

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA Nos.:532, 533, 534, 535, 536 &
537/CHNY/2024

निर्धारण वर्ष/Assessment Years:2013-14, 2014-15, 2015-16, 2016-17,
2017-18 & 2018-19

M/s. Prakash Shipping Agencies,
247, Thambu Chetty Street,
Mannadi,
Chennai – 600 001.

The Assistant Commissioner
of Income Tax,
Central Circle 3(3),
Chennai

PAN: AAEFP 1257A

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Y. Sridhar, F.C.A

प्रत्यर्थी की ओर से/Respondent by

: Shri AR.V. Sreenivasan, A ddl.CIT

सुनवाई की तारीख/Date of Hearing

: 11.07.2024

घोषणा की तारीख/Date of Pronouncement

: 28.08.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

These appeals by the assessee are arising out of the different orders of the Commissioner of Income Tax (Appeals), Chennai - 20dated17.01.2024 / 18.01.2024. The assessments were framed by the Deputy Commissioner of Income Tax, Central Circle3(3), Chennai for the assessment years 2013-14 to 2018-19 u/s.147of the

Income Tax Act, 1961 (hereinafter the 'Act') vide orders of even date 31.12.2022.

ITA Nos.532 to 535 & 537/CHNY/2023

2. The first common issue in these five appeals of assessee is as regards to the order of CIT(A) confirming the action of the AO in making addition of unexplained expenditure u/s.69C of the Act being expenses incurred towards "examination/inspection charges which actually represents amount paid to PO/EO/AO of the Government agencies". For this, assessee has raised identically worded grounds in all the years and hence, we will take the facts and circumstances and grounds raised in assessment year 2013-14 in ITA No.532/CHNY/2024 and will decide the issue. The relevant ground raised by the assessee in ground No.5 reads as under:-

"5. On the facts and circumstances of the case, the ld.CIT(A) has erred both in law and facts confirming the action of the ld.AO despite the fact that the condition precedent to invoke u/s 69C of IT Act was not satisfied."

However, the chart of addition on this issue reads as under:-

Assessment year	Disallowance u/s.69C of the Act
2013-14	4,38,480/-
2014-15	8,49,144/-
2015-16	13,26,300/-
2016-17	10,62,360/-
2018-19	10,63,680/-

3. Brief facts are that the assessee M/s. Prakash Shipping Agencies, a partnership firm is engaged in the business of customs brokers and holding customs brokers license issued by Custom House. A survey u/s.133A of the Act was conducted on the business premises of the assessee by the Department on 12.11.2018 and during the course of survey, the survey party of the Department noticed that the assessee has incurred expenses towards examination charges, which represents amount paid to P.O/E.O/A.O of the Government Agencies. The survey party notes as under:-

<i>Financial year</i>	<i>Asst. Year</i>	<i>Total amount of expenses as per the vouchers for April of the financial year</i>	<i>Total amount paid to P.O/E.O/A.O included in Col No.3</i>	<i>Estimation of total amount of expenses for the year under consideration</i>	<i>Estimation of amount paid to P.O/E.O/A.O for the year under consideration</i>
2012-13	2013-14	44,525	36,540	5,34,300 (44,525 × 12m)	4,38,480 (36,540×12m)

The AO noted that as per explanation to section 37(1) of the Act, any expenditure incurred by an assessee for the purpose, which is an offence or which is prohibited by law, shall not be deemed to have been incurred for the purpose of business or profession and hence, no deduction shall be allowed in respect of such expenditure. Accordingly, assessee's case was reopened by issuing notice u/s.148 of the Act after recording reasons u/s.147 of the Act. Accordingly,

the assessee filed return of income in response to notice u/s.148 of the Act and hence, assessment was completed u/s.147 r.w.s. 143(3) of the Act. The AO noted in his assessment order that during the course of survey conducted at the assessee's business premises, various self-made vouchers were found in the record room and other places of the building. According to AO, the vouchers pertaining to April month of each financial year starting from 2011-12 to 2017-18 were analyzed and it was found that 80% of the expenses incurred towards examination / inspection charges which actually represents amount paid to P.O/E.O/A.O of the Government Agencies and hence, the AO estimated the disallowance at Rs.4,38,480/-. The assessee vide its submissions dated 07.03.2022 stated that the above mentioned expenses have not been claimed in the income-tax return filed by the assessee but the AO noted that the self-made vouchers found during the course of survey clearly indicates that the above mentioned expenses have been incurred by assessee. Subsequently, the assessee claimed vide letter dated 28.03.2022 that these expenses are part of clearance work paid to labour, crane operators, etc., during the custom clearance inspection of cargo/container by AO/EO/PO. The AO has not considered the submissions of the assessee but made addition by observing in para 6.3 as under:-

“The assessee’s submission is duly considered and found to be not acceptable as Shri P.G. Sundarrajan, who is the managing partner of the above assessee firm clearly admitted in response to question no.8 of the sworn statement recorded u/s.133A of Income Tax Act, 1961 dated 13.11.2018 that the above expenditure actually incurred towards the payments made to PO/EO/AO and not towards travel expenses, lunch expenses, loading and unloading of goods to/from containers during inspection of AO or EO or PO as stated by the assessee in its submissions during assessment proceedings. The assessee has stated that he has incurred the expenses but the same has not been recorded in books of accounts.”

The AO further observed that the assessee agreed for a disclosure of Rs.1.50 crores for assessment years 2017-18 & 2018-19 for the discrepancies found for covering the entire addition as stated in assessment years 2017-18 & 2018-19 amounting to Rs.40,00,000/- & Rs.1,10,00,000/- respectively. However, the AO added this amount of Rs.4,38,480/-. Aggrieved, assessee preferred appeal before the CIT(A).

4. The CIT(A) after considering the submissions of the assessee confirmed the action of the AO by observing in paras 7.3.11 to 7.3.16 as under:-

“7.3.11 It is noticed that while finalizing the assessment, the AO has not disallowed expenditure Rs.4,38,480/- u/s 37 of IT Act for making payments in violation of law to Government agencies.

7.3.12 The AO was of the opinion that the expenditure reflected as 'AO/PO/EO by self-made vouchers is not recorded in books. It is noticed that no ledger account was filed for 'Misc Expenditure for clearing', 'Misc

Expenditure for import' in which as per claim of appellant expenditure under consideration was recorded.

7.3.13 Similarly no ledger account for heads 'AO/PO/EO' or 'ship advance' were filed.

7.3.14 Profit and loss account filed by the appellant for the year also do not show any expenditure under above three heads.

7.3.15 The appellant though claimed that expenditure under consideration is collected from Customers in respect of whose consignment such expenditure is incurred, no Evidence for collection of the same from customer has been produced.

7.3.16 During appeal proceedings also, appellant has not filed any evidence to show that the same was brought into books and subsequently collected from Customer. Therefore, contention of appellant that source for expenditure incurred has been explained before AO basing on books can't be accepted. Hence addition made by AO on account of unexplained expenditure u/s 69C Rs.4,38,480/-, is upheld. Accordingly, Ground of Appeal No.4 of the appellant is dismissed.”

Aggrieved, assessee is in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted from the case records and sample copy of vouchers brought before us during the course of hearing that the expenditure is actually incurred towards travel expenses, lunch to the employees, loading and unloading of goods, clearance work paid to labour, crane operators during the customs physical examination/inspection of cargo/containers by AO/EO/PO in connection with the examination/inspection and this fact is

mentioned in the vouchers as examination/inspection charges. It was claimed that these are genuine business expenses allowable u/s.37 of the Act. He stated that these expenditure are not hit by firstly Explanation to Section 37(1) of the Act, for the reason that no payment is made to government employee or for any purpose which is an offence or which is prohibited by law. The Id.counsel claimed that these expenditures were paid for the purpose mentioned above and from the beginning this was the stand of assessee and it is a normal business expense. The Id.counsel for the assessee before us stated that all these expenditure are recorded in the books of accounts and it is not unrecorded expenditure and hence, there is no application of section 69C of the Act as sought for by the AO and CIT(A). According to Id.counsel, section 69C of the Act envisages that expenditure whose source is unexplained by the assessee but not the expenditure which is recorded in the books of accounts is to be added. Here, he explained that expenditure recorded in the books of accounts is evidenced by self-made vouchers. On the other hand, the Id. Senior DR relied on the assessment order and the order of CIT(A). We noted that there is no evidence that these amounts are paid by the assessee either to the government employees i.e., AO/EO/PO and these payments are made by assessee or expenditure is incurred by the assessee for the purpose,

which is an offence or which is prohibited by law, as envisaged in the Explanation to Section 37(1) of the Act. Hence, in the given facts and circumstances and the fact that expenditure is incurred by the assessee towards travel expenses, lunch to the employees, loading and unloading of goods, clearance work paid to labour, crane operators during the customs physical examination/inspection of cargo by the AO/EO/PO and incurred in connection with examination/inspection, which is genuine business expenditure allowable u/s.37 of the Act. Hence, we allow this expenditure and set aside the order of AO as well as that of the CIT(A) on this issue. Hence, this issue is allowed.

6. Since the facts and circumstances are identical in other assessment years i.e., 2014-15 to 2016-17 & 2018-19 also, taking a consistent view, we allow the expenses incurred towards 'examination charges' as genuine business expenditure allowable u/s.37 of the Act. Accordingly, this issue raised by the assessee in all these five assessment years i.e., AYs 2013-14 to 2016-17 & 2017-18 is allowed.

7. The next common issue in these five assessment years 2014-15 to 2016-17 & 2018-19 is as regards to the order of CIT(A)

confirming the action of the AO in making addition on adhoc basis by estimating and without specifying which voucher is not verifiable. For this, assessee has raised identically worded grounds in all these years and hence, will take the facts and grounds from assessment year 2013-14 and decide the issue. The grounds raised by assessee read as under:-

6. The ld.CIT(A) has erred both in law and facts confirming the addition of Rs.8,16,770/- on ad hoc basis without specifying which voucher is not verifiable.

7. The ld.CIT(A) has erred in disallowing the legitimate expenditure by quoting “self-made vouchers”, which is not tenable.

However, the chart of addition on this issue reads as under:-

Assessment year	Disallowance u/s.69C of the Act
2013-14	8,16,770/-
2014-15	50,08,295/-
2015-16	8,70,731/-
2016-17	13,14,542/-
2018-19	11,97,940/-

8. During the course of survey, the Department from copy of financial statements and audit report found and analysis of the same carried out for assessment years 2012-13 to 2016-17 & 2018-19 that the assessee has not incurred expenditure to the extent it is claimed. The AO reproduced the relevant details for assessment year 2013-14 in assessment order as under:-

<i>Sl. No</i>	<i>Nature of Expense</i>	<i>Amount as per return of income filed</i>	<i>Actual as per the financial statements furnished during the course of survey</i>	<i>Difference</i>
<i>1</i>	<i>Salaries and Wages</i>	<i>30,42,309</i>	<i>28,87,960</i>	<i>1,54,349</i>
<i>2</i>	<i>Other expenses</i>	<i>10,41,544</i>	<i>---</i>	<i>10,41,544</i>
<i>3</i>	<i>Shipping and Handling Expenses</i>	<i>---</i>	<i>(-) 33,43,820</i>	

The AO noted during the course of assessment proceedings that the assessee has not submitted documentary evidences i.e., bills and vouchers during assessment proceedings despite multiple opportunities and hence, he made disallowance of 20% of the above mentioned expenses and accordingly made disallowance of Rs.8,16,770/- out of the total expenditure claimed by assessee of Rs.40,83,853/-. Aggrieved, assessee preferred appeal before CIT(A).

9. Before CIT(A), the assessee filed documents to prove genuineness of expenditure i.e., ledger copies of salaries and wages, ledger copies of other expenses amounting to Rs.30,42,309/- and Rs.10,41,544/- respectively. But the assessee could not produce bills and vouchers and therefore, the CIT(A) also confirmed the action of the AO. Aggrieved, assessee is in appeal before the Tribunal.

10. We have heard rival contentions and gone through facts and circumstances of the case. Admittedly, the expenditure claimed under the head like salary and wages, other expenses, shipping and handling expenses in the return were claimed in the return originally filed as well as in the return filed in response to notice u/s.148 of the Act, but is not disputed that these are not business expenses. Even the Revenue has accepted that these are normal business expenses but only quantification is in dispute. In the absence of bills and vouchers, the AO estimated the disallowance at 20% and confirmed by CIT(A). We feel that a reasonable disallowance of 10% will serve the interest of justice and hence, we restrict the disallowance at 10% and direct the AO to re-compute the income accordingly. In term of the above, we partly-allow the claim of assessee and this ground raised by assessee is partly-allowed.

11. Since the facts and circumstances are identical in other assessment years i.e., 2014-15 to 2016-17 & 2018-19 also, taking a consistent view, we restrict the disallowance at 10% and direct the AO to re-compute the income accordingly. Therefore, this issue raised by the assessee in all these five assessment years i.e., AYs 2013-14 to 2016-17 & 2017-18 is partly-allowed.

ITA No.534/CHNY/2024, AY 2015-16

12. The next issue in assessment year 2015-16 is as regards to order of CIT(A) confirming the disallowance made by AO of expenses for which no TDS is deducted by invoking the provisions of section 40(a)(ia) of the Act. For this, assessee has raised the following ground No.8:-

“8. On the facts and circumstances of the case, the ld.CIT(A) has erred in confirming the action of the ld.AO despite the fact the disallowance of 40(a)(ia) is not applicable as most of the deductees filed a nil deduction certificate (foreign liner).”

13. Brief facts are that the AO during the course of assessment proceedings noticed from Form No.3CD that assessee has claimed shipping and handling expenses of Rs.1,96,74,408/- during the financial year 2014-15 relevant to this assessment year 2015-16 but TDS was not deducted. The assessee was show-caused vide letter dated 23.03.2022 to explain as to why 30% of shipping and handling expenses should not be disallowed due to non-deduction of TDS. The assessee has not submitted any documentary evidence and since the assessee has not deducted TDS, 30% of the expenses amounting to Rs.59,02,322/- was disallowed. Aggrieved, assessee preferred appeal before CIT(A).

14. The assessee before CIT(A) claimed that TDS is not applicable as the expenditure relates to freight, transport and foreign liner, who have filed 'nil deduction' certificates having less than 10 goods carriage vehicle but CIT(A) noted that no 'nil deduction' certificate was filed either before AO nor during appeal proceedings before CIT(A). Hence, he dismissed this issue by observing in para 7.5.5 as under:-

“7.5.5. However, it is noticed that in the return of income entire expenditure of Rs.1,96,74,408/- (para 7, page 4 of assessment order) is shown to have incurred towards freight. It is the contention of appellant that all the payees have 'Nil TDS deduction certificates' with assessee because of which no TDS was made. However, it is noticed that copies of 'NIL deduction' certificates were neither filed before AO nor during appeal proceedings. Hence disallowance made by AO is confirmed. Accordingly, Ground of appeal No.6 is dismissed.”

Aggrieved, assessee came in appeal before the Tribunal.

15. Before us, the Id.counsel for the assessee made only submission that this issue can be remitted back to the file of the AO and assessee will file CA certificate in view of second proviso to section 40(a)(ia) of the Act, where the recipient parties have included the income in their respective returns of income. To this proposition, the Id. Senior DR also not objected.

16. After hearing both the sides and going through the facts, we remit this issue back to the file of the AO and assessee will file the relevant certificate from CA in term of second proviso to section 40(a)(ia) of the Act. Hence, this issue is restored back to the file of the AO.

ITA No.535/CHNY/2024, AY 2016-17

17. The next issue in assessment year 2016-17 is as regards to the order of CIT(A) making the action of AO in making disallowance of expenses i.e., out of pocket claimed by assessee and incurred exclusively for the purpose of business amounting to Rs.14,24,411/-.

For this, assessee has raised the following ground No.8:-

“8. On the facts and circumstances of the case, the ld.CIT(A) has erred in confirming the action of the ld.AO despite the fact that the disallowance of Rs.14,24,411/- out-of-pocket expenses were incurred exclusively for the purpose of business which is allowable expenditure u/s.37 of the Act.”

18. Brief facts relating to this issue are that the AO noted that some of the expenses of Rs.14,24,411/- was offered by assessee firm itself, which was not considered, which resulted in under assessment of taxable income for assessment year 2016-17. The assessee claimed that this amount includes the amount offered of Rs.40,00,000/- and now, separately added in the order which includes the out of pocket expenses as per survey report and this

tantamount to double taxation. But the AO has not accepted the explanation of the assessee and added the same. Aggrieved, assessee preferred appeal before CIT(A).

19. The CIT(A) also confirmed the action of AO as the assessee is unable to prove or despite the onus being expenses claimed to have been incurred in the nature of out of pocket expenses incurred towards consignment, etc. Aggrieved, assessee came in appeal before the Tribunal.

20. We have heard rival contentions and gone through facts and circumstances of the case. The Id.counsel for the assessee before us claimed that this expenditure has already been considered while computing addition offered by assessee of Rs.40,00,000/- in this assessment year. He stated that these expenses are part of declaration made by assessee of Rs.40,00,000/- and hence, it cannot be separately treated. We find considerable force in the plea of assessee as the Revenue could not point out what is the bifurcation of Rs.40,00,000/-. We noted that the assessee has already declared a sum of Rs.40,00,000/- in the disclosure including this under this head and hence, we delete this addition. Accordingly, this issue of assessee's appeal is allowed.

ITA No.536/CHNY/2024, AY 2017-18

21. The only issue in this appeal of assessee is as regards to the order of CIT(A) restricting the action of AO in confirming addition of Rs.14,44,200/- on account of incidental expenditure out of the total amount admitted by the assessee during the course of survey at Rs.1.10 crores. For this, assessee has raised the following ground No.3:-

“3. On the facts and circumstances of the case, the ld.CIT(A) has erred both in law and in facts in confirming the addition of Rs.14,44,200/- despite the fact that the expenditure was exclusively incurred for the purpose of business.”

22. We have heard rival contentions and gone through facts and circumstances of the case. The facts are that the AO while completing assessment added additional income admitted by the assessee during the course of survey relating to this assessment year at Rs.1.10 crores. The AO added the sum as under:-

<i>Returned Income</i>	:	<i>Rs. 11,29,480/-</i>
<i>Add: Additional income as admitted by the assessee during the course of the survey and apportioned for the AY 2016-17</i>	:	<i>Rs.1,10,00,000/-</i>
		<hr/> <i>Rs.1,21,29,480/-</i> <hr/>

Aggrieved, assessee preferred appeal before the CIT(A).

23. The CIT(A) restricted the addition at Rs.14,44,200/- and deleted the balance addition by holding that the assessee has

admitted towards incidental expenditure for these years but not related to current year and hence, he deleted the addition of earlier years of Rs.95,55,800/- but confirmed or restricted the balance addition of Rs.14,44,200/- as the assessee could not produce bills and vouchers by observing in para 7.12 as under:-

“7.12 Hence, addition made by AO to the extent of Rs.95,55,800/- (Rs.1,10,00,000/- minus Rs.14,44,200/-) is hereby deleted as it represents admission of appellant towards ‘Incidental Expenditure’ of other years but not related to current year. The AO is directed to delete addition to the extent of Rs.95,55,800/-. Consequently, Grounds relating to the issue are partly allowed.”

We noted that the AO simpliciter made addition, as the assessee admitted during the course of survey as an amount of Rs.1.10 crores but the assessee before CIT(A) contended that this admission of Rs.1.10 crores pertains to earlier years which was disclosed and taxed and this addition does not pertain to this assessment year. The CIT(A) noted that the assessee has agreed and reiterated twice that no proper bills are maintained with respect to incidental expenditure incurred over the years i.e., assessment year 2012-13 to 2018-19. Accordingly, assessee agreed for total such incidental expenditure over the years amounting to Rs.69,34,224/-. The CIT(A) noted that an amount of Rs.14,44,200/- has been incurred during the relevant year towards incidental expenditure and it is not supported by any bill and thus, he referred to question Nos.8,10 & 11. The CIT(A) recorded this fact in para 7.9 as under:-

“7.9 However, it is noticed from statement u/s 133A reproduced above that an amount Rs.14,44,200/- has been incurred during the year towards ‘Incidental Expenditure’ and it is not supported by any Bills. This fact was admitted by appellant while replying to question number 8,10 and 11.”

24. At the time of hearing before us, the Id.counsel for the assessee read out question Nos.10, 11 & 11 and answer to the same and stated that the assessee has disclosed this sum of Rs.1.10 crores and if separate addition is made for this amount of Rs.14,44,200/- on account of expenditure incurred during the year on account of incidental expenditure not supported by bills, the same tantamount to double addition. We noted that this plea of the assessee that this amount tantamount to double addition seems logical as the assessee has already disclosed a sum of Rs.1.10 crores as additional income and further, making addition of this expenditure of incidental expenses of Rs.14,44,200/- makes no sense. Hence, we delete this addition and allow this issue of assessee's appeal. Accordingly, this appeal of the assessee is allowed.

ITA No.537/CHNY/2024, AY 2018-19

25. The next issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of the AO in disallowing a sum of Rs.20,59,900/- on adhoc basis being 15% of entire expenditure debited in the P&L account. For this, assessee has raised the following ground No.6:-

6. *On the facts and circumstances of the case, the ld.CIT(A) has erred both in law and in facts in confirming the action of the ld.AO despite the fact that the ld.AO disallowed a sum of Rs.20,59,900/- on ad hoc basis, being 15% of entire expenditure debited in P&L Account without specifying which voucher/bill is not verifiable and without rejecting the books of account.*

26. We have heard rival contentions and gone through facts and circumstances of the case. The AO during the course of assessment proceedings noticed that the assessee has claimed expenses in the Profit & Loss account at Rs.1,37,32,676/- but only made partial submissions but no evidence was produced to prove the same. Hence, he made addition by disallowing 15% of the expenditure at Rs.20,59,900/-. Aggrieved, assessee preferred appeal before the CIT(A). The CIT(A) also confirmed the action of the AO by observing in para 7.4.3 as under:-

“7.4.3 I have examined facts leading to disallowance of Expenditure. It is very clear from the assessment order that the only reason for ad-hoc disallowance of expenditure by the AO is non-production of bills/vouchers to prove genuineness of Expenditure by the Appellant. It is established that onus is on Appellant to show genuineness of Expenditure claimed for the year which the appellant has failed to discharge. But still the AO has been reasonable in disallowing only a portion of Expenditure claimed under the heads instead of disallowing entire Expenditure.”

27. Before us, the Id.counsel for the assessee argued that after noting the fact that the assessee before AO as well as CIT(A) contended that all the bills and vouchers were impounded by the Department during the course of survey and the same are lying at

the premises of the department and without pointing out any specific default of discrepancy, adhoc disallowance of expenses is unsustainable in law. We agree with the arguments of Id.counsel that once the vouchers and bills are impounded with the Department and lying with them and without pointing out any defect, no disallowance can be made. We delete the disallowance and allow this ground raised by assessee.

28. In the result, the appeals filed by the assessee in ITA Nos.532, 533, 535 & 537/CHNY/2024 are partly-allowed, ITA No.534/CHNY/2024 is partly-allowed for statistical purposes and ITA No.536/CHNY/2024 is allowed.

Order pronounced in the open court on 28th August, 2024 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)
उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 28th August, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.