

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखासदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER

Sr. No	Appeal Numbers	Assessment Years	Appellant	Respondent
1	ITA No.1973/Chny/2024	2013-14	GRM Constructions, 6-A, Salem Road, Kalangani PO, Namakkal – 637014. [PAN: AACFG 4873D]	The Asst. CIT, Central Circle, Salem
2	ITA No.1974/Chny/2024	2014-15		
3	ITA No.1975/Chny/2024	2015-16		
4.	ITA No.1976/Chny/2024	2016-17		
5.	ITA No.1977/Chny/2024	2017-18		
6.	ITA No.1978/Chny/2024	2018-19		
7.	ITA No.1979/Chny/2024	2019-20		
8.	ITA No.1980/Chny/2024	2020-21		

अपीलाधी की ओर से/ Appellant by : Shri T.S.Lakshmi Venkatraman, FCA
प्रत्यर्धी की ओर से /Respondent by : Ms. R. Anita, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 14.10.2024
घोषणाकी तारीख /Date of Pronouncement : 18.10.2024

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid eight appeals filed by the assessee are against the identical orders passed by Learned Commissioner of Income Tax (Appeals), Chennai-20 [hereinafter "CIT(A)"] dated 24.05.2024 confirming the addition made by the Ld. Assessing Officer.

2. The facts in all the appeals of the assessee are identical and issues are common hence, we proceed to pass a common order. For brevity, we shall take up the appeal in ITA No.1973/Chny/2024 for A.Y

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2013-14 as lead case. The grounds of appeal raised by the assessee for A.Y 2013-14 are as under:

"1. On the facts and circumstances of the case the order of first appellate authority dated 24.05.2024 in dismissing the appeal of the appellant is bad in law and is not legally justified.

2. On the facts and circumstances of the case the first appellate authority is not justified in giving a finding that the notice U/s 148 issued on 29.03.2021 for the assessment year 2013-14 for which the due date for issue of the notice has expired on 31.03.2020, is a valid notice. The above notice is barred by limitation and the reassessment proceedings are bad in law. On Similar facts Income Tax Appellate Tribunal 'B' Bench in ITA No. 1506/Chny/2023 by order dated 31.05.2024 has held that the notice U/s 148 for the A.Y 2013-14 issued to the assessee on 27.03.2021 in that case is barred by limitation U/s 149 of the Act.

3. On the facts and circumstances of the case the first appellate authority is not justified in sustaining the reassessment proceedings which has been done after four years from the end of the assessment year on same set of facts without any fresh materials coming into the possession of the AO other than the statement recorded in the course of survey U/s 133A on 06.02.2020.

4. On the facts and circumstances of the case the first appellate authority is not justified in solely acting upon the statement recorded in the course of survey U/s 133A of the Act on 06.02.2020 in sustaining the addition of Rs.10,78,063/- made by the AO. It has been judicially settled that the statements recorded in the course of survey does not have any evidentiary value as held by The Madras High Court in the case of CIT vs. S.Khader Khan Son reported in 300 ITR 157 which decision has also been affirmed by The Apex court.

5. On the facts and circumstances of the case the amount admitted in the course of survey U/s 133A was not admitted in the return filed in response to notice U/s 148 of the Act which action amounts to retraction of the statement.

6. On the facts and circumstances of the case in the course of survey proceedings books of accounts and documents were also seized and the addition of Rs.10,78,063/- has been made not on the basis of the above seized documents but the addition has been made solely on the basis of statement recorded in the course of survey which is bad in law.

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7. On the facts and circumstances of the case reliance was placed upon the circular of CBDT dated 10.03.2003 wherein departmental officials have been specifically instructed not to get confessions during the course of search and survey operations, which circular is binding on all the officials of the department. The framing of the assessment on the basis of such confessions given by the assessee which action has been sustained by The First Appellate Authority is bad in law.

8. In view of the above grounds and other submissions to be made at the time of Appeal hearing, the order U/S 250 passed by Commissioner of Income Tax (Appeals Chennai 20 may be cancelled and justice rendered.”

3. The assessee is involved in a civil contract works and filed return of income for A.Y 2013-14 on 13.09.2014 declaring total income of Rs.13,33,194/-. A survey u/s. 133A of the Income-tax Act, 1961 (hereinafter “the Act”) was conducted in the premises of the assessee on 05.02.2022. During the survey proceedings, it was found that the assessee has claimed labour expenses, but could not substantiate the labour expenses with bills and vouchers fully. The partners therefore, in his statement recorded during the survey u/s. 133A of the Act admitted for disallowance of 10% of labour expenses. The A.O has reopened the assessment on the basis of above statement by issuing notice u/s. 148 of the Act. The assessee in response to notice u/s. 148 of the Act has stated that the return originally filed may be treated as return filed u/s. 148 of the Act. The assessee therefore has not accepted the disallowance of 10% of labour expenses in the return filed in response to notice u/s.148 of the Act. The A.O in the

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assessment order passed u/s. 147 of the Act has made the addition by adding 10% of labour expenses as per the reasons recorded. The Ld. CIT(A) has confirmed the addition as the assessee itself has agreed for disallowance of 10% labour expenses during survey.

4. The Ld. Authorized Representative (A.R) of the assessee before us has challenged the reopening of assessment after four years for A.Ys 2013-14, 2014-15 & 2015-16 as there was no fresh materials in possession of AO and assessment has been reopened only on the basis of statement. On merit, the Ld. AR has submitted that the addition has been made merely on the basis of statement taken during survey u/s. 133A of the Act and without giving any show cause during assessment proceedings. The Ld. AR has further submitted that survey was conducted on 06.02.2020 and thereafter, Covid pandemic broke out and there was a lock down in the country due to Covid and the assessee in the return of income in response to notice u/s 148 on 20.10.2021 has not accepted the disallowance of labour expenses @ 10%. The Ld. AR has submitted that during the course of survey proceedings, the documents have been impounded, but no documents relating to labour expenses has been impounded or relied upon while making the addition. The Ld. AR relying on the decision of Hon'ble

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Madras High Court in the case of CIT vs. S. Khader Khan Son 300 ITR 157 (Mad.) has submitted that statement of partner in survey operation regarding undisclosed income is not a conclusive piece of evidence. The Ld. AR has argued that the CBDT in a Circular dated 10.03.2003 has also emphasized that the assessing officer should not take confession during survey operation and the A.O should rely on the evidence or material recovered during the course of survey operation to make addition and in the present case the A.O has relied only on statement and not on any documents therefore, addition made should be deleted.

5. The Ld. Departmental Representative (DR), on the other hand, has relied on the orders of authorities below and argued that the order of CIT(A) may be confirmed as addition has been made on the basis of disallowance of labour expenses agreed by the assessee.

6. We have heard the rival submissions, and perused the materials available on record. A survey u/s. 133A of the Act was conducted in the premises of the assessee. The managing partner, Shri R. Ganeshan, in his statement during survey stated that all vouchers relating to labour charges are prepared by site supervisors and some

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of the vouchers might have been misplaced and some of the vouchers might be self made, based on the expenses incurred by the site Supervisor. Hence, there will be increase/fluctuation in labour charges expenses claimed. He, therefore offered 10% of the labour charges as income for A.Y 2013-14 to 2019-20.

7. The Ld AR has challenged the reopening of assessment, affirmed by Ld CIT(A). We do not find any merit in the submission of Ld AR as the the assessment has been reopened on the basis of finding of survey that some of the vouchers for labour charges was not available and accepted by the partner , therefore the A.O was justified to reopen assessment u/s. 147 of the Act.

8. As regards to merit, the A.O has made the addition only on the basis of statement of the managing partner , who has agreed for 10% of disallowance of labor expenses during survey .We note that the firm has not accepted the disallowances admitted by the partner as it did not include the disallowances in the return of income filed in response to notice u/s. 148 of the Act. The A.O has made the addition only on the basis of statement of the partner. However, after admitting that some of labour expenses are not fully vouched during survey, onus was on the assessee to submit all bill/vouchers in support of the

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expenses claimed during assessment proceeding, which assessee has failed to discharge. We therefore hold that the AO was justified to make the disallowances. As regard to quantum of disallowances, assessee has shown net profit between 2.5% to 6.18% of gross receipt for A.Y 2013-14 to A. Y 2019-20 as under:

Assessment year	Gross receipts (in Rs.)	Labour Charges	Net Profit (in Rs.)	Net profit ratio before addition	Net profit ratio after addition
2013-14	6,05,53,329	1,07,80,638	18,13,194	3.01%	4.80%
2014-15	10,68,13,303	3,74,41,710	33,11,210	3.10%	6.61%
2015-16	16,18,82,230	5,07,29,378	40,48,867	2.50%	5.63%
2016-17	31,30,81,445	13,82,99,882	1,10,16,460	3.52%	7.94%
2017-18	50,05,10,773	21,96,07,058	1,77,78,218	3.55%	7.94%
2018-19	45,89,75,164	6,24,93,442	1,83,99,015	4.01%	5.37%
2019-20	75,34,10,690	6,87,88,056	4,65,32,817	6.18%	6.99%

9. The net profit ratio after disallowances of 10% labour expenses has gone up to 4.80% to 6.99% for A.Y 2013-14 to A.Y 2019-20. The Hon'ble Madras High Court in the case of *K. Kannan vs. Assistant Commissioner of Income-tax, Circle-I in Tax Case (Appeal) Nos. 679 & 680 of 2013 in M.P. Nos. 1 of 2013 and 1 & 2 of 2013 dated 01.10.2013*, has held the net profit of 5% of contract receipt in such business justifiable. We therefore, after considering the nature of business, gross receipts, labour expenses claimed, restrict the disallowances to 5% of labour expenses for A.Y 2003-04 to A.Y 2018-19, which will result in net profit of approximately 5%. As regard to A.Y 2019-20, the assessee itself has shown net profit of Rs 6.18% in the

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return of income, therefore no further disallowances is called for in A.Y 2019-20. Hence, the A.O is directed to compute disallowance accordingly.

10. In the result, all the appeals filed by the assessee are partly allowed.

Order pronounced on 18th October, 2024.

Sd/-
(महवीर सिंह)
(Mahavir Singh)
उपध्यक्ष / Vice President

Sd/-
(जगदीश)
(Jagadish)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 18th October, 2024.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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