

**IN THE INCOME TAX APPELLATE TRIBUNAL,
AGRA BENCH, AGRA**

**BEFORE :SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

ITA No.202/Agr/2024
Assessment Year: 2014-15

Tomar And Brothers, 843-A, Moti Jheel, Etawah (UP)	Vs.	Income-tax Officer, Ward 2(2)(5), Etawah.
PAN :AAFT7729D		
(Appellant)		(Respondent)

Assessee by	Sh. Anurag Sinha, Advocate
Department by	Sh. Shailendra Srivastava, Sr. DR

Date of hearing	27.03.2025
Date of pronouncement	24.04.2024

ORDER

Per Annapurna Gupta, Accountant Member:

The present appeal has been filed by the assessee against the order 29.03.2024 passed by the learned Commissioner of Income-tax (Appeals) National Faceless Appeal Centre (NFAC), Delhi [in short "CIT(A)"] u/s. 250(6) of the Income-tax Act, 1961 (hereinafter referred to as "the Act").

2. Ground No. 1, 2 & 3 raised by the assessee relate to the addition of Rs.21,12,576/- confirmed by the Id. CIT(Appeals) pertaining to expenses incurred by the assessee in respect of purchase of material,

labourexpenses, repair and maintenance, establishment, selling and administrative expenses. The grounds read as under :

“1 BECAUSE, upon due consideration of facts and in overall circumstances of the case the Ld.CIT(A) was not justified in directing disallowance of expenses @ 7.5% amounting to Rs. 21,12,576/-as against 10% made by the 'AO' in respect of 'Purchase of Material', Labour Expenses, Repair & Maintenance and Establishment, Selling and Administrative Expenses.

2.) BECAUSE, while doing so the Ld. CIT(A) omitted to consider that after sustaining disallowance @ 7.5% the resultant profit works out to 11.8% which is highly excessive in the business of civil construction and in view of the past history of the case.

3. BECAUSE, the Ld. CIT(A) while sustaining the disallowance and arriving Profit @ 11.8% had erroneously observed that in the case of the appellant for AY 2007-08 the Ld. CIT (A)-II, Agra had relied upon the judgement of CIT Vs M/s Prabhat Kumar Contractor wherein the rate of net profit of 12% was applied whereas as a matter of fact in AY 2007-08 the Ld. CIT(A) had directed the AO to adopt Net profit rate of 6% on Turnover and allow deductions under section 40(b) of the 'Act'.”

3. Briefly stated, in the absence of proper books of account maintained by the assessee, which were found to be incomplete without supporting details, stock register, ledger, cash book etc., the Assessing Officer disallowed 10% of the expenses incurred by the assessee on purchase of material, labour expenses, repair and maintenance, establishment, selling and administrative expenses, which amounted to Rs.2,81,67,680/-. Learned CIT(Appeals), however, restricted the same to 7.5% of the expenses resulting in disallowance being restricted to Rs.21,12,576/-.

4. The assessee is aggrieved by the same and his contention is that if this quantum of disallowance sustained by the Id. CIT(Appeals) is considered, it would result in its profit being 11.8% of turnover, which is too excessive and not in accordance with the past history of the case. As per past history, as reproduced in the written submission filed by the assessee, the net profit assessed in various assessment years right from the assessment year 2004-05 to assessment year 2013-14, varies from 6% to 11% with rate of 8% being applied in majority of the years. Further, his contention was that the case law relied upon by learned CIT(Appeals) to justify the rate of 11.8% of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Prabhat Kumar (2010) 323 ITR 675 (P&H) could not be relied in preference to the past history of the appellant itself. Learned counsel, therefore, pleaded adequate relief on this issue.

5. Learned DR, however, supported the order of Id. CIT(Appeals) pointing out that the Id. CIT(Appeals) has been just enough in reducing the disallowance made by the Assessing Officer from 10% to 7.5%. He contended that submissions of the assessee relating to past history of the net profit rate assessed of the assessee require no consideration.

6. We have heard the contentions of both the parties and we find merit in the contention of the Id. Counsel for the assessee. Undisputedly, in the absence of proper books of accounts maintained by the assessee,

the Revenue has resorted to an adhoc disallowance of expenses being made. Though, admittedly, the assessee has no justification for the expenses claimed by it, but be that so, any adhoc exercise by the revenue authorities has to be justified and cannot be an arbitrary exercise. Even the Id. CIT(Appeals) has in so many words stated so but while applying a just and reasonable rate of disallowance, he has referred and relied upon the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Prabhat Kumar (supra) for applying rate of 7.5% for disallowance of expenses. Learned counsel for the assessee has rightly pointed out that the said case is not applicable to the facts of the present case .As noted in the order of Id. CIT(Appeals) himself in the case of CIT vs. Prabhat Kumar (supra), Hon'ble High Court had approved a net profit rate of 12% in a similar activities carried out by the assessee and the Ld. CIT(A) ,noting that assessee's profit would come to 11.8% of the gross turnover after disallowance of 7.5% of the expenses,he accordingly applied rate of 7.5% to the adhoc disallowance. But be that so, there cannot be a standard net profit rate applicable to all persons working in a similar activity. The assessee has pointed out to us that as per its past history, net profit rate assessed on average rate of 8% We, therefore, consider it fit to reduce the disallowance to 5% of the expenses.

Ground No. 1, 2 & 3, raised by the assessee are partly allowed in above terms.

7. Ground No. 4 relates to disallowance u/s. 40(a)(ia) of the Act amounting to Rs.9,53,000/- on account of non-deduction of tax at source on various expenses, which are mentioned in the ground reading as under :

4. BECAUSE, disallowance of Rs. 9,53,000/- made under section 40(a)(ia) of the Act in respect of rent paid for hiring of JCB Porcelain, Roller, Tractor and Tanker is unwarranted, without any evidence brought on records to conclude that any payment was made to any individual in excess of the threshold limit of Rs. 1,80,000/- under the said section.”

8. Both the authorities below had noted several expenses incurred by the assessee to be without TDS and in absence of any cooperation from the assessee in this regard, disallowance of these expenses were made u/s. 40(a)(ia) of the Act amounting in all to Rs.9,53,000/-. The expenses which attracted impugned disallowance are as under :

Expenses towards JCB Pooclane, Roller & Tractor rent	:	Rs.7,42,600/-
Expenses towards Water tanker rent	:	Rs.2,10,400/-

Above expenses are found mentioned in the assessment order.

9. Before us, the contention of the Id. Counsel is that the authorities below had noted an incorrect fact that no details had been furnished by

the assessee. He contended that two replies were filed by the assessee on 09.09.2022 and 09.09.2023 on the e-portal vide e-acknowledgement No. 479853791090922 and 240859541090923 of the assessee and a chart was furnished providing the details of all the payments made for JCB, Poclane, Roller and tractor rent. He contended that it was evident from the details of all the payments were below Rs.1,20,000/- which is the limit provided for TDS. With respect to the payment of water tanker rent amounting to Rs.2,10,400/-, learned counsel fairly admitted that no details were submitted. Written submission of the assessee in this regard is reproduced hereunder :

“Assessee respectfully submits that such a view of the authorities below is unsustainable. Vide Reply dated 09.09.2022 & 09.09.2023 furnished on e-portal...vide e-acknowledgement No. 479853791090922 & e-acknowledgement No. 240859541090923 the following Chart vide Page-84 providing details of payment made against JCB, Pocklane, Roller and Tractor Rent was furnished which shows that payment of Rs. 7,42,600/- were made to 14 individuals and payments were less than Rs.1,20,000/- which is the limit provided for TDS. Though no details against payment of water tank rent amounting to Rs. 2,10,400/- was furnished.

M/S TOMAR & BROTHERS, 43-A, MOTIJHEEL COLONY, ETAWAH.

Break up of JCB Rent, Tractor Rent, Roller & Poclane Rent.
(01.04.2013 to 31.03.2014)

DATE	PARTICULARS		AMOUNT
18.04.2014	SHRI HUKUM SINGH BHARTHANA	TRACTOR	18500.00
12.05.2013	SHRI RAM SINGH CHHATA MATHURA	TRACTOR	42600.00
06.06.2013	ASHOK MISHRA, FRIENDS COLONY ETAWAH	JCB	75600.00

16.06.2013	APPU TOMAR NIMAISH CHAURAHA ETAWAH	TRACTOR	18500.00
18.06.2013	TILLU TANK, SUBHASH CHAUK BHIND MP	ROLLER	43000.00
16.11.2013	TILLU TANK, SUBHASH CHAUK BHIND MP	ROLLER	48000.00
06.07.2013	MANOJ GUPTA	POCLANE	45000.00
09.07.2013	MANSINGH BHIND	TRACTOR	28000.00
20.09.2013	RAVI SHARMA	ROLLER	42000.00
12.11.2013	PRAVEEN SINGH CHAUHAN	JCB	45000.00
18.11.2013	PRAVEEN SINGH	JCB	32600.00
20.01.2014	RAVI SHARMA	ROLLER	32000.00
29.01.2014	SATISH YADAV, SARANGPURA, ETAWAH	TRACTOR	35000.00
03.02.2014	SATISH YADAV, SARANGPURA, ETAWAH	TRACTOR	45000.00
15.01.2014	KALLU KAUSHIK	JCB	45000.00
23.12.2013	SABIR, GANDHI NAGAR, ETAWAH	ROLLER	48000.00
18.07.2013	RATAN MODI	POCLANE	45000.00
20.09.2013	RATAN MODI	POCLANE	53800.00
TOTAL			742600.00

6.1 Therefore, Assessee again submits that the payment for Tractor Rent & other machine Rent u/s 40(a) (ia) of the 'Act' for alleged non-deduction of TDS aggregating to Rs. 9,53,000/- is uncalled for. The authorities below had made the disallowance on mere doubt, despite the audit-report clearly stating that the assessee was not liable for tax deduction at source under any provision of the 'Act'. The 'appellant' had also furnished details of payees of machinery, rent vide reply dated 28-12-2016 before the AO and Ld. CIT(A). As could be seen from the details filed, none of them had been paid rent beyond threshold limit of Rs. 1,80,000/- stipulated for the year in question. The 'AO' had no tangible material to make the disallowance under section 40A(ia) of the 'Act' and your honour, therefore, may kindly delete the same."

10. Learned DR, however, reiterated that in absence of any details submitted by the assessee as noted by the revenue authorities, the disallowance needs to be confirmed.

11. Having heard the contention of both the parties, we find that the assessee has submitted as a matter of fact that the details of payment amounting to Rs.7,42,600/- which were visited with the disallowance u/s. 40(a)(ia) of the Act for non-deduction of tax at source, were submitted before the authorities below vide two replies. Even e-acknowledgement of submission made were furnished. Learned DR is unable to controvert this fact. The details submitted as reproduced above, supports the contention of Id. Counsel that none of the payments made exceeded Rs.1,20,000/-, which is a limit for tax deduction at source. The DR was unable to point out any counter to the facts and position of law. In view of the same, we hold that the payment of Rs.7,42,600/- could not be visited with the disallowance in terms of provision of section 40(a)(ia) of the Act. We have noted contention of the Id. Counsel that even the tax audit report stated that the assessee was not liable to any TDS under the provisions of the Act. The details submitted by the assessee of the payment of Rs.7,42,600/- corroborated with the tax audit report submitted by the Accountant, support the assessee's claim of no disallowance being warranted on the impugned payment u/s. 40(a)(ia) of the Act. As for the payment of water tax rent of Rs.2,10,400/- without tax deducted at source, as per admission of the Id. Counsel himself, the assessee has no

case with respect to disallowance u/s. 40(a)(ia) on the same and therefore, this disallowance is confirmed. Ground No. 4 is partly allowed.

12. Appeal of the assessee is partly allowed.

Order pronounced in the open court on 24.04.2025.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Dated: 24.04.2025

*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, Agra