

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

/ITA No.659/Hyd/2023
(Assessment Year:2021-22)

Assistant Commissioner of Income Tax, Circle-1, Kurnool.	Vs.	M/s. Suresh Constructions, Guntakal. PAN:ABCFS8982J
(Appellant)		(Respondent)
/Assessee by:	Shri S. Rama Rao, Advocate	
/Revenue by::	Shri Madan Mohan Meena, SR-DR	
/Date of hearing:	21/10/2024	
/Pronouncement:	23/10/2024	

ORDER

PER MADHUSUDAN SAWDIA, A.M:

This appeal is filed by M/s. Suresh Constructions, Guntakal ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), dated 01.11.2023 for the AY 2021-22.

2. The brief facts of the case are that the assessee is a company engaged in the business of construction and also carrying out contract work for central government, state government and railways, filed its return of income on

30.11.2021 for A.Y. 2021-22 admitting total income of Rs.1,33,63,090/-. The case of the assessee was selected for scrutiny and the assessment was completed u/s.143(3) r.w.s. 144B of the Income Tax Act, 1961 ("the Act") by the Learned Assessing Officer ("Ld. AO") vide his order dated 28.12.2022 by determining the total income at Rs.3,28,58,698/-.

3. Aggrieved by the order of Ld. AO, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) going through the submission of the assessee partly allowed the appeal of the assessee.

4. Aggrieved by the order of Ld. CIT(A), the revenue is in appeal before us. The Ld. DR submitted that the assessee has incurred expenditure on account of sub-contract payments of Rs.5,52,020/-, machinery rent payment of Rs.49,27,475/- and labour charges of Rs.1,06,66,083/- (alleged expenditure).

However, the payments for the alleged expenditure had been made by the assessee to other parties instead of the party who actually had performed the works ("the creditors"). Therefore the Ld. AO had made the additions u/s.69C of the Act treating the alleged expenditure as unexplained expenditure. However the Ld. CIT(A) partly allowed the appeal of the assessee. Hence the Ld. DR submitted that as the assessee had get the work done from the creditors, he should have made the payment to the respective creditors only.

Therefore the Ld. DR relying on the order of Ld. AO requested the bench to disallow all these expenditure.

5. Per contra, the Learned Authorised Representative (“Ld. AR”) relying on the order of Ld. CIT(A) submitted that there was no dispute about the facts that the work against which the alleged expenditure have been incurred by the assessee was not carried out by the creditors. Further there was no dispute about the facts that the payment has actually not made against the alleged expenditure. The Ld. AR further submitted that the Ld. AO without questioning the genuinity of the alleged expenditure made the addition u/s.69C of the Act treating the same as unexplained expenditure. However, the Ld. CIT(A) partly allowed the appeal of the assessee, by contending that provision of section 69C of the Act is not applicable in the case of the assessee. Therefore the Ld. AR prayed before the bench to uphold the order of the Ld. CIT(A).

6. We have heard the rival contentions and gone through the records in the light of the submissions made by either side. The Ld. CIT(A) has categorically given the finding that the Ld. AO has nowhere doubted about the occurrence of the alleged expenditure incurred by the assessee. Further, the Ld. AO also had not brought on record any material evidence to prove that the alleged expenditure were not incurred by the assessee. With regard to the alleged expenditure, the creditors have provided the bills to the assessee, the assessee

has made TDS on all such alleged expenditure, the creditors have confirmed the payments made by the assessee in the name of other parties and the creditors have also confirmed that the work has been carried out by them. Under these circumstances, we are of the view that, the genuineness of the expenditure cannot be doubted and the same is allowable as business expenditure, which the Ld. AO had also rightly not made any disallowance u/s.37(1) of the Act. However the Ld. AO had added the alleged expenditure u/s. 69C of the Act by treating the same as unexplained expenditure. For the sake of clarity we extract the relevant part of section 69C of the Act, which is as under :

“ Unexplained expenditure, etc.

69C. *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 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 :*

Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.”

From the perusal of provisions of section 69C of the Act, it is clear that section 69C of the Act is applicable in a case where the assessee fails to explain the

source for the expenditure incurred. However, in the case of the assessee, the sources of payments against the alleged expenditure had been explained by the assessee by submitting that, payments were made from the overdraft account maintained with the State Bank of India (“SBI”) and the sources of those payments were also explained by the assessee i.e. the sources of payments were from received from customer and utilisation of overdraft facility. The Ld. AO also did not noticed any discrepancy regarding the sources explained by the assessee. Therefore there is no doubt regarding the source of making payment towards alleged expenditure. The Ld. AO made the addition u/s.69C of the Act on the ground that the payments against the alleged expenditure should have been made directly to the creditor instead of other parties. In our view, once the assessee has properly explained the sources of the alleged expenditure, the Ld. AO did not noticed any irregularity on the submission of the assessee, the addition of the alleged expenditure made by the Ld. AO u/s.69C of the Act is not as per law. Therefore we do not find any

irregularity in the order of Ld. CIT(A). Accordingly, we uphold the order of Ld. CIT(A) and dismiss the appeal of the revenue.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open Court on 23rd Oct., 2024.

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.

Dated: 23.10.2024.

* Reddy gp

Copy of the Order forwarded to :

1.	M/s. Suresh Constructions, 17-1094, Rajendra Nagar, Guntakal-515801, Anantapur District, A.P.
2.	ACIT, Circle-1, Kurnool.
3.	Pr.CIT, Kurnool.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,