

IN THE INCOME TAX APPELLATE TRIBUNAL
'DB', AMRITSAR BENCH, AMRITSAR

HEARING THROUGH HYBRID MODE

BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND
HON'BLE SHRI UDAYAN DAS GUPTA, JM

आयकरअपील सं. / ITA No. 32/ASR/2011
(निर्धारणवर्ष / Assessment Year: 2007-08)

Shri Rakesh Kumar Aggarwal 310-A Guru Tegh Bahadur Nagar Jalandhar.	बनाम/ Vs.	DCIT Range-III Jalandhar.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAKPA-3150-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Sh. Sandeep Vijh (CA) –Ld.AR
प्रत्यर्थीकीओरसे/ Respondentby	:	Sh. Rajiv Wadhwa (Addl. CIT) – Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	23-04-2025
घोषणाकीतारीख / Date of Pronouncement	:	10-06-2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2007-08 arises out of an order of Ld. Commissioner of Income Tax (Appeals), Jalandhar [CIT(A)] dated 29-11-2010 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) of the Act on 17-12-2009. Upon perusal of records, it could be seen that the assessee's appeal as well as revenue's appeal for this year was disposed-off by Tribunal vide ITA No.32/Asr/2011 & ITA No.45/Asr/2011 common order dated 12-10-2012. The appeal of the assessee was partly allowed

whereas the appeal of the revenue was dismissed. The Tribunal upheld the additions of Rs.5 Lacs under various heads viz. wages, oil & lubricants, crusher, sand & *bazri*, freight / cartage and truck expenses.

2. The revenue contested the order before Hon'ble Punjab and Haryana High Court wherein vide ITA No. 100 of 2013 dated 29-04-2014, the Hon'ble Court set aside the order of Tribunal and directed as under: -

Therefore, the order dated 12.10.2012, Annexure A.3 does not satisfy the requirements as enunciated by the Apex Court as notices herein above. The deficiencies pointed out in the account books of the assessee have not been discussed by the Tribunal, Accordingly, after setting aside the order of the Tribunal dated 12.10.2012, Annexure A.3, which is passed in violation of the principles of law laid down by the Apex Court as mentioned above, the matter is remanded to the Tribunal to decided afresh after affording an opportunity of hearing to the parties in accordance with law by passing a speaking well-reasoned order. As a result, both the appeals are allowed.

Accordingly, the appeal was restored back by Hon'ble Court to Tribunal for fresh adjudication. Subsequently, the revenue's appeal ITA No.45/Asr/2011 was dismissed by the Tribunal on account of low tax effect vide common order dated 23-08-2019. The assessee's appeal has remained to be adjudicated which is now being adjudicated.

3. The grievance of the assessee is disallowance of expenses under various heads as under: -

No.	Item	Amount (Rs.) (R/o)
1.	Wages	Rs.20 Lacs
2.	Diesel / LDO expenses	Rs.10.35 Lacs
3.	Crusher, Sand and Bajri	Rs.7.05 Lacs
4.	Freight & Cartage	Rs. 2.50 Lacs

Having heard rival submissions and upon perusal of case records, these issues are adjudicated as under. During this year, the assessee

acted as a government contractor. The expenses have been disallowed for want of cogent explanation / documentary evidences as forthcoming from the assessee.

4.1 Disallowance of Wages

The Ld. AO alleged that the expenses debited in the month of March, 2007 were 33.96% of receipts of that month. The assessee did not supply the details of workers. Accordingly, Ld. AO restricted the same to the extent of 9.12% of the receipts for the month of March, 2017. The same resulted into disallowance of Rs.49.89 Lacs. The rate as applied by Ld. AO was nothing but lowest rate of monthly wages to receipts during the year.

4.2 Disallowance of Diesel / LDO / Lubricant expenses

The Ld. AO disallowed amount of Rs.31.10 Lacs by restricting the claim to 19% of amount claimed by the assessee in the Profit & Loss Account. It was alleged that there were variations in monthly consumption of oil and lubricants.

4.3 Disallowance of other expenses

The Ld. AO disallowed amount of Rs.19.92 Lacs against crusher sand and *Bajri*, an amount of Rs.6.24 Lacs out of cartage inward and another amount of Rs.0.50 Lacs against truck expenses.

Appellate Proceedings

5.1 The assessee's submissions, on the impugned issues, was subjected to remand proceedings. The findings of Ld. CIT(A) is contained in para-4 onwards.

5.2 On the issue of wages, Ld. CIT(A) noted that the assessee was following mercantile system of accounting. The assessee did not raise bills for payment rather the contractee made own assessment of work through engineers to make payment against the measurement. The same would imply that expenditure was incurred by the assessee before the corresponding payment was made by it. Therefore, the contention that the expenses could not be correlated to the receipts on monthly basis was plausible one. The assessee did not maintain contract-wise details and accordingly, he could not supply the requisite information as called for by Ld. AO. The average wages for first nine months as a percentage of receipts was around 24.18% which would show that higher wages were debited in later months. The assessee furnished wages registers and vouchers which were not accepted since complete details were not available therein. The Ld. CIT(A) also opined that application of lowest monthly wage rate as applied by Ld. AO was erroneous. The assessee did work of Rs.43.45 Lacs. The expenditure on above four head of expenditure worked out to be Rs.59.54 Lacs. Since no evidence was led to show that the expenses debited in March, 2007 related to earlier period, the inevitable conclusion would be that the assessee incurred huge losses during March, 2007 and the expenditure was inflated for this month. On these facts, Ld. CIT(A) estimated lump sum addition of Rs.20 Lacs on account of Wages and partly allowed the appeal of the assessee. Aggrieved, the assessee is in further appeal before us.

5.3 On the issue of Diesel / LDO / Lubricant expenses, the Ld. CIT(A) observed that there was no basis for adopting the rate of 19%. The ratio of these expenses for first nine months was 18.07% whereas the ratio for the last quarter was 47.69%. The expenses would be higher during winter months. Finally, the expenditure on lubricant was allowed in full whereas diesel / LDO expenses were allowed to the extent of 19% of total receipts. The same resulted into confirmation of disallowance of Rs.10.35 Lacs.

5.4 The assessee incurred expenditure on crusher sand and *bajri* for Rs.10.93 Lacs. The Ld. AO allowed 8.5% of this expenditure which was enhanced by Ld. CIT(A) to 9%. The same reduced the impugned disallowance to Rs.7.05 Lacs.

5.5 The average expenditure on freight and cartage was 3.19% whereas this ratio for the month of March was 7.85% which was held to be on the higher side. Therefore, *lumpsum* addition of Rs.2.50 Lacs was confirmed. The disallowance of Truck expenses for Rs.0.50 Lacs was deleted.

5.6 Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

6. It emerges that the assessee acted as a government contractor and it has not maintained contract wise details being carried out by it. The disallowance of expenses has been made by lower authorities on the ground that the assessee claimed higher expenditure in the last quarter of this year to reduce its profits. The assessee is also not able

to substantiate the expenditure fully. Under these circumstances, the disallowances have been estimated by lower authorities on the basis of ratio analysis which is quite apt under the facts and circumstances of the case. The Ld. AR has urged that the assessee has declared higher net profit rate in this year and therefore, no disallowance is called for. These arguments could not be accepted since the assessee was unable to fully substantiate the expenditure with documentary evidences. However, this fact would be a relevant factor to estimate the impugned disallowances in the hands of the assessee. In this year, the assessee has declared net profit rate of 10.81% whereas net profit rate of 9.8% has been accepted in AY 2003-04. In AY 2006-07, this rate is 9.43%. The rate for AY 2004-05 is 9.64%. In other words, the profit rates in preceding years have been less than 10%.

7. So far as the disallowance of wages is concerned, Ld. AR has stated that the percentage of wage expenditure for this year was 12.20% of total receipts whereas this ratio in AY 2006-07 was 16.35% and in AY 2005-06, it was 14.14% which would show that on overall basis, the assessee has claimed lower expenditure. The Ld. AO has estimated the disallowance on the ground that the ratio of expenditure for the month of March, 2007 was 33.96% of receipts of that month as against lowest rate of 9.12%. The Ld. CIT(A) has noted that the assessee was following mercantile system of accounting and correlation of expenditure with each of the contract was not available. However, the average wage rate for first nine months was 24.18% which would imply that higher wages were debited in later months.

Considering various factors, Ld. CIT(A) upheld *lumpsum* addition of Rs.20 Lacs. We broadly concur with the factual finding of Ld. CIT(A). However, this is only an estimated addition and the fact that the assessee has reflected higher Profit in this year in comparison to earlier years, we restrict the impugned additions to the extent of 10% of Rs.20 Lacs. In other words, the impugned addition stand restricted to the extent of Rs.2 Lacs only. The assessee succeeds partly in its ground of appeal.

8. The disallowance of diesel / LDO expenses was made by Ld. AO considering the rate of 19%. However, as rightly held by Ld. CIT(A), there was no basis for adopting the rate of 19%. The ratio of this expenditure for first nine months was 18.07% whereas the ratio for the last quarter was 47.69%. The Ld. CIT(A) deleted the disallowance of lubricants but upheld disallowance of Rs.10.35 Lacs by confirming rate of 19% against diesel / LDO expenses. Considering the overall improved profit rate of the assessee, we direct Ld. AO to restrict the same to the extent of lump sum addition of Rs.2 Lacs. The assessee succeeds partly in its ground of appeal.

9. The Ld. AO has made addition of Rs.19.92 Lacs on account of crusher sand and *Bajri*. The Ld. CIT(A) partly allowed this ground and confirmed addition of Rs.7.05 Lacs. Applying the preceding analogy, we confirm *lumpsum* addition of Rs.1 Lacs under this head.

10. The lump sum addition of Rs.2.50 Lacs on freight & cartage is quite reasonable. We find no reason to interfere in the adjudication of Ld. CIT(A). No other ground has been urged before us.

12. The appeal stand partly allowed in terms of our above order.

Order pronounced u/r 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(UDAYAN DAS GUPTA)
JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Dated: 10-06-2025

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT AMRITSAR