

आयकर अपीलीय अधिकरण
गुवाहाटी पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH AT KOLKATA

[वर्चुअल कोर्ट]
[Virtual Court]

श्री मनमोहन दास, न्यायिक सदस्य
एवं
श्री रakesh मिश्रा, लेखा सदस्य
के समक्ष
Before

SRI MANOMOHAN DAS, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 39/GTY/2024
Assessment Year: 2018-19

Deputy Commissioner of Income Tax, Circle-Shillong	Vs.	Dhar Construction Company
<i>(Appellant)</i>		<i>(Respondent)</i>
PAN: AAIFD2658K		

Appearances:

Department represented by : Kausik Ray, JCIT
Assessee represented by : Gaurav Chandak, FCA.
Date of concluding the hearing : December 18th, 2024
Date of pronouncing the order : January 22nd, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of the Ld. Commissioner of Income Tax-NFAC, Delhi [hereinafter referred to as "the Ld. CIT(A)"] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") for AY 2018-19 dated 10.01.2024, which has been passed against the assessment order u/s 143(3)/144B of the Act, dated 10.09.2021.



2. The assessee has taken the following grounds of appeal:

“1) For that, the Ld. CIT(A) has erred in deleting an addition of Rs.2,97,16,776/- made by the AO as unexplained expenditure u/s 69C of the Income Tax Act although no supporting bills for such payments made u/s 194C to non-filers were furnished before the Assessing Officer.

2) For that, the Ld. CIT(A) has erred in accepting the submission of the assessee although the assessee has failed to discharge its onus of furnishing any supporting bills pertaining to payments of Rs.2,97,16,776/- made to non-filers as required by the Assessing Officer in order to verify the genuineness of the expenses claimed.

3) For that the Appellant craves leave to add, alter and amend any/all of the grounds of appeal before or during the course of hearing of the appeal.”

3. Brief facts of the case are that the assessee, Dhar Construction Company, is a Partnership Firm and is mainly engaged in the business of civil and electrical construction contract business, executing contracts for various Govt. departments in the state of Meghalaya and trading of explosive items and had filed the return of income on 30.10.2018 for the Assessment Year 2018-19 vide Acknowledgement No 356113141301018. A notice U/s 143(2) of the Income Tax Act, 1951 was issued on 22.09.2019. The assessee claims to maintain books of account on mercantile basis & the same were produced from time to time along with the various details as required during the course of the assessment proceedings. The Ld. AO disallowed expenditure of Rs. 2,97,16,776/- u/s 69C of the Act considering it as bogus expenditure. It was claimed before the Ld. CIT(A) that the Ld. AO did not consider the documents, evidences and explanations submitted by the assessee and made addition without giving proper opportunity to the assessee to explain the facts of the case. Being aggrieved with the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A) who allowed the relief claimed. The relevant extract from the order of the Ld. CIT(A) is as under:



4. Appellate Findings:

4.1 Appeal Notices were issued to the assessee on 28.07.2022, 15.12.2023 fixing the case for 12.08.2022, 29.12.2023. The assessee has filed written submission on 03.08.2022 and 02.01.2024.

4.2 The main issue in all the grounds taken by the assessee is that the Learned Income Tax Officer has erred on the law as well as on the fact of the case in disallowing expenditures of Rs. 2,97,16,776 considering the same as bogus expenditure.

4.3 I have gone through the assessment order and record available. The scrutiny assessment under the E-assessment Scheme, 2019 for the assessment year 2018- 19 for M/s. Dhar Construction Company under the Computer-Assisted Scrutiny Selection (CASS) for the assessment year 2018-19 was completed with addition u/s 69C. The identified issues for scrutiny included the verification of the genuineness of expenses, refund claims, contract receipts or fees, and share capital/other capital. The case was selected due to large payments made to individuals under section 194C, who had not filed their income tax returns. The tax authorities sought details such as ledger information, names, PANs, and current addresses of these individuals. The assessee did not provide a satisfactory response to the initial notices and reminders regarding large payments made to individuals. Further notices were issued under section 142(1) to which the assessee responded, providing a list with PAN numbers, names, and TDS deductions. However, detailed confirmations, ledgers, bank statements, and ITR copies were not provided. Notices under section 133(6) were issued to a sample of individuals to verify the genuineness of expenses. Some individuals responded with the required details, while others did not. Payments made to certain individuals were considered bogus, and the AO added back these amounts to the income under section 69C of the Income Tax Act. Section 69C allows the deemed income of the assessee if there is no satisfactory explanation about the source of expenditure. Payments made to non-filers were identified, and the assessee was given the onus to prove the genuineness of these transactions. The assessee did not respond to the notice, and these expenditures were considered bogus, resulting in additional additions under section 69C. The assessee provided responses to the show cause notice, citing the pandemic's impact on individuals and emphasizing the deduction of TDS on payments. However, bills supporting the transactions were not provided, making it difficult to verify the genuineness of the expenses. The AO proceeded with the proposed additions under section 69C, resulting in a total assessed income of Rs. 4,01,29,666/-

4.4 The assessee has provided comprehensive explanation in form of written submission for the payments made towards business expenses. It is essential to



emphasize that the non-filing of the tax return by the payee should not be construed as evidence against the genuineness of the business or business payments. The appellant, in compliance with statutory requirements has provided detailed explanations regarding the purpose of the payments made under various heads of business expenses. It is imperative to recognize that the non-filing of the tax return by the payee does not, in any way, implicate the business expense as non-genuine. The responsibility for filing tax returns lies with individual taxpayers, and the failure to comply with this obligation does not automatically cast doubt on the legitimacy of the business transactions or the TDS deductions made by the appellant. The appellant's case rests on the assertion that any discrepancy arising from the non-filing of tax returns by the payee is beyond the appellant's control. The absence of a tax return from the payee should not be misconstrued as an indicator of the appellant's non-compliance or the lack of genuineness in their business operations. As a result, the absence of the payee's tax return filing, while a noteworthy concern, should not be used to impugn the genuineness of the appellant's business. On holistic evaluation of the appellant's submissions of case laws and facts of the case, the ground relating to Disallowance of expenses u/s 69C of Rs. 2,97,16,776 is allowed.

5. As a result, the appeal of the assessee is allowed.

4. Aggrieved with the order of the Ld. CIT(A), the revenue has filed the appeal before the Tribunal.

5. Rival contentions were heard and the record and the submissions made have been examined. The Ld. AR stated before the Bench that with regard to the contention of the Ld. AO that the bills with respect to the expenditure were not produced for verification and without bills it is difficult to verify the claim made by the assessee, it was submitted that neither in the Show cause notice along with the draft assessment order nor in the subsequent notices has the Ld. AO asked for the bills or discussed the non-submission of bills. He made an addition in the final assessment order mentioning that the addition is made as no bills were produced for verification which is wholly in contradiction to the

principal of Natural justice. The assessee has relied upon the following judgments in support of the relief allowed by the Ld. CIT(A):

i) *Oryx Fisheries (P.) Ltd. v. UO1 [2010] 13 SCC 427*

ii) *New Delhi Television Ltd. v. Dy. CIT [2020] 116 taxmann.com 151/271 Taxman 1/424 ITR 607 (SC)*

5.1. The assessee has also referred to the judgments of Hon'ble Delhi High Court in the case of **CIT- V vs. M/s. Radhika Creation, reported in (2011) 10 Taxmann.com 138 (Delhi)**, Hon'ble Bombay High Court in the case of **ITO v. Vaman International (P.) Ltd. [IT Appeal No. 794 (Mum.) of 2015, dated 16-11-2016]**, Hon'ble Delhi High Court in the case of **Principal Commissioner of Income-tax (Central)-2 v. Param Dairy Ltd. [2022] 139 taxmann.com 546 (Delhi)** and the decision in **CIT Vs. Pratap Singh Amar Singh (1993) 200 ITR 788 (Rajasthan)** to substantiate the claim that the disallowance u/s 69C was not called for. The relevant paras in the case of **Radhika Creation** (supra) read as under:

"5. Insofar as the first aspect of the matter is concerned, we find that Section 69C clearly stipulates that where, in any financial year, the assessee has incurred an expenditure and he offers no explanation about 'the source of such expenditure or part thereof, or the explanation, if it is 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. Thus, the focus of Section 69C is on the "source" of such expenditure and not on the authenticity of the expenditure itself. It is an admitted position that the expenditure was shown by the assessee in its regular books of accounts and it is because of this reason that the Income-tax Appellate Tribunal had observed:-

"As the expenditure was accounted in the regular books, the source is obviously explained. The provisions of Section 69C are not applicable as there was no unaccounted expenditure."

6. What the Assessing officer attempted to do was to go into the authenticity of the expenditure and he returned a finding that the expenditure was not authenticated by vouchers and consequently, he added the said expenditure as unexplained expenditure under Section 69C. We are in agreement with the observations and findings of the Commissioner of Income-tax (Appeals) as well as that of the Income-tax Appellate Tribunal that this is not a case which falls under Section 69C. Clearly, Section 69C refers to the 'source of the expenditure' and not to the expenditure itself.

Consequently, the Assessing Officer was clearly wrong in treating the said expenditure as unexplained expenditure under Section 69C of the said Act and the lower appellate authorities were right in their conclusions in deleting the said addition."

5.2. It was further submitted that following the decision of the Hon'ble Delhi High Court in the case of CIT vs. Radhika Creation (supra), the ITAT, Delhi Bench has granted relief on the same issue in the cases of **ACIT, Central Circle 21, New Delhi vs. Blue Luxury Impex Pvt. Ltd., in ITA Nos. 5495 to 5500/Del/2011 dated 13.06.2012; ACIT, Central Circle 21, New Delhi vs. Anupama Links Pvt. Ltd., in ITA No.4135 to 4140/Del/2012 dated 12.10.2012 and ACIT, Central Circle 21, New Delhi vs. AA Testronics Solutions Pvt. Ltd., in ITA Nos. 4223 to 4228/Del/2012 dated 12.10.2012.** The Hon'ble Bombay High Court in the case of **ITO v. Vaman International (P.) Ltd. [IT Appeal No. 794 (Mum.) of 2015, dated 16-11-2016]** has allowed the appeal on similar grounds. Further, the Hon'ble Delhi High Court in the case of **Principal Commissioner of Income-tax (Central)-2 v. Param Dairy Ltd. [2022] 139 taxmann.com 546 (Delhi)** deleted the addition made under section 69C and upheld the decision of the Tribunal that "total purchases including 'Milk Purchase Tanki' had been debited to profit and loss account and entire source of purchases was duly recorded in account books and thus source of such purchases stands established and having been made out of funds shown in account books". When the books of account have been maintained and



expenditure recorded with full details then no addition can be made under S. 69C vide **CIT Vs. Pratap Singh Amar Singh (1993) 200 ITR 788 (Rajasthan)**.

6. We have heard the rival contentions and given our serious consideration to the facts on record. The assessee was a non-filer. It was submitted by the Ld. AR that the issue of non-submission of bills was neither mentioned in the show cause notice nor in the draft assessment order nor even in the subsequent notices issued and the addition was made against the principle of natural justice. The Ld. AR also read out the provisions of section 69C of the Act and stated that since the expenses were recorded in the books of account, section 69C of the Act was also not applicable. Our attention was also drawn to pages 13 to 16 of the paper book. The net profit ratio was 8% before depreciation and interest to partners. When queried by the Bench as to whether the assessee could justify the expenditure with the support of the primary documents, viz. vouchers, the Ld. AR submitted that the Ld. AO did not ask for the vouchers in the notice issued. The Ld. DR countered this argument by saying that in the notice u/s 142(1) of the Act the Ld. AO had asked for every detail. Further, a perusal of the assessment order shows that the reasons for selection was large payment made to individuals who had not filed the returns of income for which the assessee was asked to file their ledger details, ITR copies and other details and comparison with the last years. The assessee did not file any reply in the initial reply filed so a notice under section 142(1) of the Act was again issued by the Ld. AO on 26.02.2021, and a reminder was also sent. In response to which the assessee submitted a list with PANs, name and TDS deductions made but no confirmation, ledger copy, bank statement and copy of ITRs of the individuals was given, even though



the assessee had assured to give the confirmations and the details within 5 days. Subsequently, notices under section 133(6) of the Act were issued on sample basis to some individuals/company to check the genuineness of expenses and they were asked to file the copy of their income tax returns, bank statement highlighting the transactions with the assessee and the purpose of the transaction along with the ledger copy. Response was received from 10 parties. Further, on the basis of data available on the Departmental portal, list of non-filers was found to whom payment had been made but who had not filed their income tax returns. The assessee was given the list of those non-filers, and the onus to prove the genuineness of transactions with them vide notice issued u/s 142(1) of the Act, but no reply was filed by the to the notice issued. Thus, it is not correct to state that the Ld. AO never asked for such details. A perusal of the details of non-filers mentioned at page 3 of the assessment order shows that heavy payments were made to one individual Shri Phulchand Sharma at Rs. 1,47,60,000/- and while the Ld. AO had invoked section 69C of the Act to make the addition, however, this was a case of the expenses not being verified and, therefore, the expenses claimed under section 37(1) of the Act were liable to be disallowed as it could not be established in the absence of the vouchers that the expenditure was incurred for business purposes. It has been held in the case of P.K. Palanisamy Vs. N Arumugham and another (Civil Appeal No. 2099, arising out of SLP (Civil) No. 2308 of 2009), that it is a well settled principle of law that mentioning of wrong provision or non-mentioning of provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor. The Hon'ble Supreme Court observed as under:

"It is a well settled principle of law that mentioning of a wrong provision or nonmentioning of a provision does not invalidate an order if the court and/or statutory authority had the requisite jurisdiction therefor.

In Ram Sunder Ram v. Union of India & Ors. [2007 (9) SCALE 197], it was held:

".....It appears that the competent authority has wrongly quoted Section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law [see N. Mani v. Sangeetha Theatre and Ors. (2004) 12 SCC 278]. Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the Learned Counsel for the appellant."

In N. Mani v. Sangeetha Theatres & Ors. [(2004) 12 SCC 278], it is stated:

"9. It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does exist and can be traced to a source available in law."

6.1 Even though the provisions of section 69C of the Act were not applicable, however since the primary evidence for the expenditure claimed was not produced before the Ld. AO, nor the same could be produced before the Bench, therefore, some disallowance was called for on account of expenditure not being supported by vouchers. Hence, it is considered appropriate to sustain the addition to the extent of 10% of the expenses disallowed by the Ld. AO for non-maintenance of the vouchers which was conveyed to the Ld. AR. Accordingly, considering the totality of facts of the case, addition of Rs. 29,71,678/- being 10% of the disallowed amount of Rs. 2,97,16,776/- is hereby sustained and the rest of the addition is directed to be deleted. Hence, Ground Nos. 1 and 2 of the appeal are partly allowed.



7. Ground No. 3 is general in nature and does not require any separate adjudication.

8. In the result, the appeal filed by the revenue is partly allowed.

Order pronounced on 22nd January, 2025 under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

[Manomohan Das]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 22.01.2025

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Deputy Commissioner of Income Tax, Circle-Shillong.**
- 2. Dhar Construction Company, Demseiniong, Maccabe Roads, Shillong, Meghalaya, 793003.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Guwahati Benches, Guwahati.
- Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata