

आयकर अपीलीय अधिकरण न्यायपीठ "एक-सदस्य" मामला रायपुर में

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAIPUR BENCH "SMC", RAIPUR**

**श्री रवीश सूद, न्यायिक सदस्य के समक्ष
BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.553/RPR/2024

निर्धारण वर्ष / Assessment Year : 2017-18

Rajnandgaon Petrol Service
Partner : Kulwant Singh Bhatia,
Pendri, G.E. Road,
Rajnandgaon (C.G.)-491 441
PAN: AAGFR7601E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Circle-2(1), Bhilai (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : None (written submission)
Revenue by : Smt. Anubhaa Tah Goel, Sr. DR

सुनवाई की तारीख / Date of Hearing : 14.01.2025

घोषणा की तारीख / Date of Pronouncement : 20.01.2025

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the ADDL/JCIT(A)-9, Mumbai, dated 30.10.2024, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 21.12.2019 for the assessment year 2017-18. The assessee has assailed the impugned order on the following grounds of appeal:

- “1. The learned Addl. Commissioner of Income Tax (Appeals) erred in partially confirming the disallowance of transportation expenses amounting to Rs.2,19,981 which is excessive and unjustified in light of the past history of the appellant's business and the evidence provided.
2. The disallowance of expenses was made on an ad-hoc basis without proper reasoning or justification, which is against the principles of natural justice.
3. No show-cause notice was issued by the learned Assessing Officer before making the disallowance, violating the procedural fairness required under the Income Tax Act, 1961, and the learned Addl. Commissioner of Income Tax (Appeals) has also ignored this argument of the appellant which he ought to have considered.
4. The learned Addl. Commissioner of Income Tax (Appeals) failed to consider the detailed submissions and evidence presented, including historical data demonstrating the reasonableness of the expenses claimed.
5. The learned Assessing Officer erred in disallowing expenses without bringing any adverse material on record or conducting independent verification as required under the law.
6. The learned Assessing Officer failed to appreciate that all transportation expenses are supported by invoices and

payment records and are incurred wholly and exclusively for the purpose of business under Section 37(1) of the Income Tax Act, 1961.

7. The learned Addl.CIT(A) overlooked binding judicial precedents on the need for specific findings or corroborative evidence for sustaining disallowances.”

2. Succinctly stated, the assessee firm had e-filed its return of income for A.Y.2017-18 on 12.03.2018, declaring an income of Rs.17,25,670/-. Subsequently, the case of the assessee was selected for scrutiny assessment u/s. 143(2) of the Act.

3. During the course of assessment proceedings, the A.O observed that the assessee firm which was running a petrol pump under the name and style of Rajnandgaon Petrol Service, Rajnandgaon had, inter alia, claimed deduction of merchant share and tanker transport expenses aggregating to Rs.44,64,558/-, viz. (i) tanker expenses : Rs.43,99,618/-; and (ii) merchant share : Rs.64,940/-. As the assessee had failed to substantiate its claim for deduction of expenses based on supporting bills and vouchers to the satisfaction of the A.O, therefore, the latter had on an ad-hoc basis disallowed 15% of the total expenses i.e. Rs.6,69,683/- (15% of Rs.44,64,558/-). Accordingly, the A.O vide his order passed u/s.143(3) of the Act, dated 21.12.2019 after making the aforesaid addition determined income of the assessee firm at Rs.23,95,353/-.

4. Aggrieved the assessee firm carried the matter in appeal before the ADDL/JCIT(A), Mumbai. In so far the disallowance of the assessee's claim for deduction of merchant share of Rs.64,940/- was concerned, the CIT(Appeals) found favour with the contentions advanced by the assessee and vacated the said addition, but at the same time, upheld the disallowance of its claim for deduction of tanker expenses to the extent of 5% (as against disallowance of 15% made by the A.O) of Rs.2,19,981/- (i.e. 5% of Rs.43,99,618/-. For the sake of clarity, the observations of the CIT(Appeals) are culled out as under:

“7. DECISION

The appellant is an authorized dealer of Bharat Petroleum Corporation Ltd. and is having a Petro Pump. The AO called for the details of expenses incurred in respect of tanker transport payment of Rs.43,99,618/- and merchant's share at Rs.64,940/-. According to the AO, in spite of specifically asking the appellant to produce bills and vouchers, the appellant has not submitted any supporting in respect of the same. Therefore, the AO disallowed 15% of the expenses of Rs.6,69,683/- for want of supporting.

During the appellant proceedings the appellant requested for Virtual Conferencing which was granted on 10.6.2024 at 12.30PM.

The appellant is before the appellate proceedings against the addition of Rs.6,69,683/- made on ad hoc basis. A Remand Report was called for and during the Remand Report in spite of specific queries to produce evidences and in particularly considering the payments were made to parties covered u/s.40A(2)(b). The AO also reported that during the assessment proceedings notices u/s. 142(1) were issued and specifically the details in respect of transfer expenses were called for.

However, the appellant did not produce any supporting though the parties were from the family members of the

partners. According to the AO, the disallowance of 15% is reasonable and fair considering non-cooperation from the appellant.

The appellant submitted that the merchant shares expense is being paid every year and the appellant is required to provide the services to the customers. These services are provided under the programme of BPCL and payment is made to BPCL only. Considering these facts, no disallowance of 15% should be made on ad hoc basis.

The explanation given by the appellant is reasonable and it is held that no disallowance of 15% is to be made on Merchant Share Expenses of Rs.64,940/-.

In respect of expenses incurred on transport payments, it is difficult to believe that supporting could not be produced. Considering the totality of the facts, 5% disallowance should be sufficed. Accordingly, disallowance of 5% of Rs. 43,99,618/-, which comes to Rs.2,19,981/- is hereby confirmed.

Accordingly, the appeal is Partly Allowed.”

5. The assessee firm being aggrieved with the order of the ADDL/JCIT(A), Mumbai has carried the matter in appeal before the Tribunal.

6. The assessee has relied upon the written submissions dated 13.01.2025. Accordingly, in the backdrop of the same, I herein proceed with and dispose of the appeal after hearing the Ld. Departmental Representative (for short 'DR') and perusing the orders of the lower authorities and the material available on record.

7. The assessee in support of his contention that no disallowance can be made on presumptive or a estimation basis, had relied upon the following judicial pronouncements:

(i) Commissioner of Income Tax Vs. Dhakeswari Cotton Mills Limited 26 ITR 775 (SC)

(ii) Monarch Foods Pvt. Ltd. Vs. Assistant Commissioner of Income Tax 54 TTJ 405;

(iii) Assistant Commissioner of Income Tax Vs. Arthur Anderson & Co. 94 TTJ 736

(iv) Dwarka Prasad Agrawal Vs. ITO, 52 ITD 239

(v) CIT Vs. SSP (P) Ltd. 202 Taxman 386

(vi) Cardiac Care & Allied Health Pvt. Ltd. Vs. DCIT, ITA No.247/JP/2019

(vii) M/s. Sunia Finlease Ltd. Vs. ITO, ITA No.07/RPR/2017

8. As the assessee firm had failed to substantiate its claim for deduction of tanker expenses of Rs.43,99,618/- based on supporting bills and vouchers etc., therefore, I am of the view that the A.O had rightly observed that its claim for deduction could not be summarily accepted on the very face of it. At the same time, I cannot remain oblivion of the fact that there was no justification for the A.O to have disallowed a part of the aforesaid expenses on an ad-hoc basis, i.e. @ 15% of the total “tanker transport expenses” of Rs.43,99,618/- which had, thus, resulted to a consequential disallowance of Rs.6,69,683/-. I, say so, for the reason that neither the quantification of the disallowance by the A.O @15% of the

tanker expenses, nor the scaling down of the said disallowance by the CIT(Appeal) @5% has any logical reasoning.

9. As is discernible from the assessment order, I find that the A.O had not referred to a single instance of expenditure which as per him was either not verifiable; or was not found to be in order; or was not found to have been incurred wholly and exclusively for the purpose of business. Although, the A.O had observed that the assessee had failed to produce the bills and payments vouchers regarding the transportation expenses, but the assessee in his “written submission” had stated, viz. (i) the A.O without calling upon the assessee to show cause that as to why an addition/disallowance of “transport expenses” of Rs.6,69,683/- (supra) may not be made in its case had most arbitrarily and in violation of CBDT Instruction No.20/2015, dated 29.12.2015 made the said disallowance; (ii) the A.O had lost sight of the material fact that the payment of transport expenses were made by the assessee through banking channels and no cash payments were made; (iii) the payments of transport expense of Rs.43,99,619/- were made to identified persons, i.e. (a) Shri Kulwant Singh Bhatia, HUF (Rs.34,06,070/-) and (b) Shri Yashpal Singh Bhatia, HUF (Rs.9,39,549/-); (iv) the payment of transport expenses have been duly reported in Form 26AS, i.e. the statement of TDS filed by the assessee firm; and (v) that as the GP/NP rates of the assessee firm was progressive in comparison to the preceding year, therefore, the said fact in itself

suggested and rather dispelled the doubts as regards the authenticity of the claim for deduction of transport expenses that was raised by the assessee firm.

10. Apart from that, I find that the CIT(Appeals) without any justifiable reason had sustained the aforesaid ad-hoc disallowance of Rs.2,19,981/- (i.e. 5% of Rs.43,99,618/-). In my view the aforesaid ad-hoc disallowance of Rs.6,69,683/- (supra) made by the A.O was merely haunted by his general observations and not on the basis of reference to any specific instance of an expenditure which as per him was for cogent reasons liable to disallowed. In the backdrop of the aforesaid facts, I find substantial force in the claim of the assessee that in absence of pointing out of any specific infirmity qua the assessee's claim for deduction of the aforesaid expenditure by the lower authorities, the disallowance by the A.O of a part of the assessee's claim for deduction of transport expenses on an ad- hoc basis could by no means be held to be justified. My aforesaid view is fortified by the order of the **ITAT, Kolkata in the case of Animesh Sadhu Vs. ACIT, Circle-1, Hoogly, ITA No. 11/Kol/2013, dated 12.11.2014** and that of the ITAT, Delhi in the case of **ACIT, New Delhi Vs. M/s Modi Rubber Ltd. ITA No. 1952/Del/2014, dated 15.05.2018**. Also, my aforesaid view that an assessee's claim for deduction of an expenditure u/s.37 of the Act cannot be arbitrarily disallowed by the A.O on a ad-hoc

basis is supported by the order of the **ITAT, Raipur in the case of M/s. Sunita Finlease Limited Vs. Income Tax Officer, ITA No.244/RPR/2017 dated 30.03.2022**. I am of the view that a disallowance of an expenditure claimed by the assessee as a deduction as per the mandate of section 37 of the Act can only be disallowed in case of satisfaction of either of the conditions set out in the said section, which are required to be spelt out by the A.O in the body of the assessment order, viz. (i) the claim of expenditure raised by the assessee is found to be bogus; (ii) the expenditure is in the nature of a capital expenditure or personal expenditure of the assessee; or (iii) that the expenditure had been incurred for any purpose which is an offence or which is prohibited by law. As the A.O had failed to place on record any material which would prove to the hilt that the assessee had either raised a bogus claim of expenditure; or that the said expenditure was not incurred wholly and exclusively for the purpose of business; or that the expenditure so claimed as a deduction did not fall within the four parameters of Section 37 of the Act, therefore, I am unable to persuade myself to subscribe to the summarily disallowance to the said effect so carried out by the A.O. My aforesaid conviction is all the more fortified by the fact that a similar claim for deduction as was raised by the assessee firm in the preceding year had been allowed by the department, but also the fact that the GP/NP rates of the assessee firm are progressive as in comparison to the preceding year. I, thus, in terms of my

aforesaid observations vacate the disallowance of Rs.2,19,981/- sustained by the CIT(Appeals). The **Grounds of appeal** raised by the assessee are allowed in terms the aforesaid observations.

11. In the result, appeal of the assessee is allowed in terms of the aforesaid observations.

Order pronounced in open court on 20th day of January, 2025.

Sd/-

(रवीश सूद /RAVISH SOOD)

न्यायिक सदस्य/JUDICIAL MEMBER

रायपुर/ RAIPUR ; दिनांक / Dated : 20th January, 2025.

***SB, Sr. PS.

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur (C.G)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
5. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.