

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI

BEFORE SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 3222/Del/2019
(Assessment Year: 2015-16)

Sarr Freights Corporation, 1E, Sewak House, Jhandewalan Extn, New Delhi PAN: AACFS9569A (Appellant)	Vs. DCIT, Circle-62(1), New Delhi (Respondent)
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Assessee by :	Shri Ashok Khandelwal, CA
Revenue by:	Ms. Yagya Saini Kakkar, CIT DR

Date of Hearing	05/05/2022
Date of pronouncement	19/05/2022

ORDER

PER ANUBHAV SHARMA, J. M.:

1. The appeal has been preferred by the Assessee against the order dated 15/03/2019 of Ld Commissioner of Income Tax (Appeals)-20, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal No. 10197/2017-18 arising out of an appeal before it against the order dated 15.12.2017 u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') passed by the Id. Assessing Officer, Deputy commissioner of Income Tax, Circle-62(1), New Delhi (hereinafter referred as the Ld. AO).

2. The facts in brief are that the Assessee filed return of income declaring income of Rs. 1,00,43,220/-, which was selected for scrutiny and notice u/s 143(2) followed by notice u/s 142(1) of the Act were issued and based upon verification of the bills, vouchers,

muster-rolls, wage sheets etc the income of the Assessee was recomputed by the Ld. AO as follows:-

<i>Subject to above discussions, the income of the assessee is recomputed as under:</i>		
<i>S.No.</i>	<i>Particulars</i>	<i>(Amount in ?)</i>
	<i>Income as per computation filed by the assessee</i>	<i>1,00,43,220/-</i>
<i>I.</i>	<i>Disallowance on account of Unverifiable Transportation & Truck Operation Expenses</i>	<i>4,00,000/-</i>
<i>II.</i>	<i>Disallowance on account of Travelling Expenses</i>	<i>2,00,000/-</i>
<i>III.</i>	<i>Disallowance out of Salaries & Allowances</i>	<i>1,00,000/-</i>
<i>IV.</i>	<i>Disallowance on account of Business Promotion Expenses</i>	<i>1,00,000/-</i>
<i>V.</i>	<i>Disallowance out of Repair & Maintenance - Vehicle</i>	<i>1,32,363/</i>
<i>VI.</i>	<i>Disallowance on account of Telephone/Mobile Expenses</i>	<i>1,12,674/</i>
	<i>Total disallowance</i>	<i>10,45,037/-</i>
	<i>Total Income</i>	<i>1,10,88,257/-</i>
	<i>Rounded off</i>	<i>1,10,88,260/-</i>

3. In appeal, the Id. First Appellate Authority had deleted the additions of Rs. 4 lakhs on account of unverifiable transportation expenses and truck operation expenses, Rs. 1 lakh on account of salaries and allowances, and Rs. 1 lakh on account of business promotion expenses. However, the remaining additions made by the Ld. AO were sustained.

4. Arguments were heard and record was perused. On behalf of the Assessee it was contended that the Id AO and the Ld CIT(A) have fallen in error in making dis-allowances on ad hoc basis in regard to the expenditure which was specifically explained and were normal business expenses. It was submitted that no dis-allowances can be made unless specific defect is pointed out. It was submitted that dis-allowance were made merely to prevent leakage of revenue and same has no legal foundation. Ld. Counsel submitted that for

Assessment Year 2014-15 and 2013-14 such ad hoc dis-allowances were set aside by the Ld. CIT(A) in Assessee's own case.

5. On the other hand the Ld. DR supported the findings of the tax authorities submitting that the orders are well reasoned.

6. The Assessee has come in appeal before the Tribunal raising following grounds of appeal:-

"1. Action of the CIT(A) in confirming the action of A. O. in making a disallowance of Rs. 2,00,000/- on ad-hoc basis out of Travelling Expenses is unjust, illegal, arbitrary and against the facts and circumstances of the case

2. Action of the CIT(A) in confirming the action of A. O. in making a disallowance of Rs. 1,32,363/- to prevent leakage of revenue out of Vehicle Repair & Maintenance Expenses is unjust, illegal, arbitrary and against the facts and circumstances of the case.

3. Action of the CIT(A) in confirming the action of A. O. in making a disallowance of Rs. 1,12,674/- to prevent leakage of revenue out of Telephone/Mobile Expenses is unjust, illegal, arbitrary and against the facts and circumstances of the case.

4. Action of the CIT(A) in not deleting the levy of interest u/s 234B of I. T. Act 1961 on assessed income is unjust, illegal, arbitrary and against the facts and circumstances of the case."

7. The grounds of appeal raised are taken together for discussion and determination as they are based on same set of facts and legal premises. It can be appreciated that the Ld. Tax Authorities have taken into consideration non-production of details and non maintenance of record indicating that expenses were incurred wholly and exclusively for business and not for benefit of partners and employees.

7.1 Giving a thoughtful consideration to the three heads of disallowances: (i) travelling expenses, (ii) repair and maintenance (vehicle) and (iii) telephone/ mobile expenses. It is apparent that these expenses are ordinary business expenses. They are not alleged to be disproportionate to the revenue generated. Further, if allowed to the extent of 90% for

being incurred wholly and exclusively for business there is no rational to disallow 10% on ad hoc basis. If the Assessee was able to justify 90% of the expenditure then disallowing 10% on ad hoc basis is arbitrary exercise of the statutory powers. In a quite reasonable manner the Id CIT(A) in Assessee's own case for Assessment Year 2014-15 has not sustained such disallowance by relying the judgemnt of Hon'ble Delhi High Court in **Friends Clearing Agency (P) Ltd. Vs. CIT 332 ITR 269**, where ithas held that there is no basis for an ad hoc disallowances. Either it was the case that the evidence was produced or the evidence was not produced.

8. Thus, grounds raised in present appeal are sustained and the appeal is allowed and the Impugned additions are set aside.

Order pronounced in the open court on 19/05/2022.

-Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 19/05/2022
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi