

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.27/Nag./2024
(Assessment Year : 2018-19)

Asstt. 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
Vizianagaram 535 101 PAN – AAFFR4050C

Assessee by : Shri Mukesh Agrawal
Revenue by : Shri Sandipkumar Salunke

Date of Hearing – 18/11/2024

Date of Order – 27/01/2025

ORDER

PER V. DURGA RAO, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 24/11/2023, passed by the learned Commissioner of Income Tax (Appeals)-3, Nagpur, [*learned CIT(A)*], for the A.Y. 2018-19.

2. In its appeal, the Revenue has raised following grounds:-

"1. On the fact and in the circumstances of the case the Id. CIT(A) erred in deleting the addition of Rs. 1,25,89,787/- being sundry creditors as assessee failed to prove the genuineness & creditworthiness of the sundry creditors amounting to Rs. 1,25,89,787/-.

2. On the fact and in the circumstances of the case, the Id. CIT(A) erred in deleting the addition of Rs. 1,25,89,787/- without appreciating the facts that the during the course of search proceedings statement of Shri Bandaru

Ramesh, one of the creditors of the firm was recorded. In the said statement Shri Bandaru ramesh had stated that he never undertook any contract work.

3. On the fact and in the circumstances of the case, the Id. CIT(A) erred in deleting the addition of Rs. 1,25,89,787/- without appreciating the fact that during the course of search proceedings Shri Bandaru Ramesh, one of the key person of the firm in his statement stated that as per his knowledge the employees shown as creditors have not provided any services to the firm.

4. On the fact and in the circumstances of the case, the Id. CIT(A) erred in deleting the addition of Rs. 4,27,605/- as Brokerage and Commission Expenses without appreciating the fact that certain persons appearing in Brokerage and commission ledger are either related to assessee's employees or assessee himself. Further, most of them have no connection with the Brokerage and commission.

5. On the fact and in the circumstances of the case, the Id. CIT(A) erred in deleting the addition of Rs. 4,27,605/- as Brokerage and Commission Expenses without appreciating the fact that assessee has not submitted any copy of agreement, nature and proof of services provided of the same. Further, payments made to persons are without any supporting material in respect of Brokerage & Commission.

6. On the fact and in the circumstances of the case, the Id. CIT(A) erred in deleting the addition of Rs. 4,27,605/- as Brokerage and Commission Expenses Shri Manvendra Mor, one of the Director, in his statement offered additional income in respect of said expenditure, for M/s RBSSD & FN Das for the relevant year.

7. Any other ground that may be raised during hearing."

3. The issue arose out of grounds no.1, 2 and 3, relates to addition of ₹ 1,25,89,787, being payment to labour contractors made by the Assessing Officer under section 69C r/w section 115BBE of the Income Tax Act, 1961 ("the Act").

4. In this case, the assessee is a Partnership Firm carrying business of mining of minerals. The assessee is maintaining regular books of account and audited under section 44AB of the Act. A survey under section 133A of the Act was conducted at the business premises of the Radhika Group on 25/08/2021. The case was selected for scrutiny under section 147 of the Act and statutory notices under section 148 of the Act was issued in response to

which the assessee filed return of income in response to notice issued under section 148 of the Act by the Assessing Officer declaring total income at ₹ 4,98,62,943. The Assessing Officer, after adopting due process, completed the assessment under section 147 of the Act on 29/03/2023, determining total assessed income at ₹ 6,28,80,335, by making addition of ₹ 1,25,89,787, under section 69C r/w section 115BBE of the Act treating it as bogus expenses on account of payment to labour contractors.

5. On appeal, the learned CIT(A) deleted the addition with following observations:-

"4. Discussion and Decision:-

.....

Ground no.3, is regarding addition of ₹ 1,25,89,787, under section 69C being unexplained expenditure to contractors. The A.O., during the assessment proceedings noticed that the appellant has incurred expenditure of ₹ 1,25,89,787, towards mining expenses. These expenses are on account of extraction of manganese ore to following labour contractors-

1	A Appala Swamy	₹ 17,17,000
2	D.S. Prakash	₹ 16,78,687
3	Madhusudana Rao	₹ 17,48,800
4	P. Dhanunjaya Rao	₹ 17,16,240
5	P. Suresh	₹ 17,51,580
6	S. Satyanarayana	₹ 5,00,000
7	V. Ramesh	₹ 17,25,200
8	V. Satya Rao	₹ 17,52,280
	<i>Total:-</i>	₹ 1,25,89,787

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 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 appellant's firm/staff also engage 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 returns filed by them.

The appellant has discharged its 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. 23.78 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. 1.25.89,787/- made u/s 69C is directed to be deleted and ground No. 3 is hereby allowed."

The Revenue being aggrieved is in appeal before the Tribunal.

6. Before us, the learned Counsel for the assessee submitted that this issue is covered by the decision of the Co-ordinate Bench of the Tribunal, Nagpur Bench, rendered in assessee's own case in DCIT v/s R.B.S.D. And F.N. Das Export Firm, ITA no.234/Nag./2023, for A.Y. 2020-21, vide order dated

30/10/2024, wherein the Tribunal has deleted the identical addition and prayed that the same may be followed and the addition made be directed to be deleted.

7. The learned Departmental Representative supported the order of the Assessing Officer.

8. We have heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below. The issue for our adjudication is squarely covered by the decision of the Co-ordinate Bench, passed in assessee's own case in DCIT v/s R.B.S.D. And F.N. Das Export Firm ., ITA no.234/Nag./2023, for A.Y. 2020-211-22, vide order dated 30/10/2024, wherein the Tribunal has deleted the identical addition. The relevant portion of the order of the Co-ordinate Bench is reproduced below for reference:-

"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 f 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 off the Revenue. Consequently, there is no merit in the additions generated under section 69C of the Act."

9. Since the issue before us is squarely covered by the aforesaid decision of the Tribunal rendered cited supra, we decline to interfere with the order passed by the learned CIT(A) which is hereby upheld by dismissing the grounds no.1, 2 and 3, raised by the Revenue.

10. In grounds no.4, 5 and 6, the issue raised by the Revenue relates to the addition of ₹ 4,27,605, on account of brokerage and commission expenses.

11. In continuation of the facts briefed above, the Assessing Officer also made addition of ₹ 4,27,605, on account of brokerage and commission expenses assuming that certain persons appearing in brokerage and commission ledger are either related to the assessee's employees or assessee himself.

12. On appeal, the learned CIT(A) deleted the addition by arriving at the following detailed observations:–

"Ground no. 4 is regarding addition of Rs. 4,27,605/- made under section 37 of IT Act by disallowing brokerage and commission paid to Sri DVN Divya & Sri BVG Sudhakar. During the assessment proceedings, appellant has submitted copy of bills issued by Sri DVN Divya & Sri BVG Sudhakar, their Ledger accounts in the books of appellant, bank statement showing payments made to them, copy of form 15A downloaded from Traces site with their PAN, complete name, address commission paid and TDS thereon. However, the Id

AO held 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 is bogus and added it u/s 37 of the Act.

During appellate proceedings, the appellant submitted that Shi DVN Divya & Shri BVG Sudhakar looks after follow-up of orders and recovery of outstanding amounts from debtors. Both are neither related to the appellant nor both are employees of the appellant group. Payment to both of them 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. 4,27,605/-, 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 undue 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 agents giving details of services provided, their complete name, address, and PAN numbers. It is seen that the payments to them 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 the 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. 4,27,605/- Shri Manvendra Mor has stated that these expenses are genuine and the persons have given services. Therefore, the reliance of AO on statement of Shri Manvendra Mor to disallow expenditure of Rs. 4.27.605/- is misconceived and incorrect.

3.4) 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 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 evidence of income which leads to information on what has of evidence E not been 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. 4,27,605/- 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. 4,27,605/- made u/s 37 of the Act. Ground No. 4 is allowed."

13. We have heard the arguments of rival parties, perused the material available on record and gone through the orders of the authorities below. The issue for our adjudication is squarely covered by the decision of the Co-ordinate Bench, passed in assessee's own case in DCIT v/s R.B.S.D. And F.N. Das Export Firm, ITA no.234/Nag./2023, for A.Y. 2020-21, vide order dated 30/10/2024, wherein the Tribunal has deleted the identical addition. The relevant portion of the order of the Co-ordinate Bench is reproduced below for reference:-

"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."

14. Since the issue before us is squarely covered by the aforesaid decision of the Tribunal rendered as cited supra, we decline to interfere with the order passed by the learned CIT(A) which is hereby upheld by dismissing the grounds no.4, 5 and 6 raised by the Revenue.

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

Order pronounced in the open Court on 27/01/2025

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 27/01/2025

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