

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.234/Nag./2023
(Assessment Year : 2020-21)

Dy. Commissioner of Income Tax
Central Circle-1(3), Nagpur Appellant

v/s

R.B.S.D. And F.N. Das
Export Firm, Shreeram Nagar
DFN Colony, Garividi Respondent
Vizianagram 535 101 PAN-AAFFR4050C

Assessee by : Shri Manoj G. Moryani
Revenue by : Shri Sandipkumar Salunke

Date of Hearing - 08/10/2024

Date of Order - 30/10/2024

ORDER

PER K.M. ROY, A.M.

The Revenue has filed the present appeal challenging the impugned order dated 30/05/2023, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the assessment year 2020-21.

2. The Revenue has raised following grounds:-

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition Rs. 13,22,460/- made on account of unexplained expenditure u/s 69C of the IT Act, 1961, without appreciating the facts that the person whose name are appearing in the sundry creditors have categorically stated that they were not aware and not carried out any work for the firm and also stated that they used to withdraw the cash from the bank and give it to managing partner as per his directions which was accepted by Shri Manvendra More, Partner of the Firm and he declared the amount of Rs. 13,22,460/- along with credit

entries of different years towards cession of liability of sunder creditors for the A.Y. 2020-21 and admitted the same in his statement. Therefore, the A.O. added the unexplained expenditure u/s 69C of the IT Act, 1961 to the income of the assessee.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 74,51,358/- made on account of explained expenditure u/s. 69C of the IT Act 1961, without appreciating the facts that during the course of survey proceedings it was found that the land is in the name of Shri Vishnu Mor and the building has nothing to do with the business of the Firm. Therefore, the A.O. had rightly added the expenditure of Rs. 74,51,358 u/s 69C r.w.s. 115BBE of the Act booked in the books of M/s. RBSSD & FN Das for the A.Y. 2020-21, since the same was not related with the business of the assessee and the Ld. CIT(A) erred in treating the same as personal expenses of the partner and liable to be disallowed u/s 37(1) of the Act.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 15,89,204/- made on account of unexplained expenditure u/s 69C of the IT Act, 1961, without appreciating the facts that the assessee had not substantiated the expenditure incurred with any documentary evidences like work contract, bifurcation of services rendered, therefore, the A.o. has rightly added the unexplained expenditure to the total income of the assessee.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 15,28,680/- made on account of disallowance of brokerage and commission U/s. 69C of the IT Act, 1961, without appreciating the facts that the assessee had not substantiated the expenditure incurred with any documentary evidences like copy of agreement, nature and proof of services provided and the payment made to these persons without any supporting materials, therefore, the A.O. had rightly added the unexplained expenditure to the total income of the assessee.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 25,06,079/- made on account of unexplained mining expenses u/s 69C of the IT Act, 1961, without appreciating the facts that the assessee had not substantiated the expenditure incurred with any documentary evidences like copy of agreement, nature and proof of services provided and the payment made to these persons without any supporting material, therefore, the A.O. had rightly added the unexplained expenditure to the total income of the assessee.

6. Any other ground that may be raised at the time of appellate proceedings."

3. Fact in Brief :- A search and seizure action under section 132 of the Income Tax Act, 1961 ("the Act"), was conducted in Radhika Group of cases

Visakhapatnam on 25/08/2021. Consequent upon search and seizure operation in Radhka Group, a survey was conducted on 25/08/2021, at the office premises of the assessee situated at Vizianagram. The assessee filed original its return of income under section 139(1) of the Act on 13/02/2022, declaring total income of ₹ 18,01,81,210. The case was selected for complete scrutiny under CASS, with the reason of "Income from other sources". Notice under section 143(2) of the Act was issued to the assessee on 29/06/2021, and duly served. Notice under section 142(1) of the Act was also issued on 01/02/2022. Accordingly, the Assessing Officer has made assessment under section 143(3) on 19/09/2022, determining total assessed income at ₹ 19,45,78,986, after making following addition.

S. No.	Income Assessed	Addition made	On account of
1.	Rs. 19,45,78,986/-	Rs. 13,22,460/-	u/s 69C of the Act
2.		Rs. 90,40,562/-	u/s 69C of the Act
3.		Rs. 15,28,680/-	u/s 69C of the Act
4.		Rs. 25,06,079/-	u/s 69C of the Act

4. Aggrieved by the assessment order, the assessee has filed appeal before the first appellate authority.

3. The assessee has made details submission before the CIT(A), which is reproduced below:-

"1. Assessee is a partnership firm carrying on business of Mining of Manganese Ore minerals. It maintains regular books of accounts which are audited u/s 44AB of I T Act.

2. A Survey u/s 133A of IT act was conducted at premises of the assessee on 25.08.2021. Assessee filed return of income on 13.02.2022 declaring total income of Rs. 18,01,81,210/-. Case was selected for scrutiny and notice under section 143(2) and 142(1) were issued which were duly replied by the assessee. In the assessment order passed u/s 143(3) the AO has made following additions which are in dispute in appeal before your honour

a) Unexplained expenditure	Rs. 13,22,460/-
b) Repairs & Maintenance to Building	Rs. 90,40,562/-
c) Brokerage & Commission paid	Rs. 15,28,680/-
d) Mining Expenses	Rs. 25,06,079/-

3. Unexplained Expenditure Rs. 13,22,460/-

3.1 During assessment proceedings the AO raised a query related to credit entries of ₹13,22,460 in the books of accounts. It was submitted that the amount of Rs. 13,22,460/- does not represent any expenses incurred during the year. Assessee also submitted details of ₹13,22,460 and explained as under-

"1. Please refer to our submission dt.09/09/2022 (Copy of Letter enclosed) regarding payment received of Rs. 13,22,460/-. In this respect it is most respectfully submitted that the total amount of Rs.13,22,460/- does not represent any cessation of liability nor any amount of expenditure incurred during the year. The assessee once again enclosing copy of account of following parties for your reference.

(i) B.V.G. Sudhakar	10,00,000.00
(ii) N.Applalaramalu	1,179.00
(iii) Pradeepkumar Katakwar	3,954.00
(iv) S.Hussain	3,17,327.00
Total	13,22,460.00

a) B.V.G. Sudhakar : B.V.G. Sudhakar is working as manager in the firm and on 16/11/2019, the company has advanced to him a sum of Rs.10,00,000/- for company work by cheque No. 8025692 of ICICI Bank. The said amount was returned by Shri B.V.G. Sudhakar on 21/11/2019 (Copy of bank statement enclosed). The said amount of Rs.10,00,000/- does not represent any cessation of liability nor towards any expenditure incurred during the year. The amount advanced and received back is the regular transaction for the business purpose. Thus amount of Rs. 10,00,000/- under any circumstances should not be added to the total income.

b) N.Applaramulu : Please refer copy of account enclosed. The assessee is carrying on mining business and during the course of business a sum of Rs.1179/- was paid in excess and as such on 25/03/2020 the amount from the party was recovered by receiving Rs. 1179/- in cash. The amount of Rs. 1179/- neither represent any cessation of liability nor does represent any expenditure incurred and your honour is requested not to add Rs.1179/- to the total income of the assessee.

c) Pradeepkumar Katakwar : Please refer copy of account enclosed. The assessee on 13/12/2019 has paid a sum of Rs.3954/- on behalf of Katakwar for service tax purpose under Sabka Vikas Scheme. On 26/12/2019, the party has returned the said amount paid by the firm (Copy of Bank Statement with State Bank of India, Garivide enclosed). The amount of Rs.3954/- is neither any cessation of liability nor does it represent any expenditure. Your honour is requested to look into the fact

and it is requested not to add Rs.3954/- to the total income of the assessee.

d) S.Hussain : Please refer copy of account of the party. The assessee on 13/12/2019 has paid a sum of Rs.3,17,327/- on behalf of S.Hussain for service tax purpose under Sabka Vikas Scheme. On 26/12/2019 the party has returned the said amount paid by the firm on 13/12/2019. (Copy of bank statement with State Bank of India, Garividi enclosed). The amount of Rs.3,17,327/- is neither cessation of liability nor does it represent any expenditure. Your honour is requested not to add Rs.3,17,327/- to the total income of the assessee."

3.2 However, In the assessment order, the Id. AO referred to some statement of an employee of the assessee group Sri Bandharu Ramesh and held the amount of Rs.13,22,460/- as unexplained expenditure and made addition under section 69C r.w.s. 115BBE of the Act.

3.3 It is respectfully submitted that the amount of Rs. 13,22,460/- is not any expenditure incurred during the year. As explained in para 3.1 above, they represent the amount received from various persons in respect of either loans given to them, or payment made by assessee on their behalf on earlier occasions. All these transactions are duly recorded in books of accounts. Supporting documents like bank statements and ledger account of parties were submitted before the AO during assessment proceedings and are produced before your honour for kind perusal. The Id. AO has not understood facts of the case and misguided himself. Reference of statements of Sri Bandar Ramesh in the assessment order is totally irrelevant and has no bearing to the amount of Rs. 13,22,460/-.

3.4 It is, therefore, requested to delete addition of Rs. 13,22,460/- made u/s 69C of the Act.

4. Disallowance of Rs. 90,40,562/- out of building repairs and maintenance

4.1 During the year under consideration assessee firm incurred expenditure on building repairs and construction totalling to Rs. 90,40,562/- break up of which is as under.

Building maintenance (Labour Quarter etc)	Rs. 15,89,204/-
Bheemi House construction	Rs. 74,51,358/-
Total	Rs. 90,40,562/-

4.2 During assessment proceeding it was submitted before the AO that the expenditure of Rs. 74,51,358/- are related to construction of house at Beemli owned by a partner. Since the Assessee firm was carrying on business from a small village called Garividi, which does not have any lodging and boarding facility, the assessee firm intended to use the Beemli house as guest house for its business purpose. Therefore, all expenses related to construction and renovation of this Beemli house amounting to Rs. 74,51,358/- incurred by assessee firm during relevant

previous year were claimed as expenses in Profit & Loss a/c under the head Building repairs and maintenance. However, during search proceeding in the statement of Shri Manvendra Mor, partner of the firm, agreed to withdraw claim of this expenditure. Accordingly, in the assessment order, the AO has made addition of Rs. 74,51,358/-. However, AO has invoked s. 69C r.w.s. 115BBE which is under challenge in present appeal before your honour.

As regards expenditure of Rs. 15,89,204/- it was submitted that they are related to general repairs and maintenance of labour quarter which were constructed in the year 1984. The expenses are revenue in nature. Complete details of expenses including bills and vouchers were submitted during assessment proceedings.

4.3 The AO, in the assessment order, without pointing out any defect in the bills and vouchers produced before him, held that the assessee has not furnished copy of agreement for expenses on labour quarter and hence disallowed the entire expenditure on Building Repairs & Maintenance and made addition of Rs. 15,89,000/- to the returned income.

4.4 Invocation of s. 69C r.w.s. 115BBE on addition of Rs. 74,51,358/-

4.4.1 In this regard it is submitted that all expenses on construction of Beemli House totaling to Rs. 74,51,358/- are recorded in regular books of accounts of the assessee which are audited u/s 44AB of I T Act and were produced before the AO during assessment proceedings. Most of the payments have been made by account payee cheques and they are reflected in bank statements of the assessee. The expenditure totalling to Rs. 74,51,358/- were made from the regular business income of Rs. 18.02 crores earned by the assessee. In the assessment order the AO has made addition of this amount for the reason that the Beemili House was not used for the business purpose of the assessee. The AO has, in the assessment order, nowhere doubted about the source of expenditure of ₹74,51,358/-. Therefore, the addition should have been made u/s 37 and not u/s. 69C r.w.s. 115BBE of the Act.

Section 69C is reproduced hereunder for kind reference-

"Unexplained expenditure, etc.

Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the 2448[Assessing Officer], satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year (emphasis supplied by assessee)

From the reading of section 69C it is clear that there are two conditions for invoking section 69C. First is, that the assessee has incurred any expenditure in the relevant previous year, and second is that the assessee does not offer any explanation about source of such

expenditure. If both the conditions are fulfilled then only section 69C can be applied.

In the present case though the assessee has incurred expenditure during the year but all these expenses are duly recorded in books of accounts and they have been incurred from the regular business income of the assessee. The AO has neither during entire assessment proceeding nor in the assessment order doubted about the source of such expenditure. Therefore, the second limb of section 69C is not attracted and hence the assessing officer has erred in making addition under section 69C read with section 115 BBE of the Act.

4.4.2 Considering facts of the case it is humbly requested to direct the AO to delete invocation of s. 69C on addition of Rs. 74,51,358/- and direct to make addition u/s 37 of the Act.

4.5) Addition of Rs. 15,89,204/-

4.5.1) *In this context, it is humbly submitted that the assessee firm is carrying on mining activity since 1984 from a remote village Garividi in Vizianagaram district of Andhra Pradesh. The firm has mine office, staff and labour quarters and creches at mining site for accommodating the labourers who come a long way from other villages. There are hundreds of labour working in the mine area and as per the Mining Safety Act proper shelter / quarters / crèches has to be provided for mine workers and the assessee is also having different offices like Mine Office, Transport Office, Weighbridge Office, Accounts Office, Canteen Area, etc. All the above labour quarters, crèches, office buildings and places were constructed during the period from 1984 to 1990 and the same being temporary in nature, necessary repairs and maintenance are required from time to time to upkeep the same. During the year under consideration the assessee has incurred expenditure of Rs.15,89,000/- towards general repairs and maintenance of all these buildings at mine area. The expenses are current repairs to upkeep these buildings and no new capital asset has been acquired out of it. The expenses comprises of labour wages, cement, sand and other miscellaneous items.*

4.5.2 *During assessment proceedings, assessee has submitted complete details of expenses on building, repairs and maintenance including bills and vouchers for each expenditure under this head. All these expenses are routine expenses to upkeep various buildings of the assessee at mine site. The assessing officer has not pointed out even a single defect in the bills and vouchers so produced by the assessee but disallowed the entire expenditure on a very flimsy ground that the assessee did not produce copy of work contract agreement.*

4.5.3 *It is humbly submitted that the assessee is maintaining regular books of accounts which are audited under section 44AB of Income Tax Act. The auditor, in its report, has not pointed out any defect in the books of accounts or bills and vouchers maintained by the assessee. In the assessment proceeding, the AO has not disputed the fact that the assessee has maintained regular books of accounts, bills and vouchers. The AO has not rejected assessee's books of account. It is settled position of law that where books of accounts of assessee are not rejected, onus is*

on assessing officer to point out specific expenses which are not incurred in connection with business and only thereafter he can make disallowance under the provisions of Income Tax Act. There is no provision provided under income tax act, empowering assessing officer to make disallowance on ad hoc basis without pointing out specific defect. Reliance is placed on following judgments-

Katira Construction Ltd. V. ACIT (ITA No. 1000/Rjt/2010)

M.V.A. Seetharaman Raju v. DCIT (unless assessing officer points out specific defects in expenditure claimed by assessee, no ad-hoc disallowance can be made for the reason that assessee has not filed any evidence to justify said expenditure)

Similar view has been taken by various ITAT in following cases-

- a) *Dynamix India Drill-Con Co. v. ACIT (ITA No. 6110/Del/2018 order dt. 16/03/2023);*
- b) *Kailas Chand Agrawal v. DCIT (ITA No. 275/RPR./2016);*
- c) *TPF Getinsa Euroestudios v. ACIT (ITA No. 2400/Del./2022); and*
- d) *DCIT v. Shalaka Infra Tech (ITA Nos. 1222 & 1223/Pun./2017).*

4.5.4 *Since in the assessee's case, the assessee has maintained proper books of accounts, bills and vouchers for expenses incurred and the AO has not pointed out any defect in the bills and vouchers produced before him, the disallowance of Rs. 15,89,204/- out of Building Repairs & Maintenance expenses is unjustified and deserves to be allowed.*

4.5.5 *Without prejudice to above submissions it is submitted that similar expenses on Building Repairs and Maintenance have been incurred by assessee in other assessment years also. The AO has completed assessment of AY 2018-19 vide order u/s 147 r.w.s. 143(3) of I T Act on 28/03/2023 wherein the claim of expenditure of Building Repairs and maintenance has been accepted by the AO. Copy of assessment order is enclosed herewith.*

5. Brokerage and Commission of Rs. 15,28,680/-

5.1 *During the relevant previous year assessee has claimed expenses of Rs 15,28,000/-/- on account of Brokerage and Commission paid to Shri DVN Divya. It was submitted to the AO that Shri DVN Divya looks after follow up of orders and recovery of outstanding amounts from debtors. He is neither related to the assessee nor is he an employee of the assessee group. Payment to him has been made after due deduction of TDS at applicable rate.*

5.2 *During the assessment proceedings, the assessee has submitted following documents in support of Brokerage and Commission expenses-*

- a) *Copy of bills submitted by Sri DVN Divya*
- b) *Copy of ledger account and bank statements giving details of payments made to him*
- c) *Copy of form 16A downloaded from traces site containing complete name, address, PAN, Commission amount and TDS amount etc.*

5.3 However, in the assessment order the learned AO has made addition of Rs. 15,28,000/- u/s 69C r.w.s. 115BBE of IT Act since in the statement recorded u/s 132 Shri Manvendra Mor, partner of the firm, had agreed to offer this amount as additional income in the return of income.

5.4 In this regard it is submitted that the AO has nowhere in the assessment order doubted about genuineness of the expenditure of Rs. 15,28,680/-. AO has also not falsified the various documents submitted by assessee in support of the expenditure. The sole basis of this addition is statement of Shri Manvendra Mor recorded at the time of search wherein he admitted to offer this amount as additional income.

5.5 In this regard it is submitted that the statement of Sri Manvendra Mor U/s. 132(4) was not voluntary. It was obtained under undue influence and by coercion. Search was un-necessarily prolonged to make the assessee bend and make confessional statement. This is evident from the fact that while the search was conducted on 25/08/2021, the final statement u/s 131(1A) was recorded on 13/01/2022. There is gap of more than 140 days between the date of search and recording of final statement which is very unusual and implies that statement was taken after tiring the assessee for a considerable period.

It is further submitted that the confessional statement given by Sri Manvendra Mor is not based on any evidence and without understanding implication of the same and therefore, the statement is not correct one and hence retracted. In the answer to question No. 40 related to commission expense of Rs. 15,28,680/- he has categorically stated that these expenditure are genuine and the persons have given services. However, so as to avoid prolonged litigation with the department and to have a peaceful settlement I am offering the said amount as additional income. It is trite law that a statement obtained under duress, threat and without understanding its implication has no evidentiary value because it loses its credibility of being an involuntary.

The law relating to retraction is well-settled by Supreme Court in Sri Krishna V. Kurukshetra University, AIR 1976 SC 376, wherein it is held that if the original statement suffers from any defects the person is entitled to go back on the statement already made by making correct statement. The Supreme Court have laid down the ratio, after considering S. 18 of the Evidence Act, 1872 that any admission made in the ignorance of the legal rights or under duress, cannot bind the maker of the admission. This right has been tested under Income-Tax Act and the same has been upheld by Punjab & Haryana High court in Kisan Lal Shivchand Raj V. CIT, (88 ITR 293).

5.6 It is humbly submitted that the CBDT has issued an instruction to its field officers vide F. No. 286 / 2 /2003-IT (INV) dated March 10, 2003 in following words-

"Instances have come to the notice of the Board where assessees have claimed that they have been forced to confess the undisclosed income during the course of the search and seizure and survey operations. Such confessions, if not based on credible evidence, are later retracted by the

concerned assessee while filing returns of income. In these circumstances, on confessions during the course of search and seizure and survey operations do not serve any useful purpose.

It is, therefore, advised that there should be focus and concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search and seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders."

The instruction is timely and is binding on the officers engaged in search as well as survey operations. But it does not bar any statement but only bars confessions.

5.7 It is further submitted that the disallowance of Commission and brokerage of ₹ 15,28,680/- is not based on any material gathered at the time of survey or during the assessment proceedings but it is a proposition based on presumption. The AO has not supported the disallowance by any tangible evidence. The burden of proving the negative is stringent and subject to a greater degree of rigor of evidence.

In this context reliance is placed on following judgments-

CIT v. K. Bhuvanendran (303 ITR 235)(Mad HC)

"There was no evidence or material found during the course of search operation. The statement recorded from the appellant was subsequently retracted and rebutted. Furthermore, the statement was not relatable to any seized material. Therefore, even the statement could not be the basis for making any addition. When the sale deed discloses a sale consideration, it is for the revenue to show that what was disclosed in the sale deed is not the correct sale consideration. In this case the revenue could not bring on record any material to show that the appellant had paid on money of Rs. 23,00,000/-."

M Narayan & Bros. v. ACIT (243 CTR 588)(Mad HC)

In this case Madras High Court has considered the circular issued by CBDT dated 10th March 2003 wherein they have categorically stated that "undue emphasis should not be placed on the recorded statement. While the statement rendered at the time of search u/s 132(4) may be used in evidence in any proceeding, yet, that by itself, does not become the sole material to rest the assessment more so when the appellant seeks to withdraw the same by producing material evidence in support of such retraction. It is always open to a person, who made the admission, to show that the statement to offer income is incorrect and had material to substantiate so; the Tribunal was not justified in placing undue emphasis

on the confession statements made by the appellant. When the appellant had explained the statement made on the second day of the search with materials, that the amounts offered were the loans taken the relatives who were already assessed on the said amount; apart from this, even otherwise, the transactions relating to pawn broking related to years prior to the date of assessment and had no relevance to the year under consideration, rightly the CIT(A) accepted the case of appellant to cancel the assessment on Rs. 4 Lakhs. Thus when the appellant had explained his statement as not correct in the context of the materials produced, the Tribunal would not be justified in its conclusion that the statement made would clothe the assessment with legality. Quite apart from that, the case of the appellant also stands supported by the circular dated 10th March, 2003 of the CBDT, which has given categorical directions to the officers, who are entrusted with the job of assessment that undue emphasis should not be placed on the statements recorded. In fact, it had given a mandate not to obtain confession as to the undisclosed income. Thus applying the circular dt.10th March, 2003 to the facts of the case, which is binding on the Revenue, there is no hesitation in setting aside the order of the Tribunal. As already pointed out that except for the statements referred to by the Tribunal, it had not adverted its attention to the materials produced by the appellant before the CIT(A) explaining the claim that the said amount could not be included in the hands of the appellant.”

5.8 It is once again submitted that the appellant has furnished following documents in support of Brokerage and Commission expenses-

- a) Copy of bills submitted by Sri DVN Divya
- b) Copy of ledger account and bank statements giving details of payments made to him
- c) Copy of form 16A downloaded from traces site containing complete name, address, PAN, Commission amount and TDS amount etc.

The AO has not pointed out any defect in the above documents produced by assessee. The expenses are genuine business expenses.

5.9 Considering facts of the case and legal position on the issue it is most humbly prayed to kindly delete addition of Rs. 15,28,680/- made u/s 69C of the Act.

6) Disallowance of Mining Expenses of Rs. 25,06,079/-

6.1 During the year under consideration, assessee has incurred various expenses on mining of manganese ore. Amongst those expenses genuineness of following two expenses were questioned by the AO-

Name of Party	Date of payment	Amount (₹)
Sri T Puranchandra Rao	27/01/2020	16,14,218/-
M/s Bhomatha Real Properties	01/02/2020	8,91,861/-
TOTAL Rs.		25,06,079/-

6.2 Assessee submitted following documents in support of the claim of expenditure-

- a) Copy of bills submitted by above parties
- b) Details of payments made to parties along with due TDS
- c) copy of bank statements reflecting payments to the parties.

6.3 However, the AO, in the assessment order has held that assessee has not furnished copy of agreement for work contract, nature and proof of services provided and hence disallowed the claim of expenditure of Rs.25,06,079/- and made addition u/s 69C r.w.s. 115BBE of I T Act.

6.4 In this regard it is submitted that the Assessee is carrying on mining activities since 1944. The mines are open cast manual mine situated at Garividi, Dist.: Vizianagaram. As the mining activities are going on since 1944, the depth of the mine has reached over 250 Ft. To carry on such deep mining activities, huge teams of man-power in terms of labourers are required. The team of the management has appointed several labour contractors to carry out various mining activities. The management has given the contract work to different persons as there are so many labour problems and different labour laws. The work awarded to the labour contractor comprises of digging, carrying over burden, making path, stacking of ore and mutty, etc. The contractors are being appointed by the agent of the company who normally takes the stock situation of labour team, their financial condition and integrity of the contractor. After appointment, work is awarded to different contractors for different pits so as to calculate the work done by them. The agent personally supervises the work of each contractor and verifying the same directs the contractor to prepare his work bill. The work bill is being verified by the mining supervisor who transfers the said bill to the accounts department. After receiving the bills, the accounts department verifies the rates, etc. and after deducting "Tax at Source" makes payment to the contractor.

6.5 It is further submitted that the assessee has discharged its onus by providing copy of bills submitted by these contractors' showing details of work done by them. Assessee has also provided their complete name, address, and PAN numbers. The contractors have shown the contract amount as income in their respective income tax returns and paid due taxes thereon.

6.6 The above documents were submitted to the AO during assessment proceeding, and he has nowhere doubted genuineness of these documents. It is worthwhile to mention here that during the relevant previous year assessee firm has sold goods worth Rs. 55.15 crores. Without employing labourers through contractors such sales would not have been possible. The Id. AO has not doubted assessee's production and sales figures. Therefore, under such circumstances expenses incurred by assessee on labour contractors cannot be doubted and disallowed because without them the production and sales would not have been possible.

6.7 It is also submitted that the assessee has made payments to contractors against their bills from time to time by account payee cheques drawn on ICICI Bank, Vishakhapattanam.

6.8 *It is submitted that the expenses on account of labour contractors are genuine business expenses, supported by bills issued by contractors, payment through account payee cheques after due deduction of TDS at applicable rates.*

6.9 *It is therefore, humbly requested to kindly delete the addition of ₹ 25,06,079."*

4. We have heard the rival contention of both the parties; perused material placed on record and duly considered the facts of the case in the light of settled legal position and the case laws relied upon by the assessee as well as Revenue. We shall now first deal with ground no.1, which relates to disallowance under section 69C of the Act for ₹ 13,22,460.

5. The learned Departmental Representative ("*the learned D.R.*") strongly relied on the order of the Assessing Officer and stated that the employee of the assessee firm admitted his statement recorded during survey proceedings the amount of ₹ 13,22,460, along with credit entries of different years towards cessation of liability of sundry creditors for the assessment year 2020-21.

6. The Ld. Counsel for the assessee relied on the order of the learned CIT(A), wherein the learned CIT(A) has dealt with the issue at Page-16 and 17 of his order, which is reproduced below:-

"Ground No. 3 is regarding the addition of Rs. 13,22,460/- made u/s. 69C r.w.s. 115BBE of the Act as unexplained expenditure. During assessment proceedings the AO raised a query related to credit entries of Rs. 13,22,460/- in the books of accounts. Appellant submitted that the amount of Rs. 13,22,460/- neither represent any expenses incurred during the year nor represent any cessation of liability. Appellant also submitted party wise details of sum of Rs. 13,22,460/- which relates to 4 parties. Appellant also submitted ledger account of above parties and bank statement reflected the transaction. In the assessment order AO referred to some statement of an employee of the appellant group Shri

Bandharu Ramesh and held the amount of Rs. 13,22,460/- as unexplained expenditure and made addition u/s. 69C r.w.s. 1155BBE of the Act

In appeal before me appellant reiterated submission made before AO and submitted details of Rs. 13,22,460/- alongwith ledger account of parties and bank statement.

I find force in the argument of the appellant that the amount of Rs. 13,22,460/- is neither expenditure incurred during the year nor it is cession of liability. From the details furnished by the appellant it is clear that these amounts are either loans given to them or payment made by appellant on their behalf on earlier occasions which has been repaid by them subsequently and the transaction is squared off. All these transactions are duly recorded in the books of accounts and supported by entries in bank statement. Considering the fact the case the addition of Rs. 13,22,460/- is directed to be deleted. Hence ground No. 3 is allowed."

7. The learned counsel for the assessee during the appellate proceedings argued that the amount of ₹ 13,22,460, is neither expenditure incurred during the year nor it is session of any liability. From the details furnished by the assessee it is clear that these amounts are either loans given to them, or payment made by assessee on their behalf on earlier occasions which has been repaid by them subsequently and the transaction is squared off. All these transaction were duly recorded in the books of accounts and supported by entries in bank statement.

8. We have gone through order of the learned CIT(A) as well as details submitted before us like ledger account which is placed at Page-47 To 50 of the Paper Book furnished by the assessee, bank statement, extract of the statement recorded. We also found that the amount paid to them is neither any cessation of liability nor does it represent any expenditure. All these transaction are also duly recorded in books of accounts of the assessee.

"6.5 In this respect it is most respectfully submitted that the total amount of Rs.13,22,460/- does not represent any cessation of liability nor any amount of expenditure incurred during the year, which are as under

(i) B.V.G. Sudhakar	10,00,000.00
(ii) N.Applalaramalu	1,179.00
(iii) Pradeepkumar Katakwar	3,954.00
(iv) S.Hussain	3,17,327.00
Total	13,22,460.00

a) B.V.G. Sudhakar : B.V.G. Sudhakar is working as manager in the firm and on 16/11/2019, the company has advanced to him a sum of Rs.10,00,000/- for company work by cheque No. 8025692 of ICICI Bank. The said amount was returned by Shri B.V.G. Sudhakar on 21/11/2019 (Copy of bank statement enclosed). The said amount of Rs.10,00,000/- does not represent any cessation of liability nor towards any expenditure incurred during the year. The amount advanced and received back is the regular transaction for the business purpose. Thus amount of Rs. 10,00,000/- under any circumstances should not be added to the total income.

b) N.Applaramulu : The assessee is carrying on mining business and during the course of business a sum of Rs.1179/- was paid in excess and as such on 25/03/2020 the amount from the party was recovered by receiving Rs. 1179/- in cash. The amount of Rs. 1179/- neither represent any cessation of liability nor does represent any expenditure incurred and your honour is requested not to add Rs.1179/- to the total income of the assessee.

c) Pradeepkumar Katakwar : Please refer copy of account enclosed. The assessee on 13/12/2019 has paid a sum of Rs.3954/- on behalf of Katakwar for service tax purpose under Sabka Vikas Scheme. On 26/12/2019, the party has returned the said amount paid by the firm.(Copy of Bank Statement with State Bank of India, Garivide were filed by the assessee). The amount of Rs.3954/- is neither any cessation of liability nor does it represent any expenditure. In view of the above addition Rs. 6954 were rightly deleted by CIT(A).

d) S.Hussain : Please refer copy of account of the party. The assessee on 13/12/2019 has paid a sum of Rs.3,17,327/- on behalf of S.Hussain for service tax purpose under Sabka Vikas Scheme. On 26/12/2019 the party has returned the said amount paid by the firm on 13/12/2019. (Copy of bank statement with State Bank of India, Garividi were submitted). The amount of Rs.3,17,327/-is neither cessation of liability nor does it represent any expenditure. "

3.2 However, In the assessment order, the Id. AO referred to some statement of an employee of the assessee group Sri Bandharu Ramesh and held the amount of Rs. 13,22,460/- as unexplained expenditure and made addition u/s 69C r.w.s. 115BBE of the Act.

3.3 It is respectfully submitted that the amount of Rs. 13,22,460/- is not any expenditure incurred during the year. As explained in para 3.1 above, they represent the amount received from various persons in respect of either loans given to them, or payment made by assessee on their behalf on earlier occasions. All these transactions are duly recorded in books of accounts. Supporting documents like bank statements and ledger account of parties were submitted before the AO during assessment proceedings and are produced before your honour for kind perusal. The Id. AO has not understood facts of the case and misguided himself. Reference of statements of Sri Bandaru Ramesh in the assessment order is totally irrelevant and has no bearing to the amount of Rs. 13,22,460/-."

9. We have considering the rival argument of both the parties and perused the material available on record. We find that the learned CIT(A) has rightly deleted the addition of ₹ 13,22,460, for the reason that the entire entries were duly recorded in the books of accounts of the assessee and detail of expenses were duly submitted, therefore, the provisions of section 69C are not application to the facts of the issue in hand. Consequently, we hold that the learned CIT(A) has rightly deleted the addition. Accordingly, the order passed by the learned CIT(A) is hereby upheld. Ground no.1, raised by the Revenue is dismissed.

10. Ground no.2, raised by the Revenue relates to disallowance under section 69C of the Act for ₹ 74,51,358.

11. The learned D.R. assailing the order passed by the learned CIT(A) submitted that the assessee has claimed ₹ 74.56 lakh towards building repair and renovation at Bheemlipatnam by the partner only and a sum of ₹ 74.56 lakh should be treated as expenses incurred as construction.

12. The learned Counsel for the assessee relied on order passed by the learned CIT(A). The learned CIT(A), vide Page-16 & 17 of his order, dealt with the issue, which is reproduced as under:-

"Ground No. 4 is regarding the addition of Rs. 90,40,562/- on account of disallowance of expenses on Building Repairs & Maintenance. During the course of survey at the premises of the appellant details of expenses on account of building repairs and maintenance amounting to Rs. 90,40,562/- were found. It was submitted by appellant that the expenses of Rs. 15,89,204/- are related to day to day repairs of labour quarters etc. which are revenue in nature hence they have been claimed as expenditure in the profit and loss account. As regard expenses of Rs. 74,51,358/- it was submitted that they are related to construction of house at beemli, owned by a partner, which appellant intended to use as guest house hence the expenses relating to it have been debited to profit and loss account. However, during search proceedings Mr. Manvendra Mor, Director of the appellant company, intended to withdraw the claim of Rs.74,51,358/-. During assessment proceedings appellant has submitted complete details of expenses of Rs.90,40,562/- including bills and vouchers and ledger account and also agreed for disallowance of Rs. 74,51,358/- being expenses for Beemli house. The learned AO has made addition of Rs.74,51,358/- u/s 69C r.w.s. 115BBE of the Act ad also disallowed expenses of Rs. 15,89,204/- mainly for the reason that the appellant has not produced copy of agreement with the contractor for execution of work and other details thereof.

During the course of appellant proceedings, the appellant has challenged invocation of section 69 on addition of Rs. 74,51,358/- and has disputed disallowance of Rs. 15,89,204/- being expenses on general repairs of building.

Appellant submitted that all expenses on construction of Beemli House totaling to Rs. 74,51,358/- are recorded in regular books of accounts of the appellant which are audited u/s. 44AB of I T Act and were produced before the AO during assessment proceedings. Most of the payments have been made by account payee cheques and they are reflected in banks statements of the appellant. The expenditure totaling to Rs. 74,51,358/- were made from the regular business income of Rs.18.02 crores earned by the appellant. In the assessment order the AO has made addition of this amount for the reason that the Beemili House was not used for the business purpose of the appellant. The AO has in the assessment order, nowhere doubted about the source of expenditure of Rs. 74,51,358/-. Therefore, the addition should have been made u/s. 37 and not u/s. 69C r.w.s. 115BBE of the Act.

Section 69C is as under -

Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the 2448[Assessing Officer], satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year

13. From the above it is clear that there are two conditions for invoking section 69C. First is, that the assessee has incurred any expenditure in the relevant previous year, and second is that the assessee does not offer any explanation about source of such expenditure. If both the conditions are fulfilled, then only section 69C can be applied. In the present case though the assessee has incurred expenditure during the year but all these expenses are duly recorded in books of accounts and they have been incurred from the regular business income of the assessee. The Assessing Officer has neither during entire assessment proceedings nor in the assessment order doubted about the source of such expenditure. Therefore, the second limb of section 69C is not attracted and hence in my considered view the Assessing Officer is not correct in making addition under section 69C r/w section 115BBE of the Act. However, since the expenses of ₹ 74,51,358, are not for business purpose of the assessee but they are personal expenses of the partner, the same are liable to be disallowed under section 37(1) of the Act. Considering facts of the case, the Assessing Officer is directed to delete invocation of provisions of section 69C on the addition of ₹ 74,51,358, and direct to make addition under section 37 of the Act.

14. The learned counsel for the assessee during the appellate proceedings argued that the assessee has incurred expenditure during the year but all these expenses are duly recorded in books of account and they have been incurred from the regular business income of the assessee. The Assessing Officer has neither during entire assessment proceeding nor in the assessment order doubted about the source of such expenditure. Therefore the second limb of section 69C is not attracted and hence the assessing

officer has erred in making addition under section 69C read with section 115BBE of the Act. Considering facts of the case it is humbly request to direct the Assessing Officer to delete renovation for construction of house U/s. 69C on addition of ₹ 74,51,358, and to make addition under section 37.

15. We have gone through order of the learned CIT(A) as well as details submitted we also found that the provisions of section 69C of the Act are not applicable in the case of the assessee. The Assessing Officer has neither during entire assessment proceeding nor in the assessment order doubted about the source of such expenditure. We further find that the learned CIT(A) has rightly allowed the same under section 37(1) of the Act instead of 69C of the Act and the same were fair and reasonable, hence the order passed by the learned CIT(A) is upheld on this issue. Thus, ground no.2, raised by the Revenue is dismissed.

16. Ground no.3, raised by the Revenue relates to deletion of addition under section 69C of the Act for ₹ 15,89,204.

17. The learned D.R. strongly argued and relied on assessment order. The assessee has claimed ₹ 15.89 lakh towards repair and maintenance. The assessee has failed to produce any documentary evidences like work contract, bifurcation of services.

18. We find that the learned CIT(A), vide Page-19 and 20 of his order, dealt with the issue which is reproduced below:-

"During appellate proceeding appellant submitted that the learned AO has not pointed out any defect in the books of account and bills and voucher produced before him as such the disallowance of Rs. 15,89,204/- is

unjustified. Appellant also submitted that similar expenditure made by it in AY 2018-19 have been accepted by the AO in a subsequent assessment order passed under section 147 read with section 143(3) of I T Act on 28.03.2023

The argument of the appellant carries weight and I am in agreement with the same. It is undisputed that the appellant has incurred expenses of Rs. 15,89,204/- for repairs and the building which are quite old. From the details of expenses furnished by the appellant it can be seen that the expenses are revenue in nature and no capital asset has been created out of such expenses. The observation of the AO that the appellant has not furnished copy of agreement with labour contractor is misconceived as the appellant has not made any payment to labour contractor under this head and it has made small payments to labourers for execution of repair work. The AO has also not pointed out any defect in the bills and vouchers produced by the appellant. It is settled position of law that where books of accounts of appellant are not rejected, onus is on assessing officer to pointed out specific expenses which are not incurred in connection with business and only thereafter he can make disallowance under the provisions of Income Tax Act. The assessing officer cannot make disallowance on adhoc basis without pointing out specific defect. This view is supported by following judgments of Income Tax Appellate Tribunals.

Katira Construction Ltd. V. ACIT (ITA No. 1000/Rjt/2010

Dynamic India Drill-Con. Co. V. ACIT (ITA No. 6110/Del/2018 order dated 16/03/2023

Kailas Chand Agrawal V. DCIT (ITA No. 275/RPR/2016)

TPF Getinsa Euroe Studios v. ACIT (ITA No. 2400/Del/20220

DCIT v. Shalak Infra Tech (ITA Nos. 1222 & 123/Pune/2017)“

19. The learned counsel for the assessee during the appellate proceedings argued that the assessee has incurred expenses of ₹ 15,89,204, for repairs of the buildings which are quite old. From the details of expenses furnished by the assessee, it can be seen that the expenses are revenue in nature and no capital asset has been created out of such expenses. The observation of the Assessing Officer that the assessee has not furnished copy of agreement with labour contractor is misconceived, as the assessee has not made any payment to labour contract under this head and it has made small payments

to labourers for execution off repair work. The Assessing Officer has also not pointed out any defect in the bills and voucher produced by the assessee. It is settled position of law that where books of accounts of the assessee are not rejected, onus is on Assessing Officer to point out specific expenses which are not incurred in connection with business and only thereafter he can made disallowance under the provision of the Act. The Assessing Officer cannot make disallowance on ad-hoc basic without pointing out any specific defect.

8.4 We have gone through order of the learned CIT(A) as well as details submitted before us we also found that the Assessing Officer has also not pointed out any defect in the bills and voucher produced by the assessee. It is settled position of law that where books of accounts of assessee are not rejected. The onus is on Assessing Officer to point out specific expenses which are not incurred in connection with business and only thereafter he can make disallowance under the provision of the Act. The Assessing Officer cannot make disallowance on ad-hoc basic without pointing out any specific defect. Considering the facts of the case and respectfully following the view taken by various Benches of the Tribunal, the addition of ₹ 15,89,204, out of building repairs and maintenance is directed to be deleted. Hence, ground No.3, raised by the Revenue is partly allowed.

20. Ground no.4, raised by the Revenue relates to deletion of addition under section 69C of the Act for ₹ 15,28,680.

21. The learned D.R. strongly argued and relied on the assessment order. The assessee has incurred ₹ 15,28,680 lakh brokerage and commission. The

assessee has not submitted any copy of agreement, nature and proof of service provided of the same and the payment made to these persons are without any supporting material with respect of Brokerage & Commission. The partner of the firm also admitted the same expenditure as additional income of the assessee for the relevant year.

22. We find that the learned CIT(A), vide Page-19 and 20 of his order, dealt with the issue which is reproduced below:-

"Ground no. 5 is regarding the addition of Rs. 15,28,680/- made under section 69C of IT Act by disallowing brokerage and commission paid to Sri DVN Divya.

During assessment proceedings appellant has submitted copy of bills issued by Sri DVN Divya, his ledger account in the books of appellant, bank statement showing payments made to him, copy of form 16A downloaded from Traces site with his PAN, complete name, address commission paid and TDS thereon. However, the Id. AO that in the statement recorded during survey/search Shri Manvendra Mor, partner of appellant, had agreed to offer this amount as additional income hence, the expenses incurred for Commission & Brokerage paid in bogus and added it u/s. 69C of the Act.

During appellate proceedings the appellant submitted that Shri DVN Divya looks after follow up of orders and recovery of outstanding amounts from debtors. He is neither related to the appellant nor is he an employee of the appellant group. Payment to him has been made after due deduction of TDS at applicable rate and supported by bills etc. Appellant submitted that the AO has nowhere in the assessment order doubted about genuineness of the expenditure of Rs. 15,28,680/-. AO has also not falsified the various documents submitted by appellant in support of the expenditure. The sole basis of this addition is statement of Shri Manvendra Mor recorded at the time of search wherein he admitted to offer this amount as additional income.

Appellant further submitted that the statement of Shri Manvendra Mor was not voluntary, and it was taken under influence and by coercion. Appellant has relied on CBDT Circular F. No. 286/2/2003-It(INV) dated March 3, 2003 and certain judicial pronouncements to argue that the assessment should have been made based on evidences and not on the basis of confessional statements.

The appellant has discharged its onus by providing copy of bills submitted by commission agent giving details of services provided, his complete name, address, and PAN number. It is seen that the payments to him have been made through banking channel after due

TDS. The AO has not found any defect in the documents produced by the appellant nor has AO falsified these documents. The sole basis of disallowance is statement of Shri Manvendra Mor wherein he admitted to offer this amount as income. Apart from the statement of Shri Manvendra Mor there is no evidence on record that the expenditure of Commission and brokerage is bogus. In fact, in answer to question No. 40 related to Commission expenses of Rs. 15,28,680/-, Shri Manvendra Mor has stated that these expenses are genuine and the person has given services. Therefore, the reliance of AO on statement of Shri Manvendra Mor to disallow expenditure of Rs. 15,28,680/- is misconceived and incorrect.

CBDT has issued an instruction to its field officers vide F. No. 286/2/2003-IT (INV) dated March 10, 2003 in following words-

"Instances have come to the notice of the Board where appellants have claimed that they have been forced to confess the undisclosed income during the course of the search and seizure and survey operations. Such confessions, if not based on credible evidence, are later retracted by the concerned appellant while filing returns of income. In these circumstances, on confession during the course of search and seizure and survey operations do not serve any useful purpose.

It is, therefore, advised that there should be focus on concentration on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Departments. Similarly, while recording statement during the course of search and seizure and survey operations no attempt should be made to obtain confession as to the undisclosed income. Any action on the contrary shall be viewed adversely.

Further, in respect of pending assessment proceedings also, assessing officers should rely upon the evidences/materials gathered during the course of search/survey operations or thereafter while framing the relevant assessment orders."

Hon'ble Madras High Court in CIT v. K. Bhuvanendran (303 ITR 235) has held that the statement recorded from the appellant was subsequently retracted and rebutted. Furthermore, the statement was not relatable to any seized material. Therefore, even the statement could not be the basis for making any addition.

Similarly in M Narayan & Bros. v. ACIT (243 CTR 588) the Hon'ble Madras High Court considered the circular issued by CBDT dated 10th March 2003 and held that when the appellant had explained his statement as not correct in the context of the materials produced, the Tribunal would not be justified in its conclusion that the statement made would clothe the assessment with legality.

Considering facts of the case the disallowance of Commission and brokerage of Rs. 15,28,680/- is not based on any material gathered at the time of survey or during the assessment proceedings but it is a preposition based on presumption. It is therefore, directed to delete the

addition of Rs. 15,28,680/- made u/s 69C of the Act. Ground no. 5 is allowed."

23. The learned counsel for the assessee during the appellate proceedings argued that the assessee has discharged its onus by providing copy of bills submitted by commission agent giving details of service provided, his complete name, address, and PAN details. The payments to him have been made through banking channel after due TDS. The Assessing Officer has not found any defect in the documents produced by the assessee nor has the Assessing Officer falsified these documents. The sole basis on disallowance is statement of Shri Manvendra Mor, there is no evidence on record that the expenditure of Commission and brokerage is bogus. In fact, in answer to question 40 related to Commission expenses of ₹ 15,28,680, Shri Mor, has stated that these expenses are genuine and the person has given service. Therefore, the reliance of Assessing Officer on statement of Shri Manvendra Mor, to disallowed expenditure of the ₹ 15,28,680, is misconceived and incorrect.

24. We have gone through the order passed by the learned CIT(A) as well as details submitted before us. We also find that Shri DVN Divya looks after follow up of ordered recovery of outstanding amounts from debtors. He is neither related to the assessee nor is he an employee of the assessee group. The payment made to him has been made after due deduction of TDS as applicable. The Assessing Officer has nowhere in the assessment order doubted about genuineness of the expenditure of ₹ 15,28,680. The Assessing Officer has also not falsified the various documents submitted by the assessee in support of the expenditure. Consequently, we hold that the learned CIT(A)

has rightly deleted the addition and the order passed by the learned CIT(A) is hereby upheld Thus, ground no.4, raised by the Revenue is dismissed.

25. Ground no.5, relates to deletion of addition under section 69C of the Act deleting the addition under section 69C of the Act for ₹ 25,06,079.

26. The learned D.R. strongly argued and relied on assessment order. The assessee has incurred various expenses on mining of manganese ore ₹ 25,06,079. The assessee has not submitted any copy of agreement, nature and proof of service provided of the same and the payment made to these persons are without any supporting material. The partner of the firm Shri Manvendra More, admitted during the search proceedings that although the bills for the said expenses are misplaced but the expenses has been actually incurred by the assessee firm.

27. We find that the learned CIT(A) has dealt with this issue at Page-23 & 24 of the his order, which is reproduced below:-

"Ground no. 6 is regarding the addition of Rs.25,06,079/- u/s 69C being unexplained Mining Expenses. The Assessing Officer, during assessment proceedings noticed that the appellant has incurred various expenses on mining of manganese ore. Amount those expense genuineness of following two expenses were questioned by the Assessing Officer.

<i>Name of Party</i>	<i>Date of Payment</i>	<i>Amount (Rs.)</i>
<i>Sri T Puranchandra Rao</i>	<i>27/01/2020</i>	<i>16,14,218/-</i>
<i>M/s. Bhomatha Real Properties</i>	<i>01/02/2020</i>	<i>8,91,86/-</i>

During assessment proceeding appellant has submitted copy of bills issued by labour contractors, their Ledger account in the books of appellant, copy of form 16A downloaded from Traces site and bank statements showing payments to them after due deduction of TDS. However, the Id. AO held that the appellant has not furnished copy of agreement for work contract nature and proof of services provided and

hence, the expenses incurred for labour contractors is bogus and added it u/s 69C of the Act.

During appellate proceedings the appellant submitted that the Appellant is carrying on mining activities since 1944. The mines are open cast manual mine situated at Garividi, Dist.: Vizianagaram. As the mining activities are going on since 1944, the depth of the mine has reached over 250 Ft. To carry on such deep mining activities, huge teams of man-power in terms of labourers are required. The team of the management has appointed several labour contractors to carry out various mining activities. The work awarded to the labour contractor comprises of digging, carrying over burden, making path, stacking of ore and mutty, etc. The contractors are being appointed by the agent of the company who normally takes the stock situation of labour team, their financial condition and integrity of the contractor. After appointment, work is awarded to different contractors for different pits so as to calculate the work done by them. The agent personally supervises the work of each contractor and verifying the same directs the contractor to prepare his work bill. The work bill is being verified by the mining supervisor who transfers the said bill to the accounts department. After receiving the bills, the accounts department verifies the rates, etc. and after deduction "Tax at Source" make payment to the contractor. The village Garividi is a very small place, and it is very difficult to find labour contractors, so some time also happens that some known persons of the appellant's firm/staff also engaged in contract work and with their acquaintances form a labour team they execute the contract work.

Appellant further submitted that the expenses on account of labour contractors are genuine business expenses, supported by bills issued by contractors, and their acceptance of it by showing contract receipts in Income Tax return filed by them.

The appellant has discharged it onus by providing copy of bills submitted by these contractors' showing details of work done by them. Appellant has also provided their complete name, address and PAN numbers. Payments to them has been through banking channel after due deduction and payment of TDS. The AO has not found any defect in the documents produced by the appellant nor has the AO falsified these documents. It is also undisputed that the appellant has sold goods worth Rs. 55.15 crores during the relevant previous year. Without employing labourers through contractors such sales would not have been possible. The Id. AO has not doubted appellant's production and sales figures. The addition made by AO is solely based on surmise and conjecture without bringing any corroborative evidence on record which cannot be sustained. Therefore, the addition of Rs. 25,06,079/- made u/s. 69C is directed to be deleted and ground No. 6 is hereby allowed."

28. The learned counsel for the assessee during the appellate proceedings argued that that the assessee has discharged its onus by providing copy of

bills submitted by these contractors showing details of work done by them. The assessee has also provided its complete name, address, and PAN details. Payments to them have been made through proper banking channel after due deduction and payment of TDS. The Assessing Officer has not found any defect in the documents produced by the assessee nor has the Assessing Officer falsified these documents. It is also undisputed that the assessee has sold goods worth ₹ 55,15 crore during the relevant previous year. Without employing labourer through contractors such sales would not have been possible. The Assessing Officer has not doubted assessee's production and sales figures. The addition made by Assessing Officer is solely based on surmise and conjecture without bringing any corroborative evidence on record which cannot be sustained.

29. We have gone through order of the learned CIT(A) as well as details submitted before us. We also find that the assessee is carrying on mining activities since the year 1944. The mines are open cast manual mine situated at Garividi, Dist. Vizianagaram. As the mining activities are going on since 1944, the depth of the mine has reached over 250 FT to carry on such deep mining activities, huge teams of man-power in terms of labourers are required. The team of the management has appointed several labour contractors to carry out various mining activities. The work awarded to the labour contractor comprises of digging, carrying over burden, making path, stacking of ore and mutty, etc. The contractors are being appointed by the agent of the company who normally takes the stock situation of labour team, there financial condition and integrity of the contractor. After appointment, work is awarded to different contractors for different pits so as to calculated

the work done by them. The agent personally supervises the work of each contractor and verifying the same directs the contractor to prepare his work bill. The work bill is being verified by the mining supervisor who transfers the said bill to the accounts department. After receiving the bills, the accounts department verifies the rates, etc. and after deducting "Tax at Source" makes payment to the contractor. The village Garividi is a very small place, and it is very difficult to find labour contractors, so some time it also happens that some known persons of the assessee's firm/staff also engage in contract work and with their acquaintances from a labour team they execute the contract work. We are also gone through the assessment order, entire addition was made by the Assessing Officer under section 69C of the Act. The provisions of section 69 of the Act reproduced as under:-

*SECTION 69C.
Unexplained expenditure, etc.*

Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the 2448[Assessing Officer], satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year.

From the plain reading of section 69C it is clear that there are two conditions for invoking section 69C. First is, that the assessee has incurred any expenditure in the relevant previous year, and second is that the assessee does not offer any explanation about source of such expenditure. If both the conditions are fulfilled then only section 69C can be applied. But in the present case

1) Assessee is a partnership firm carrying on business of Mining of Manganese Ore minerals. It maintains regular books of accounts which are audited u/s 44AB of I.T. Act.

2) A Survey u/s 133A of IT act was conducted at premises of the assessee on 25.08.2021. Assessee filed return of income on 13.02.2022 declaring total income of Rs.18,01,81,210/-. Case was selected for scrutiny and notice under section 143(2) and 142(1) were issued which were duly replied by the assessee. In the assessment order passed u/s 143(3) the AO has made entire addition additions U/s. 69C which are in dispute in appeal

In the present case though the assessee has incurred expenditure during the year but all these expenses are duly recorded in books of accounts and they have been incurred from the regular business income of the assessee. The AO has neither during entire assessment proceeding nor in the assessment order doubted about the source of such expenditure. In view of the above we are opinion that the second limb of section 69C is not attracted in the present case, therefore we are deleted the addition made U/s. 69C."

30. We have considering the rival argument of the learned Counsel for the assessee as well the learned D.R. The learned CIT(A) has rightly deleted the additions under section 69C and we uphold the order of learned CIT(A) and this ground of appeal of the department were dismissed. Hence, ground no.5, raised by the Revenue is dismissed.

31. It is pertinent to mention here that the grounds raised by the Revenue harp upon the applicability of provisions of section 69C of the Act to all the additions made by the Assessing Officer. Thus, it is important to examine at the very behest as to whether the charging provisions of section 69C of the Act is at all applicable as to the facts and circumstances of the case. It is deemed expedient to refer to the provisions of section 69C of the Act which are reproduced elsewhere in the order. Here the Assessing Officer has unequivocally noted that the expenditure is recorded in the regular books of account. It is not the case that the Assessing Officer has found out some expenditure which is not reflected in the regular books of account. Thus, where the expenditure is already reflected, the source of incurring such expenditure need not be explained, as the same is evident by analysis of the books of account. Accordingly, application of provisions of section 69C of the Act fails at the very threshold. The learned D.R. could not satisfactorily explain the anomaly but he prayed before the Bench to apply the provisions

of section 37 of the Act. His request is not acceptable since the same is contrary to the grounds of appeal raised by the Revenue and he is not permitted to change the colour and contour of the Revenue. Consequently, there is no merit in the additions perpetrated under section 69C of the Act.

13. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 30/10/2024

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

**Sd/-
K.M. ROY
ACCOUNTANT MEMBER**

NAGPUR, DATED: 30/10/2024

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Nagpur; and*
- (5) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur