

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI
BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No.271/Del/2015
(ASSESSMENT YEAR 2011-12)**

Asst. CIT, Circle-51(1), New Delhi.	Vs.	Smt. Shashi Mehta, Prop. M/s. S. N. Industries, 2682/2, Beadon Pura, Gurudwara Road, Ajmal Khan Road, Karol Bagh, New Delhi-110005. PAN-AAXPM0259Q
(Appellant)		(Respondent)

**ITA No.117/Del/2015
(ASSESSMENT YEAR 2011-12)**

Smt. Shashi Mehta, Prop. M/s. S. N. Industries, 504, Kirti Mahal, 19, Rajendra Place, New Delhi-110008. PAN-AAXPM0259Q	Vs.	Joint CIT, Range-33, New Delhi.
(Appellant)		(Respondent)

Assessee by	Shri Manish Upneja, CA & Shri Baldev Raj, CA	
Department by	Shri Sahil Kumar Bansal, Sr. DR	
Date of Hearing	06/02/2025	
Date of Pronouncement	19/02/2025	

ORDER**PER MANISH AGARWAL, AM:**

These Cross Appeals filed by the Assessee and Revenue against the order of Learned Commissioner of Income Tax (Appeals)-8, New Delhi ("the CIT(A)" for short) in Appeal No.294/13-14 dated 30/10/2014 for Assessment Year 2011-12.

2. The assessee has challenged the appellate order on the following grounds of appeal.

"1. That on the facts and circumstances of the case and in law, the Hon'ble CIT(A) has erred in sustaining the addition made by the Joint Commissioner of Income Tax, Range-33, New Delhi ("Ld. AO") amounting to Rs. 24,32,940/- and enhancing the aforesaid addition by Rs. 11,48,254/-, thereby making an aggregate addition amounting to Rs. 35,81,194/-, by alleging that certain purchases made by the assessee were bogus;

2. That on the facts of the case, the Hon'ble CIT(A) had erred by not taking into consideration, the documentation and explanation furnished by the assessee assailing the instant disallowance made by the Ld. AO;

2.1 That on the facts and circumstances and in law, the Hon'ble CIT(A) erred in observing as under:

"3.17 As per above reconciliation submitted by the appellant; the unexplained liability to the extent of Rs.12,84,685/- (Rs.32,48,062 minus Rs.19,63,377/-) pertains to the AY 2010-11. Therefore, the same should be taxed in the AY 2010-11 as unexplained liability. The AO is directed to take remedial action in the AY 2010-11 on this score";

2.2 That while directing the Assessing Officer to take remedial action in terms of the alleged unexplained liability, the Hon'ble CIT(A) did not afford any opportunity to the Appellant to reconcile the alleged difference and therefore, the same violates the basic tenets of natural justice and fair play:

3. That having regard to the facts of the case and on law, the Hon'ble CIT(A) erred in sustaining an addition of Rs. 99,200/- by alleging that the Appellant had inflated its purchases;

4. That having regard to the facts of the case and on law, the Hon'ble CIT(A) erred in initiating penalty proceedings under Section 271(1)(c) of the Act.

All of the above grounds of appeal are without prejudice and notwithstanding each other.

The Appellant craves leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.

Any consequential relief, to which the Appellant may be entitled under the law in pursuance of the aforesaid grounds of appeal, or otherwise, thus may be granted.

The Revenue has taken the following grounds of appeal:

"1. Whether the Ld. CIT(A) has erred in deleting add un amounting to Rs.15,75,770 on account of bogus sundry creditors despite AO proved bogus sundry creditors and the burden was of the assessee to prove the genuineness of the parties. Burdon

2. Whether the Ld. CIT(A) has erred in deleting addition amounting to Rs.1,88,88,625/ out of Rs. 2,13,21,565/ on account of bogus purchase and not appreciating the fact that the parties from which purchases were made, as claimed by the assessee could not be traced by the deptt. Upon physical verification and summons issued by way of speed post and that burden was on the assessee to prove the genuineness of the parties.

3. Whether the Ld. CIT(A) has erred in deleting addition mounting to Rs.1,57,34,377/ on account of payment made in cash in excess of Rs. 20,000/- other than account payee cheque u/s 40(A)(3) of the I. T. Act, 1961 when the assessee himself admitted before the AO that payment to persons made in cash and that in each case this amount was a single expenditure through assessee's own cash book on single date to single person. The Ld. CIT(A) has ignored the facts that provision of section 40(A)(3) of the I. T. Act were introduced as a deterrent for checking unaccounted business transaction

4. Whether the Ld. CIT(A) has erred in deleting addition amounting to Rs.45,96,845/- on account of contract expenses debited to P & L account despite the disallowances made by AO on the ground of absence of any proof of genuineness.

5. Despite the service of notices by AO the Ld. CIT(A) has not appreciated the efforts of AO for servicing of notices.

6. The appellant crave leave to add, alter or amend any/all of the grounds of appeal before or during the course of hearing of the appeal.”

Since, the issues in both the appeals are common, thus, both the appeals are taken together and disposed off by a single order.

3. Brief facts of the case are that assessee is an individual and engaged in the business of manufacturing and Sales of Tar Products and besides having construction activity. The return of income was filed on 28/09/2011 declaring total income of Rs.1,05,32,960/-. The case was selected for scrutiny under CASS and after considering the submissions and material filed, the assessment was completed u/s 143(3) of the Income Tax Act, 1961 ('the Act' for short) vide order dated 31/01/2014 at total income of Rs.6,00,57,570/- by making various additions. In first appeal before the Ld. CIT(A), the assessee has filed various fresh evidences along with prayer u/s 46A. The Ld. CIT(A) after obtaining the remand report from the Assessing Officer and considering the submissions made by the appellant has allowed substantial relief to the assessee. Against this order of Ld. CIT(A), both the assessee and Revenue are in appeal before us.

4. Ground of appeal No.1 of Revenue and Ground of appeal No.3 of the assessee are common and related to the issues of addition made by the Assessing Officer of Rs.15,75,770/- by holding the sundry creditors as bogus. The Ld. CIT(A) has deleted the addition to the extent of Rs.14,76,570/- uphold the addition of Rs. 99,200/- in respect of one sundry creditor.

5. Before us, the Ld. Sr. DR submitted that in para 3.12 of the appellate order, the Ld. CIT(A) has made contradictory finding wherein he has observed that the purchases might have been inflated and cheque payments have been shown to camouflage and later on cash in lieu thereof would have been taken by the assessee, therefore, addition of inflated purchases can be done. At the same time, the Ld. CIT(A) has deleted the addition made in respect of the four creditors totaling to Rs.14,76,570/-. The Ld. Sr. DR further submitted that in assessment proceedings also the Assessing Officer has made verification of the parties and it was found that they have failed to comply with the summons issued, therefore, he prayed that the addition made by the AO deserves to be upheld.

6. On the other hand, the Ld. AR of the assessee submitted that the assessee has filed all the plausible evidences in order to establish that these creditors are genuine creditors. He further submitted that during the course of remand proceedings, confirmations were filed along with their copy of PAN and it was established that the closing balance for which the addition have been made stood square off by

making payments through payees cheque in subsequent year. He further submitted that when the purchases have not been doubted and trading result declared were accepted, only closing balance of the creditors should not be held as bogus. With regard to the addition of Rs.99,200/- confirmed by the Ld. CIT(A), an application under Rule-29 of ITAT Rules, 1963 is filed before us along with confirmation from the party M/s Balwinder Singh and prayed that no addition should be made looking to the fact that the party has duly accepted the transactions carried out. He further submitted that in the case of the assessee, the assessment for subsequent assessment years i.e., Asst. Year 2012-13 and 2014-15 were completed u/s 143(3) of the Act wherein the income declared stood accepted without raising any doubts with respect to any of the sundry creditors or mode and manner of maintaining the books of accounts by the assessee. He thus prayed that order of CIT(A) to the extent of relief allowed deserves to be sustained and further prayed that addition of Rs.99,200/- as sustained be deleted.

7. We have heard the rival submissions and perused the material available on record. From the entire series of events, we find that the assessee has made part compliance before the Assessing Officer to prove the genuineness of the sundry creditors and part compliance was made before the Ld. CIT(A) during the course of appellate/remand proceedings. Now before us also assessee has submitted certain fresh evidences under Rule 29 of ITAT, Rules, 1963. A remand report was sought by us from the AO wherein the

AO after making observations on factual aspects, has requested not to admit such evidence at this stage. After considering the arguments in the interest of justice and also looking to the fact that these documents are necessary and goes to the root of the matter, therefore, the same are admitted for adjudication.

8. Now coming to the merits, on perusal of the finding made by the Ld. CIT(A) in para 3.10 to 3.12 of his order at pages 24 to 26, we find that the assessee has filed the confirmation, PAN Card etc. before the Ld. CIT(A). In the remand report, the AO observed that in case of M/s Laxmi Plastics Rs.49,260/-, M/s Ford Services Station Rs.79,013/- and M/s Shankar Puja Trading Company Rs.60,916/-, the summons were issued during the course of remand proceedings but proper compliance was not made. With respect to M/s Kabir Steel Tubes Pvt. Ltd. Rs.12,87,381/-, the summon issued was returned back unserved with the remark "Closed". Assessee in rejoinder before Ld. CIT(A) filed its PAN and Confirmation etc. wherein the said party has accepted the transaction with the assessee. The Ld. CIT(A) after making enquiry found that M/s Kabir Steel Tubes Pvt. Ltd. is closed due to auction by banker. It is a matter of fact that the payments have been made to all these parties in subsequent years through account payee cheques where they have not doubted by the Department. Moreover, the assessee has made purchase from these parties in the year under appeal and such purchase were not doubted by the Assessing Officer who made addition of the closing balance only. On careful consideration of these facts, we find no infirmity in

the Ld. CIT(A)'s order in deleting the addition of Rs.14,76,570/- in respect of four parties out of Sundry Creditors which order is hereby confirmed. The ground of appeal No.1 of revenue is dismissed.

9. With respect to the addition of Rs.99,200/- made for M/s Balwinder Singh, from the perusal of the remand report submitted by the AO dated 02/01/2023, we find that assessee has filed the copy of the bills and necessary evidences of the payments made to that party. These payments were made through banking channel in subsequent assessment years which are reported by the Assessing Officer in the remand report. It is also seen that not only in the year under appeal but also in subsequent year, the assessee has made purchases from this party which have not doubted by the AO. Under these circumstances, there is no reason to hold that the creditor M/s Balwinder Singh is a bogus creditors and, accordingly, the addition of Rs.99,200/- made is hereby deleted. The ground of appeal No.3 of the assessee is allowed.

10. Ground of appeal No.2 of the Revenue and the Ground No.1 to 2.2 of the assessee are in relation to the addition of Rs.2,13,21,565/- made by Assessing Officer being 50% of the purchases made from five parties totaling to Rs.4,26,43,130/- as bogus and added back to the income of the assessee. In first appeal, the Ld. CIT(A) has deleted the addition to the extent of Rs.1,88,88,625/- in respect of four parties against which revenue is in appeal before us. However, in respect of the purchases made from one party namely M/s Unimet

Profiles of Rs.48,65,879/- out of which 50% was disallowed by the Assessing Officer, the Ld. CIT(A) has held that entire purchase from this party is to be disallowed. Thus, he made enhancement and made addition of Rs.35,81,194/- as relating to the year under appeal and Rs.12,84,685/- as related to Asst. Year 2010-11 and, accordingly, against the addition of Rs.24,32,940/- made in respect of this party total addition of Rs.48,65,879/- is directed to be made in two assessment years against which assessee is in appeal before us.

11. Before us, the Ld. Sr. DR vehemently supported the order of the AO and submitted that assessee has not established the purchases made from these parties and when the Assessing Officer has made enquiries, the summons issued were returned back. Further no confirmation or other evidence was filed by the assessee. All these facts are tabulated by the Assessing Officer in para 3.2 of the assessment order wherein Assessing Officer has pointed out the outcome of the investigation carried out by him based on which he reached to the conclusion that purchases made from these parties were bogus. Ld. Sr. DR further submitted that the Ld. CIT(A) while deleting the addition has referred the remand report submitted, however, if the remand report is seen, it is clear that the investigation made by AO during the assessment proceedings is affirmed in the remand report. He further submitted that the AO has already granted substantial relief to the assessee by making addition of Rs.50% of the purchases and, therefore, the Ld. Sr. DR requested for confirmation of the additions so made by AO. Further with regard to the

enhancement done by Ld. CIT(A), the Ld. Sr. DR supports the order of the Ld. CIT(A) on this score.

12. On the other hand, the Ld. AR of the assessee submitted that the assessee during the course of appellate proceedings have filed the necessary details to establish that the purchases made from these parties are genuine purchases and the deficiencies pointed out by the AO through investigation were duly replied. The party wise explanation given by assessee is reproduced in appellate order at pages 11 to 18 which is self-explanatory. He further submits that all the parties were registered under the VAT Act and registration was granted after physical verification of the business premise, therefore, it cannot be said that the parties are non-existent. He further submit that Ld. CIT(A) while deleting the additions has discussed each and every party which is at para 3.14 to 3.18 of the order, wherein Ld. CIT(A) after considering the facts that the parties have duly confirmed the transactions with the assessee, payments have been made through payee cheques in the year under also and subsequent years and after considering the facts that the trading results have been accepted which includes the purchases declared, has deleted the addition with respect to purchases made from four parties. He thus, prayed for confirmation of the order of Ld. CIT(A) deleting the additions made by AO on account of bogus purchases from four parties.

13. With regard to the enhancement made in respect of the purchases from M/s Unimet Profiles, during the course of hearing, the AR of the assessee filed additional evidences in the shape of confirmed copy of ledger account of M/s S. N. Industries Proprietary Firm of assessee in the books of M/s Unimet Profiles and also the ledger accounts of this party in subsequent assessment years in the books of assessee where the payments made against these purchases are reflected. The Bench has sought the remand report and in terms of remand report dated 02/01/2023, we find that AO has not found any error in the details filed by the assessee and it is observed by the AO in the remand report that in respect of subsequent assessment years, purchases have been made and payments were also made to this party. It is also seen that during the Financial Year 2012-13, the assessee has made purchases of Rs.10,91,800/- and payment of Rs.14,02,126/- was made during that financial year. The assessment for Asst. Year 2013-14 relevant to Financial Year 2012-13 was completed u/s 143(3) of the Act wherein purchases made from this party has not been doubted. He, therefore, prayed for the deletion of the enhancement of Rs.35,81,194/- made.

14. We have heard the rival submissions and perused the materials available on record. During the course of hearing, assessee has filed additional evidences on which we have sought comments of the AO. The Assessing Officer in the remand report submitted before us, has objected for admission of the additional evidence for the sole reason that they have not been filed before the AO not before the CIT(A) nor

in remand proceeding. Further regarding to the of enhancement by Ld. CIT(A), it is argued by Ld. AR that no notice for enhancement was given by the Ld. CIT(A), therefore, the assessee could not be able to produce necessary evidences. From the perusal of the CIT(A) order, we find no reference of any notice issued before making such enhancement, therefore, in the interest of justice, the additional evidences filed by the assessee regarding enhancement are taken into consideration to decide this issue.

15. As observed above, in the remand report submitted before us, the AO accepted the transactions of purchases carried out by the assessee with the said party M/s Unimet Profiles in the year and in subsequent year also, no adverse observations have been made by the AO except stating that payments were made against the purchases so made. Looking to these facts, we are of the considered view that the purchases made from M/s Unimet Profiles cannot be held as bogus purchases and the enhancement done by Ld. CIT(A) is hereby deleted. As a result, ground of appeal No.1 to 2.2 are allowed.

16. With regard to the purchases made from other parties, we have gone through the observations of Ld. CIT(A) as contained in para 3.14 to 3.18 (except 3.17 which relates to the enhancement). While deleting the additions on account of bogus purchases, the Ld. CIT(A) has made following observations:

“3.14 In case of disallowance of purchases made from M/s Shiva Asphaltic Products Ltd.; the reasoning given by the AO is held uncalled for as there is no illegality in having different TIN for branch(es) in each state/Union Territory. The signatory of the bills issued by each branch with different bill

numbers is bound to be different. In case the AO's reasoning is accepted then a company having branches across India should have only one TIN for all states/Union Territories though the Act of that state/Union Territory does not provide so. TIN not like PAN is valid across India. Similarly, as per the AO there should be only one bill book and one person for all branches (if a company is having branches across India) for issuing bill. Such finding by the AO speaks volume. The details filed by the appellant in appeal proceedings as mentioned above have been confirmed by M/s Shiva Asphaltic Products Ltd. during the remand proceedings as evident from the AO's report dated 20.10.2014; therefore, it is held that no addition on this score is called for; hence the addition made in respect of purchases from M/s Shiva Asphaltic Products Ltd. is deleted. The consequential relief shall be allowed by the AO.

3.15 In case of M/s rii Tech Bitumen Product, the AO has questioned purchases of Rs.20,41,177/- only in respect of M/s Tiki-Tar Industries Ltd.; however, the disallowance of 50% of purchases made from M/s Hi Tech Bitumen Product was made by mentioning facts in respect of M/s Tiki-Tar Industries Ltd. and non-verification of the purchases from M/s Hi Tech Bitumen Product. The appellant submitted that the AO has not sent summon on the present address of M/s Hi Tech Bitumen Product even the same was provided by the appellant along with phone number/e-mail. However, the Ld. ARs submitted the letter of M/s Hi Tech Bitumen Product dated 29.09.2014 sent to the AO which confirms the appellant's contentions mentioned above regarding supply of goods either directly or through M/s Tiki-Tar Industries Ltd. The appellant filed certified copy of account also. The correspondence between M/s Hi Tech Bitumen Product M/s Tiki-Tar Industries Ltd. and the appellant along with the certificate of M/s Tiki-Tar Industries Ltd. confirming the transactions submitted before me substantiate the appellant's claim. The appellant also filed certified copy of its account appearing in the books of M/s Hi Tech Bitumen Products for the AY 1015-16 (as on date) to demonstrate the existence of the party and genuineness of transactions. Therefore, it is held that no addition on this score is called for; hence the addition made in respect of purchases from M/s Hi Tech Bitumen Products is deleted. The consequential relief shall be allowed by the AO. However, the AO is directed to pass on the information to the AO of M/s Hi Tech Bitumen Products for verification and taking necessary action as per the law in respect of purchases shown to have been done from M/s Tiki-Tar Industries Ltd, though the payment for the same has been done directly by the appellant. Accordingly, the payment made directly by the appellant to M/s Tiki-Tar Industries Ltd. has to be accounted for as sales in the case of M/s Hi Tech Bitumen Products and not as debtors.

3.16 In case of M/s Shivani Traders; the AO's reasoning for disallowance is only that the bill has been issue in the name of M/s S. N. Construction Ltd. The anomalies pointed out by the AO have been explained in the above extracted submission. Against which the AU has not commented upon adversely in his remand report, therefore, it is held that no addition on this score is called for; hence the addition made in respect of purchases from M/s Shivani traders is deleted. The consequential relief shall be allowed by the AO.

3.18 In case of M/s Vikanshu Petrochem; the AO's reasoning for disallowance is only that the bills submitted by the appellant and M/s Vikanshu Petrochem are photocopies of bills only and that two in the names of various persons and not in the name of the appellant. The bills are in the names of contractees for whom the appellant has done work. The anomalies pointed out by the AO have been explained in the above extracted submission. Against which the AO has not commented upon adversely in his remand report. The appellant's submission appears acceptable particularly in view of the fact that all the payments have been made by the appellant through the account payee cheques and the goods purchased by him has been utilized at it work site; therefore, it is held that no addition on this score is called for; hence the addition made in respect of purchases from M/s Vikanshu Petrochem is deleted. The consequential relief shall be allowed by the AO. However, the AO is directed to pass on the information to the AOs of contractees (the details of contractees may be taken from 26AS) in whose names the bills have been issue for verification and taking necessary action as per the law as these purchases are not theirs and in case these purchases are found debited in the books of contractees then the remedial action to assess it may be taken as per the law.”

17. After hearing both the parties, we find that the Department has not been able to controvert the findings of the Ld. CIT(A). It is also a matter of fact that the purchases have been accepted and AO has not doubted the trading results declared by the assessee. Under these circumstances, we are of the considered view that purchases made by the assessee from the remaining four parties totaling to Rs.1,88,88,625/- are genuine and Ld. CIT(A) has rightly deleted the addition so made. Accordingly, ground of appeal No.2 of Revenue is dismissed.

18. 3rd ground of appeal of the Revenue is relation to the deletion of addition of Rs.1,57,34,377/- made u/s 40A(3) of the Act by the AO.

19. Brief facts of the case are that on examination of the books of accounts, the AO found that assessee has made payment on a single day to a person exceeding Rs. 20,000/- which is in violation to provision of section 40A(3) of the Act, thus, he made disallowance of total expenses made in violation to section 40A(3) of the Act totaling to Rs.1,57,34,377/-. A chart containing date wise payment made to one person in excess of Rs. 20,000/- in a single day is tabulated at pages 5 to 8 of the assessment order. Before the AO, it was claimed by the assessee that these payments were made to employees, who are the supervisors looking after work at various branches spread out and these amounts were sent to them as imprest money. The expenses incurred by them against such imprest amount were duly recorded in petty cash book. However, in absence of proper bills and vouchers, AO concluded that these payments were made in excess of Rs. 20,000/- to these parties which is in violation to Section 40A(3) of the Act, and he made disallowance. Ld. CIT(A) has deleted the disallowance, thus, the Revenue is in appeal before us.

20. During the course of hearing, Ld. DR supported the observations made by the AO. He further submitted that no evidences were filed by the assessee as how to these amounts stated to have been sent to various persons and claiming such persons as her

employees nor any details were filed to support the contentions that petty expenses were incurred below Rs. 20,000/- by all such persons and how these expenses were recorded in the books of accounts. Further, since no details were filed in respect to the petty expenses claimed to have been booked against these imprest, therefore, it could be presumed that payments made to these persons are in violation to provisions of section 40A(3) of the Act, and, therefore, the AO has rightly made disallowance which needs to be upheld and order of Ld. CIT(A) deserves to be reversed.

21. On the other hand, the Ld. AR submitted that from the perusal of the list at pages 5 to 8 of assessment order. It is evident that certain names are repeated on regular basis. Assessee claimed that these Supervisors were managing branch offices located at various sites. The assessee has sent amounts in cash to them as imprest to meet out day to day expenses at the branch office level. These persons sent the details of expenses alongwith supporting bills and vouchers on the regular basis. Based on these details, the expenses were booked in the books of account and non of payments relating to a single expenses so recorded in the books of accounts against such imprest amount was in violation to section 40(A)(3), therefore, no disallowance u/s 40A(3) of the Act should be made. The Ld. CIT(A) after considering these facts has deleted the addition by observing in para 4.2 of the order and Ld. AR vehemently supported the order of Ld. CIT(A) and had requested for confirmation of the order of Ld. CIT(A) on this score.

22. We have heard the rival submissions and perused the materials available on record. During the course of hearing, it was asked to the Ld. AR to demonstrate as how these petty expenses were recorded in the books of accounts of the assessee and also show us how the petty cash books were prepared as the they were not produced before the lower authorities. In reply the Ld. AR fairly conceded that these petty cash books were not produced before the AO, and if matter is sent back to the file of AO, assessee would get verified these petty cash books containing entries of expenses incurred against these imprest amounts given to the persons whose names are appearing in the table given in the assessment order. Thus, in the interest of justice, we set aside this issue to the file of the AO for making necessary verification from the books of accounts of the assessee to ascertain whether the expenses incurred against these amounts as recorded in the petty cash books are in violation to section 40A(3) of the Act or not and decide the issue in accordance with law. With this direction, this issue is set aside to the file of the Ld. AO. As a result, this ground of the Revenue is allowed for statistical purposes.

23. Last ground of Revenue is in relation to the disallowance of Rs.45,96,845/- made out of "Contract Expenses". The Assessing Officer has made disallowance @ 5% out of total expenses of Rs.9,19,36,912/- claimed by the assessee under the head "contract expenses". The Ld. AO observed that the said ledger account contained expenses related to labor charges payable etc. On

verification, the AO found that these expenses are not supported with the authenticated bills and vouchers. i.e., in most of the cases only supportive evidence in the nature of self-made hand written slips were attached having no authentication from the parties to whom payments were made. Therefore, AO has made disallowance of 5% out of the expenses so claimed which is in addition to the disallowance made u/s 40A(3) of the Act. The Ld. CIT(A) has deleted the same, thus, the Revenue is in appeal before us.

24. During the course of hearing, the Ld. Sr. DR vehemently supported the observations made by the Ld. AO and submitted that expenses were not supported by proper bills and vouchers and AO has categorically observed that since the recipient signature in most of the cases were missing, there is a possibility that expenses might have been incorrectly booked. He therefore prayed for confirmation of the disallowance so made by AO.

25. On the other hand, the Ld. AR vehemently supported the orders of Ld. CIT(A) and submitted that no single expenses was pointed out by the AO as incurred for non-business purposes or excessive. The AO has wrongly understood the entry of labour and expenses payable at the end of the year for which general entry was made in the contract account where the contract account is debited and corresponding labor expenses payable account was credited. Since, these expenses were incurred during the year but the payments were outstanding at the year end thus the same were shown as payable.

It is further submitted by Ld. AR that assessee is a contractor having branches spread all over the places and it was not possible for it to keep qualifying accounts-cum-cashier at each site. He further submitted that all the payments were duly authenticated by the person making the payments and after proper scrutinized, the same were recorded in the books of accounts at head office. Since, these expenses incurred wholly and exclusively purpose of business, the same are allowable expenses. He thus, prayed that order of Ld. CIT(A) deserves to be uphold as this score.

26. We have heard the rival submissions and perused the materials available on record. We find that the AO made ad hoc disallowance of 5% out of contract expenses keeping in mind the quantum of expenses disallowed by applying the provisions of section 40A(3) of the Act. We are also live to the issue that assessee is engaged in the contract activity where works at many sites are simultaneously carried out. Therefore, it is not possible to keep bills and vouchers in very precise manner. The assessee has achieved total contract receipts of Rs.14,50,93,654/- against which total contract expenses claimed were of Rs.9,19,36,912/-. These expenses are in the nature of labour, petty material at site etc. Looking to nature of expenses and fact that no specific instances were pointed out by AO who made ad hoc disallowance @ 5% by making general observations. Considering to these facts and keeping in mind the nature of expenses incurred which are wholly and exclusively for the purpose of business and revenue has failed to controvert the finding of Ld.

CIT(A) in this regard, in our opinion, Ld. CIT(A) has rightly deleted the disallowances made by AO and we are not inclined to interference in the observations made by Ld. CIT(A) which are hereby upheld. As a result, ground appeal No.4 of the Revenue is dismissed.

27. The remaining grounds of appeal of the assessee and of Revenue are consequential thus are dismissed.

28. In the result, appeal of the assessee is partly allowed and appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced on 19.02.2025.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 19.02.2025

PK/PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(MANISH AGARWAL)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI