

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ, "सी" अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" C " BENCH, AHMEDABAD

श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1034/Ahd/2023  
निर्धारण वर्ष /Assessment Year : 2016-17

Assistant CIT Circle-2(1)(1) Ahmedabad	<u>बनाम/ v/s.</u>	H.V. Infratex Ltd. 202, Parth Milan Complex Nr. Hotel Nest, Navrangpura Ahmedabad - 380 009 (Gujarat)
स्थायी लेखा सं./PAN: AABCH 6794 C		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Prakash D. Shah, AR	
Revenue by :	Shri Rignesh Das, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 30 /01/2025  
घोषणा की तारीख /Date of Pronouncement: 06/02/2025

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)"] dated 30.10.2023, arising out of the assessment order dated 10/12/2018 passed under Section 144 of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] by the Assistant Commissioner of Income Tax, Circle 2(1)(1), Ahmedabad [hereinafter referred to as "AO"] for the Assessment Year (AY) 2016-17.

**Facts of the Case:**

2. The assessee is a Public Limited Company engaged in the business of government civil and construction contracts. The assessee filed its return of income for A.Y. 2016-17 on 17.10.2016, declaring total income of Rs.49,20,980/-, and book profit under Section 115JB of the Act at Rs.61,33,174/-. The case was selected for limited scrutiny under CASS. The AO issued multiple notices under Sections 143(2) and 142(1) of the Act, but the assessee did not fully comply. Consequently, the AO passed an ex-parte assessment order under Section 144 on 10.12.2018, making an addition of Rs.5,92,53,633/- under Section 37 of the Act by disallowing 25% of total other expenses of Rs.23,70,14,534/-, on the ground that the assessee failed to substantiate its claim with supporting documents.

3. The assessee preferred an appeal before CIT(A) challenging the ad-hoc disallowance. The assessee submitted additional evidence under Rule 46A of Income Tax Rules, 1962, justifying its expenses with ledgers, invoices, and supporting documents. The CIT(A) forwarded the additional evidence to the AO for verification and called for a remand report under Section 250(4) of the Act. The AO objected to admitting additional evidence, arguing that the assessee had sufficient opportunities during assessment. However, CIT(A) exercised powers under Section 250(4) of the Act and directed the AO to examine the documents on 24.02.2020. A remand report was submitted by the AO on 19.07.2023 (after 3 years), verifying the genuineness of most expenses.

4. The AO's remand report accepted certain expenses such as Bank charges, interest, labor expenses, depreciation, and certain direct expenses.

No specific discrepancies were pointed out in these expenses by the AO. However, the AO raised concerns about expenses paid in cash, and certain expenses related to rent, salary, insurance, repairs, and transportation. The CIT(A) observed that the AO did not reject the books of accounts, nor did he point out any bogus or non-genuine expenses. The assessee's accounts were audited under the Companies Act and the Income Tax Act, and no adverse remarks were given in the tax audit report. The CIT(A) relied on judicial precedents, emphasizing that an ad-hoc disallowance without specific defects is not sustainable in law. The CIT(A) found that in the absence of evidence to prove that expenses were not incurred for business purposes, disallowance under Section 37 of the Act was unwarranted. The CIT(A) ruled that additional evidence was rightly admitted under Section 250(4) of the Act and not Rule 46A of I.T. Rules as the AO was given an opportunity to verify it. Since the AO failed to pinpoint specific unverifiable expenses, the ad-hoc disallowance of 25% was arbitrary and unjustified. The CIT(A) deleted the disallowance in full and allowed relief to the assessee.

5. Aggrieved by the order of CIT(A), the revenue is in appeal before us with following grounds of appeal:

1. *Whether the Ld. CIT(A) has erred in law and on facts in admitting the additional evidences submitted by the assessee during the appellate proceedings without considering the section 46A of the IT Act.*
2. *Whether the Ld.CIT(A) has erred in law and on facts in deleting the disallowance of Rs.5,92,53,633/- being 25% of expenses of Rs.23.70,14.534/- without considering the facts of the case?*
3. *The appellant craves leave to amend or alter any ground or add a new ground, which may be necessary.*
4. *It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored.*

6. During the course of hearing before us, the Authorized Representative (AR) of the assessee stated that the Revenue's reference to "Section 46A of the IT Act" is incorrect, as no such section exists in the Act. The AR referred the correct provision is Rule 46A of the Income Tax Rules, 1962, which deals with the admission of additional evidence by CIT(A). The AR further stated that the CIT(A) has not admitted additional evidence under Rule 46A of I.T. Rules, but exercised powers under Section 250(4) of the Act, which allows the appellate authority to call for further inquiry. The AR also stated that The AO was given a full opportunity to verify the additional evidence, and the remand report dated 19.07.2023 confirmed that the expenses were properly examined. The AR placed reliance on the decision of Delhi Bench in the case of **ACIT vs. Anu Bajaj (ITA No. 1943/DEL/2023, dated 19.01.2024)**, where it was held that once relief is granted based on AO's remand report, the Revenue cannot challenge it further.

6.1. On the ground relating to deletion of disallowance of Rs.5,92,53,633/-, the AR stated that The AO disallowed 25% of total other expenses (Rs.23,70,14,534/-) on an ad-hoc basis, without identifying any specific unverifiable transactions. The AR further stated that the assessee's books of accounts were duly audited, and no adverse remarks were made in the tax audit report and the AO neither rejected the books of accounts nor pointed out any bogus or non-genuine expenses. The AR also stated that the assessee provided detailed ledgers, invoices, and supporting documents during appellate proceedings, which were verified in the remand report and the remand report did not dispute the genuineness of major expenses, only a few expenses were questioned due to lack of vouchers, but AO did not quantify

specific disallowances. The AR placed reliance on the decision of co-ordinate bench in case of ITO vs. Bharatkumar Dashrathbhai Patel (ITA No. 202/Ahd/2024). The AR argued that since the Revenue has accepted the assessee's claims in other years, an inconsistent approach in the year under consideration is unjustified.

7. The Departmental Representative (DR) relied on the order of AO.

8. We have carefully considered the rival submissions, the assessment order, the order of the CIT(A), and the material placed on record. The contended, by way of raising first ground, that the CIT(A) admitted additional evidence in violation of Rule 46A of I.T. Rules, arguing that the assessee was given sufficient opportunities during the assessment proceedings but failed to submit the necessary documents. However, from the perusal of the CIT(A)'s order, we find that:

- i. The CIT(A) exercised powers under Section 250(4) of the Act, which allows the appellate authority to call for further inquiry before disposing of an appeal.
- ii. The additional evidence was not admitted directly by CIT(A) but was forwarded to the AO for verification through a remand report.
- iii. The AO examined the additional evidence and submitted his findings, confirming the genuineness of most expenses by way of a remand report dated 19.07-2023.
- iv. Since the AO had full opportunity to verify the documents, the admission of additional evidence does not violate Rule 46A.

8.1. Therefore, we find no merit in the Revenue's contention that Rule 46A was violated. The CIT(A) followed the correct legal procedure, and accordingly, Ground No. 1 of the Revenue's appeal is rejected.

9. The AO had disallowed 25% of total other expenses of Rs.23,70,14,534/- on an ad-hoc basis, citing the assessee's failure to produce complete supporting documents during the assessment proceedings. However, the following key points emerge from the record:

- i. The AO did not reject the books of accounts under Section 145(3).
- ii. The tax audit report did not highlight any discrepancies in the assessee's expense claims.
- iii. The AO's remand report, submitted during appellate proceedings, did not identify specific defects in the expenses. The AO accepted several expenses as genuine during the remand proceedings.
- iv. No bogus or non-genuine expenditure was identified by the AO.
- v. The same nature of expenses was allowed in previous and subsequent years, indicating consistency.

9.1. It is well settled by various judicial precedents that an ad-hoc disallowance without identifying specific defects is legally unsustainable. In the case of **ACIT vs. Anu Bajaj (ITA No. 1943/DEL/2023, dated 19.01.2024)**, the Delhi Bench held that if relief is granted based on the AO's own remand report, the Revenue is precluded from challenging the same before the Tribunal.

10. The DR has merely relied on the assessment order of the AO without providing any new arguments to support the disallowance. Since the AO's own remand report does not justify the ad-hoc addition, we find that the CIT(A) rightly deleted the disallowance.

11. Accordingly, we find no infirmity in the order of the CIT(A) in deleting the addition of Rs.5,92,53,633/-, and Ground No. 2 of the Revenue's appeal is also rejected.

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

**Order pronounced in the Open Court on 6<sup>th</sup> February, 2025 at Ahmedabad.**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(MAKARAND V. MAHADEOKAR)**  
**ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 06/02/2025

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A) -
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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