). The Ld. AR contended that the appellant/assessee keeping in view the designation and nature of work of employees, had reimbursed them lump-sum amount per month of conveyance & telephone expenses or actual expenditure whichever was lower. Since actual expenditure of employees were higher than the threshold limit; therefore, the appellant/assessee did not enforce on submission of actual bills & vouchers from each employee. It was claimed that these expenditures were reimbursement and thus were allowable as business expenditure.

6. The next issue is in respect of the taxability of sundry creditor of Rs. 10,89,145/-. The Ld. AR submitted that these liabilities were not genuine. The Ld. AR contended that the section 41(1) of the Act did not empower the AO to write off the sundry creditors. Accordingly, it was challenged that the AO had wrongly

taxed the sundry creditors under section 41(1) of the Act. To buttress his arguments, he placed reliance on the decision of the Hon'ble Delhi High Court in the case of Ritu Anurag Agarwal in ITA No. 325/2008 (order dated 22.07.2009). Further, our attention was also drawn to the fact that the appellant/assessee had paid these liabilities in subsequent years. Therefore, it was submitted that these creditors were genuine. In support of the above arguments, the Ld. AR also placed reliance on the following decisions:-

- (i) Sita Devi Juneja [187 Taxmann 96], (P&H)
- (ii) Vardhman Overseas Ltd. [343 ITR 408] (Delhi)

7. The last issue is in respect of disallowance under section 40a(ia) of the Act. The Ld. AR submitted that the expenditure disallowed and offered for tax in earlier years due to the TDS default were claimed as expenditure after payment of TDS thereon in the relevant year. It was categorically submitted that the law provides allowance of such expenditure on payment of TDS.

8. The Ld. Senior Departmental Representative (hereinafter, the 'Sr. DR') placed emphasis on the finding of the Ld. CIT(A) on the issue of lease rent and prayed for upholding the finding of the CIT(A) in this regard.

9. The second issue is in respect of disallowance of bogus conveyance & telephone expenses. The Ld. Sr. DR submitted that the Ld. AR did not bring any material on the record to contradict the finding of the Ld. CIT(A), who upheld 50% of the disallowance of Rs.19,68,712/- observing as under:-

“5.4.1 I have considered the assessment order, submissions of the Appellant, remand report of AO and copy of expense vouchers submitted as part of additional evidence in respect of reimbursement of conveyance and telephone expenses made to various employees. I find a number of discrepancies in the vouchers submitted by the appellant. Most of the vouchers produced/submitted are of purchase of petrol/diesel at petrol pump. Very few vouchers of telephone expenses are produced/submitted. I agree with the AO that these vouchers do not mention the name of the employees. In some of the vouchers of petrol from petrol pump, the amount is Rs.4,000/- dated 26.05.2013, Rs.3,000/- dated 25.12.2011 another bill of Rs.3,000/- dated 27.05.2013. There are many vouchers like this. It is not believable that a vehicle of an employee, at one point, on a single day filled up with petrol/diesel worth of Rs. 4,000/- and Rs. 3,000/-. Mostly payments are made in cash. This fact is asked to the Ld. AR who could not able to explain. Very few telephone vouchers are produced. Although the Ld. AR submitted bank remittance transactions sheet through which the appellant direct the bank to pay the employee in their respective bank account. Therefore in absence complete documentary evidences and I am of the view that the appellant failed to substantiate the entire claim on account of these reimbursements. However entire expenses on this account cannot be said as non-genuine. Therefore to be fair I restrict the disallowance on this account to 50% of the entire claim. Hence 50% of disallowance of Rs.19,68,712/ made by AO towards conveyance and telephone expenses, is confirmed. This ground of appeal is Partly Allowed.”

It was contended that none of the bills of these expenses were actual bills. Round figures of bills, non-mentioning of vehicle details, name of the employees using vehicle, etc. raised the

question on veracity of these expenses. Further, the Ld. Sr. DR argued that the Ld. AR did not produce any corroboratory evidence to demonstrate that what were the actual claims of employees and how much were passed out of that along with reasoning thereof. The Ld. Sr. DR further contended that the Ld. AR had failed to demonstrate that these expenses were incurred exclusively for official works. It was also argued that these expenses were in the nature of salary paid in the garb of reimbursement of expenses to avoid taxation in the hands of employees. In view of the above, the Ld. Sr. DR prayed for dismissal of this ground.

10. The next issue is in respect of the taxability of sundry creditor of Rs. 10,89,145/-. The Ld. Sr. DR' placed emphasis on the finding of the Ld. CIT(A) on this issue and prayed for dismissal of this ground. He submitted that the Ld. CIT(A) has held that the sundry creditors did not exist in the relevant year and that was why he categorically held that "these liabilities are no more payable". Since the finding of the AO got merged with the finding of the Ld. CIT(A); therefore, this issue was no more in the purview of section 41(1) of the Act. Basically, sundry creditors, after the impugned order, had been taxed on the reasoning that these liabilities were no more payable in the relevant year, which also got buttressed by the fact that the appellant/assessee had written of the same in the subsequent year and offered for the tax. He drew

our attention to the finding of the Ld. CIT(A) in Para 5.5.1, wherein it was held that the sundry creditors were no more payable; i.e. non-genuine. The Para 5.5.1 of the appellate order reads as under:-

“5.5.1 The Ld. AR during the appellate proceeding contended that these creditors are shown as outstanding liability in the balance sheet. The appellant acknowledges his liability to pay and therefore the liability still exists. The AR of the appellant was asked to file the copies of accounts of the creditors since beginning and the payment details if any in subsequent years. Nothing has been brought on record by the Ld. AR. The Ld. AR submitted that the appellant still had legal liability to pay these creditors in its books of account. It is also admitted by the Ld. AR that no payment have been made to the parties till date. In the light of these facts I am inclined to agree with the conclusion by the AO that these liabilities are no more payable. The appellant has not taken any step to make even part payment to these parties even as on the date of hearing. The action of the AO is therefore confirmed. Hence this ground of appeal is dismissed.”

[Emphasis supplied]

10.1 The Ld. Sr. DR submitted that the facts of the case of the appellant/assessee were quite different than the facts of the cases relied upon by the Ld. AR; hence these decisions were of no help to the appellant/assessee. The Ld. Sr. DR contended that the sundry creditors had been taxed under section 41(1) of the Act in all cases relied upon by the Ld. AR; whereas in the case in hand, the CIT(A)'s finding was that the sundry creditors were 'no more payable'; i.e. non-genuine liabilities. It was submitted that the sundry creditors held as 'no more payable'; i.e. non-genuine liabilities were of earlier years too. These sundry creditors, lying

idle/unaltered/static since long in this materialistic time, were held 'no more payable'; i.e. non-genuine liabilities in the relevant year in absence of proper explanation of the appellant/assessee.

10.2 It was argued by the Ld. Sr. DR that it could not be ruled out that these liabilities might have not been paid in cash or non-genuine/bogus and kept accounted for in the Books of Account/Balance Sheet to match with the asset side of the Balance Sheet. The Ld. Sr. DR thus argued that the case laws relied upon by the Ld. AR were of no relevance in the present case as these cases were distinguishable on the facts. It was also submitted that the Ld. AR did not bring any new material on the record to controvert the finding of the Ld. CIT(A) and to demonstrate that these sundry creditors were genuine.

11. For disallowance under section 40a(ia) of the Act, the Ld. Sr. DR submitted that this needed further verification at the AO level that whether the expenditure of Rs.1,77,450/- claimed as deduction in the relevant year had been taxed in earlier years and also whether it was a case of non-deduction or late payment of TDS, etc., etc.; therefore, he requested for setting aside and restoring this matter back to the AO.

12. We have heard both the parties and have perused the material available on the record. The first issue is in respect of

disallowance of lease rent. We find merit in the submission of the Ld. AR. Here in this case, the genuineness of lease rent has not been questioned by the authorities below. The reasoning for the disallowance is only that the same has not been debited in the books of accounts. Undisputedly, this claim has been made in the ITR in the computation of income. The Hon'ble Supreme Court, in the case of Kedarnath Jute Mills Ltd. (82 ITR 363), have held as under: -

“The main contention of the learned Solicitor General is that the assessee failed to debit the liability in its books of accounts and, therefore, it was debarred from claiming the same as deduction either under section 10 (1) or under s.10 (2) (xv) of the Act. We are wholly unable to appreciate the suggestion that if an assessee under some misapprehension or mistake fails to make an entry in the books of account and although under the law, a deduction must be allowed by the Income Tax Officer, the assessee will lose the right of claiming or will be debarred from being allowed that deduction. Whether the assessee is entitled to a particular deduction or not will depend on the provision of law relating thereto and not on the view which the assessee might take of his rights nor can the existence or absence of entries in the books of account be decisive or conclusive in the matter. The assessee who was maintaining accounts on the mercantile system was fully justified in claiming deduction of the sum of Rs.1,49,776/being the amount of sales tax which it was liable under the law to pay during the relevant accounting year. it may be added that the liability remained intact even after the assessee had taken appeals to higher authorities or Courts which failed. The appeal is consequently allowed and the judgment of the High Court is set aside. The question which was referred is answered in favour of the assessee and against the Revenue. The assessee will be entitled to costs in this Court and in the High Court.”

Following the ratio laid down by the Hon'ble Supreme Court in the case of Kedarnath Jute Mills Ltd. (supra), we are of the considered view that the lease rent of Rs.71,86,600/- upheld by the Ld. CIT(A) is allowable expenditure. Hence, we set aside the order of the Ld. CIT(A) on this score and hold the disallowance of lease rent of Rs.71,86,600/- unjustified. The appellant/assessee gets consequential relief.

13. The second issue is in respect of disallowance of bogus conveyance & telephone expenses. We find merit in the argument /contention/submission of the Ld. Sr. DR. Since nothing has been brought on the record by the Ld. AR to controvert and demonstrate that the finding of the Ld. CIT(A) is erroneous and needs interference. We therefore, in view of the facts of the case, do not find it fit to interfere with the finding of the CIT(A). This ground thus stands dismissed.

14. As far as the disallowance of sundry creditor of Rs.10,89,145/- is concerned, we find merit in the arguments/submissions / contentions of the Ld. Sr. DR. The sundry creditors are in the nature of credits in the Books of account and it is the duty of the appellant/assessee to explain and demonstrate the genuineness of sundry creditors, if questioned. The appellant/assessee is further required to controvert the

finding of the Ld. CIT(A). It cannot be ruled out that these liabilities had not been disposed of earlier through cash or otherwise. However, we are of the considered view that the idle/unaltered/static sundry creditors, in particular, require verification/investigation. We therefore, in the interest of justice and facts in entirety, are of the considered opinion that the appellant/assessee deserves reasonable opportunity of being heard to make shortcomings or non-compliances. In view thereof, without offering any comment on merit of this issue, we deem it fit to set aside the finding of the CIT(A) in this regard and remit this matter back to the file of the AO for de-novo consideration. The appellant/assessee should ensure compliances during the set-aside proceeding before the AO. The AO is also required to provide reasonable opportunities of being heard to the appellant/assessee before deciding this issue on merit.

15. As far as the disallowance under section 40a(ia) of the Act is concerned, we find merit in the argument of the Ld. Sr. DR that it needs verification. We therefore, direct the AO to verify that whether the sum of Rs.1,77,450/- claimed as deduction in the relevant year has ever been offered for tax in earlier years and whether it is a case of late deposit of TDS or otherwise, etc. In case the same had been offered for tax in earlier year and it fulfills all the terms & conditions for allowability in the relevant year as per

the law, the same has to be allowed accordingly. We therefore, restore this issue to the file of the AO for doing needful as above.

16. In the result the appeal is partly allowed as above.

Order pronounced in open Court on 28th August, 2024.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated:28/08/2024
Binita Rukhaiyar, Sr. Ps.

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI