

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2889/Del./2011  
(ASSESSMENT YEAR : 2007-08)**

DCIT, Circle 22 (1), vs. Smt. Roshni Devi,  
New Delhi. B – 63, Okhla Indl. Area Phase I,  
New Delhi – 110 020.

**(PAN : AIQPD6664F)**

**ITA No.5427/Del./2011  
(ASSESSMENT YEAR : 2008-09)**

DCIT, Circle 22 (1), vs. Smt. Roshni Devi,  
New Delhi. B – 63, Okhla Indl. Area Phase I,  
New Delhi – 110 020.

**(PAN : AIQPD6664F)**

**ITA No.3712/Del./2013  
(ASSESSMENT YEAR : 2009-10)**

DCIT, Circle 22 (1), vs. Smt. Roshni Devi,  
New Delhi. B – 63, Okhla Indl. Area Phase I,  
New Delhi – 110 020.

**(PAN : AIQPD6664F)**

**(APPELLANT)**

**(RESPONDENT)**

**ASSESSEE BY : Shri Satish Aggarwal, CA  
REVENUE BY : Shri Anil Kumar Sharma, Senior DR**

Date of Hearing : 20.07.2016

Date of Order : 26.07.2016

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Since identical question of fact and law has been raised in the aforesaid appeals, the same are being disposed off by way of consolidated order to avoid repetition of discussion.

2. The appellant, Deputy Commissioner of Income-tax, Circle 22 (1), New Delhi, by filing the aforesaid appeals, sought to set aside the impugned order dated 11.03.2011, 07.09.2011 and 14.03.2013 passed by Id. Commissioner of Income-tax (Appeals)-XXIII, New Delhi qua the assessment years 2007-08, 2008-09 and 2009-10 respectively on the grounds inter alia that :-

**AY 2007-08**

“1. On the facts and on the circumstances of the case the Ld. CIT (A) has erred in deleting the addition of Rs.6,77,07,368/- made by AO on account of wages paid by the assessee.

2. On the facts and on the circumstances of the case the Ld. CIT (A) has erred in restricted the 10% of expenses of Rs.3,26,33,960/- instead of 10% disallowance of expenses of Rs.98,29,185/- made by AO.

3. The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.”

**AY 2008-09**

“1. On the facts and on the circumstances of the case the Ld. CIT (A) has erred in deleting the addition of Rs.5,46,99,265/-.

2. On the facts and on the circumstances of the case the Ld. CIT (A) has erred in deleting the addition of 10% of expenses made by the AO under the head Staff Welfare, Conveyance & Travelling, Printing & Stationery, Office Repair & Maintenance and Postage.

3. The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.”

### **AY 2009-10**

“1. On the facts and on the circumstances of the case the Ld. CIT (A) has erred in deleting the addition of Rs.6,17,95,105/- made by the AO on account of salary and wages.

2. The appellant craves leave to add, alter or amend any of the grounds of appeal before or during the course of hearing of the appeal.”

2. Briefly stated the facts of this case are : assessee is into the business of fabrication work being provided to various garment manufacturing units. Scrutiny proceedings were initiated during which assessee put into appearance through Shri Brijesh Srivastava, Accountant of the assessee who has filed details and explanations from time to time. Manufacturing units were paying the amount by way of cheques to the assessee which were deposited in various bank accounts of the assessee which was withdrawn in cash and paid the salary and wages to the workers. Assessee has gross receipts of Rs.76.53 crores and shown the

payment to the tune of Rs.68.59 crores as salary and wages having net profit of Rs.27,94,728/- which is about 0.36% of the total receipts. In the balance sheet, assessee has shown closing balance in her capital account at Rs.21,13,000/- and has shown fixed assets at Rs.11,52,000/- and another non-business investments at Rs.38,80,000/- and the major part of the balance sheet pertains to sundry debtors and wages payable. Assessee furnished the explanation to explain the aforesaid queries. Major issues come up for scrutiny before AO is a cash payment of wages to the tune of Rs.68.59 crores during the year under assessment. AO noticed that though the assessee claimed that her workers were keep changing and was not in a position to produce such large number of workers for verification but assessee had shown payment of ESIC and PF in case of some workers but major portion of payment of wages is shown to have been paid to the workers where ESIC and PF were not deducted. AO also noticed that the salary register maintained by the assessee is not bearing thump impression of the payee and thereby rejected results of trading and profit & loss account. As against the turnover of Rs.76.53 crores, assessee shown negligible net profit at 0.36%.

3. From the facts brought on record by the assessee, AO gathered that assessee is not doing the business which she has tried to project through her books of account and consequently rejected the same u/s 145(3) of the Act. AO also came to the conclusion that since the fabrication is done by the manufacturer from their own labour but shown in the name of assessee and as such, the non-payment of wages to the workers cannot be ruled out. Assessee in connivance with manufacturers manipulated the expenditure on account of fabrication for such manufacturing units and own profits by adjusting the cash figures arbitrarily. AO considered the cash payment made to the non-ESIC deducted workers doubtful and consequently disallowed the reasonable and proportionate amount as under :-

Total wages payable as per balance sheet	Rs.68,69,92,456
Total wages payable to the persons where ESI was deducted	Rs.34,74,55,612/-
Total wages shown paid to workers where ESIC has not been deducted	Rs.33,85,36,843/-

On failure of the assessee to substantiate his cash payment on account of wages by evidence and justification, AO worked out an ad hoc amount to the tune of 20% of the wages paid on account of ESIC and PF workers to the following effect :-

“Total cash wages paid to non-ESI workers Rs.33,85,36,843/-  
20% of Rs.33,85,36,843/- comes to Rs.6,77,07,368/- is disallowed  
and added back to the net income of the assessee for the relevant  
assessment year.”

and thereby made an addition of Rs.6,77,07,368/- qua AY 2007-08  
& AY 2009-10 and Rs.5,46,99,265/- qua AY 2008-09.

4. During the assessment year 2007-08, assessee claimed expenses in her P&L account to the tune of Rs.98,29,185/- on account of purchase of consumables, staff / labour welfare, goddown, rent, etc.. Finding the explanation furnished by the assessee not tenable, AO has made an ad hoc disallowance of 10% on the total amount of Rs.98,29,180/- i.e. Rs.9,82,918/- and made an addition thereof to the total income of the assessee.

5. During the AY 2008-09, assessee claimed cash expenses in her P&L account to the tune of Rs.76,53,732/- on account of staff/ labour welfare, conveyance and travelling, festival expenses, etc.. AO disallowed 10% of these expenses for lack of complete books, vouchers and books and thereby made an addition of Rs.7,65,373/-.

6. Assessee carried the matter before the Id. CIT (A) by filing the appeals which have been partly allowed. Feeling aggrieved, the revenue has come up before the Tribunal by way of filing the aforesaid appeals.

7. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. Ld. DR for the revenue challenging the impugned order passed by the Id. CIT (A) relied upon the order passed by the AO. However, on the other hand, Id. AR for the assessee while supporting the impugned order passed by Id. CIT (A) contended inter alia that the assessee is merely a supplier of labour to the garment manufacturing industries on seasonal basis and they being migrant labourer could not be produced before the AO; that the entire addition has been made by the AO on the basis of suspicion which has been rightly deleted by the Id. CIT (A); that in the AY 2010-11 no such addition has been made by the AO as per order dated 26.03.2014; that assessee being a contractor completes most of the jobwork in the premises of the manufacturer and supplies necessary infrastructure except consumable items which accounts for less than 0.5% to the total receipt and all the related activities are completed under the supervision of clients; that the employer is not under obligation to deduct ESIC if gross wage of worker is more than Rs.7,500/-; that total number of workers drawings more

than the exempted limit were 4950 w.e.f. April, 2007 to October, 2007 and in the last three months, it was 5887,6380 and 8940 workers and this information was duly supplied to the AO who has arbitrarily misinterpreted the same; that employer is not under obligation to deduct ESIC and PF if the gross amount and the basic wage does not exceed Rs.10,000/- and Rs.6,5000/- respectively.

**GROUND NO.1 OF ITA No.2889/DEL/2011 (AY 2007-08)**  
**GROUND NO.1 OF ITA No.5427/DEL/2011 (AY 2008-09)**  
**GROUND NO.1 OF ITA No.3712/DEL/2013 (AY 2009-10)**

9. The sole question arises for determination raised vide ground no.1 in all the three appeals is :-

*“as to whether CIT (A) has erred in deleting the additions made by the AO on account of wages paid by the assessee by rejecting books of account u/s 145 of the Act?”*

10. When the aforesaid question is examined in the light of tax audit report, balance sheet and P&L account of assessee, copy of compliance report issued by Provident Fund and ESI authorities, we reach at the conclusion that the AO has merely rejected the books of account on the basis of suspicion and guesswork and there is no illegality or perversity in the findings returned by the Id. CIT (A) vide impugned order for the following reasons :-

- (i) that when undisputedly the assessee has supplied labour to the garment manufacturing units having turnover exceeding Rs.100 crores who have recorded the direct expenses in their manufacturing accounts, there was no material whatsoever with the AO to reach at the conclusion that the assessee has inflated her wages and bogus expenses;
- (ii) that when the AO has duly carried out the cross verification of the expenses shown in the books of account by the assessee with the export houses to whom, the assessee was supplying labour, the AO was required to bring on record the evidence to prove that the payment made by the assessee for providing labour to the export houses has been bogus and inflated. The AO rather recorded in para 3.2 of the assessment order that :-

“The nature of business of the assessee has shown by her and preparation of books of accounts and balance sheet it is rather difficult to rely upon the book results or to entire reject such results of the trading and profit and loss account. The assessee has shown huge turnover at Rs.76.53 crore (roundly) but shown net profit at 0.36% which is very negligible and cannot be relied keeping in view of prudent business practices. In case, 1% of assessee's receipts-are

results in bad debt then assessee may immediately plunged into net losses. Assessee is receiving payment from large industrial units such as Orient Craft Ltd., Pareals Global Ltd. Vishal Megamart and other big names of readymade manufacturing industry. Such large houses cannot rely upon assessee to do the work of fabrication for them who are mainly exporters. As assessee has little financial worth, it is not understandable easily that she is doing business for such large industrial houses. All such factors were kept in mind to draw conclusion from the business activities as shown by the assessee. However certain issues were tried to solve the mystery of business of the assessee.”

and proceeded to declare the balance payment as doubtful and disallowed the ad hoc amount to the tune of 20% of the wages paid on account of non-ESI and PF workers on the basis of estimation;

- (iii) that when the AO has himself admitted the payment shown in the ESIC and PF return and has cross verified the entire payment on account of wages made by the export houses, he has illegality disallowed an ad hoc amount to the tune of 20% of the wages paid on account of non-ESIC and PF workers;
- (iv) that when the Id. CIT (A) during the appellate proceedings have sought the report from the AO on the inspection report issued by ESI / PF authorities,

the AO was required to file his comment thereon but he has not preferred to do so;

- (v) that the Id. CIT (A) having co-terminus powers examined inspection reports issued by ESI / PF authorities regarding the workers / labourers supplied to the export houses by the assessee and has not found any illegally or perversity in the same and have rightly deleted the addition;
- (vi) that had there been any violation of labour law i.e. ESI / PF Act, the same would have been brought on record by ESI / PF Authorities by initiating penal action against the assessee / export houses;
- (vii) that the AO disbelieved the net profit shown at 0.36% of the receipt as claimed by the assessee on the ground that the same is negligible which is not based upon any comparative study brought on record by the assessee;
- (viii) that profit of any business house cannot be disputed on the basis of conjectures and surmises unless sustainable evidence is not brought on record that actual profit is more than claimed by the assessee;

- (ix) that merely because of the fact that the cash is immediately withdrawn from the bank after clearance of cheque, the wage bill cannot be declared as inflated or bogus one because this practice of making payment is an accepted feature. Moreover, in case of contract labourer, payment invariably made immediately after completion of the jobwork;
- (x) that when the assessee has duly explained the deduction on account of ESI and PF which was not to be deducted in case of each and every worker regarding which Inspection Report in the form of Annexure 'E' is available at pages 46 to 49 of the Paper Book filed by the assessee, the general findings returned by the AO that the assessee has inflated the wage bill of the workers whose ESI and PF was not deducted, are not sustainable;
- (xi) that the AO, in such circumstances, was required to point out specifically by discussing each and every case of the worker in the light of the report given by the ESI and PF authorities to declare the wage bill as inflated and bogus;

- (xii) that AO even after cross verifying the books of account, balance sheet, P&L account with the accounts books of export houses to whom labour was being supplied by the assessee has proceeded on the basis of suspicion and estimation to disallow the 20% of the wages paid on account of non-ESI and PF workers as bogus expenditure which is not permissible under law. Because suspicion cannot take the place of proof;
- (xiii) that there is not an iota of material on the file if ESI and PF Department have ever recorded any findings for non-payment of ESI and PF to any of the eligible worker;
- (xiv) that when undisputedly the assessee has made payment in cash to the workers because most of them were contract labourers and it was not plausible to maintain their bank accounts and the assessee has also paid ESI and PF in respect of its eligible worker covered under the Act, the question of inflated / bogus wage bill does not arise;

(xv) that the AO after losing sight of the fact that ESI and PF deduction is not applicable to each and every worker unilaterally came to the conclusion that in case of some of the workers since ESI and PF was not deducted, the assessee has raised bogus wage bills;

(xvi) that the AO has not separately examined both ESI and PF wage bill and non-ESI and PF wage bill to work out the wages paid to non-skilled worker which were outside the purview of ESI and PF Act, rather arbitrarily declared the same as inflated and bogus one.

(xvii) that in the subsequent assessment year 2010-11, no such expenses on account of wages paid by the assessee have been disallowed by the AO as is evident from the assessment order dated 26.03.2014 made available on the record by the assessee.

11. So, in view of what has been discussed above, we hereby affirmed the findings returned by the Id. CIT (A) qua deletion of amount of Rs.6,77,07,368/- for AY 2007-08, Rs.5,46,99,265 for AY 2008-09 and Rs.6,17,95,105/- for AY 2009-10 and thereby determined ground no.1 of all the appeals against the revenue.

**GROUND NO.2 OF ITA No.2889/DEL/2011 (AY 2007-08)**

12. This ground pertains to the addition of Rs.9,82,918/- being 10% of the expenses claimed by the assessee made by the AO on the ground that since the assessee is not into any production / manufacturing, such expenses are not incurred by it and on the ground that to verify the claim of travelling expenses in respect of Shri K.B. Rao the said person was not produced before the AO and disallowed 10% of the expenses on ad hoc basis.

13. Ld. CIT (A) deleted the ad hoc addition made by the AO by returning the following findings :-

“13. The submissions made by the appellant vis-a-vis the basis of disallowance made by the Assessing Officer have been considered. It is apparent that the Assessing Officer has made the disallowance on purely ad hoc basis without going into the facts pertaining to each item of expenditure claimed by the appellant. The Assessing Officer has made the disallowance under the presumption that no input of consequence has been made by the appellant apart from acting as a mediator. However, the perusal of details submitted by the appellant in respect of various expenses shows that the appellant has been actively engaged in the sourcing of labour of various types on behalf of different export houses. The telephone expenses details submitted shows that almost all the payments have been made by cheque for operating 126 cell phones by employees of the assessee, which by itself is evidence enough of actual work being carried out by the appellant. Therefore, there can be no basis for disallowance of any expenses under this head. Further,

the details submitted in respect of printing & stationery reveal that various forms have been printed by the appellant which are used on a regular basis to facilitate various aspects of human resource management being carried out by the assessee on behalf of his clients. Substantial part of these payment have also been made by cheque. In the face of evidence submitted by the appellant, adhoc disallowance to the extent of 10% by the Assessing Officer is deleted. Further, the godown rent has been paid to accommodate workers at the time of their arrival and the Assessing Officer has also not pointed out anything with regard to this expense to merit disallowance of 10%. However, it is seen that there is no detailed explanation with respect to claim of expenses debited under the head purchase of consumables to the tune of Rs.36,33,960/-. All these expenses have been met in cash, therefore, disallowance by the Assessing Officer to the tune of 10% of these expenses is justified and therefore, upheld. As such, addition to the tune of Rs.3,63,396/- is upheld.”

14. Keeping in view the complete details of expenses placed before the AO by the assessee during assessment proceedings qua the expenditure incurred during the year under assessment and the fact that Id. CIT (A) held that almost all the payments have been made by cheque for operating 126 cell phones by the employees of the assessee, ad hoc disallowance to the extent of 10% as made by the AO is not sustainable. However, expenses debited under the head purchase of consumables to the tune of Rs.36,33,960/- and disallowance on the same to the extent of 10% amounting to Rs.3,63,396/- has been upheld by the Id. CIT (A) which is accepted

by the assessee being not pressed. So, ground no.2 is determined against the revenue.

**GROUND NO.2 OF ITA No.5427/DEL/2011 (AY 2008-09)**

15. This ground pertains to the addition of 10% of the other expenses viz. staff welfare, conveyance, festival expenses, printing & stationery, office repair & maintenance, postage & telegram and telephone made by the AO on the ground that the assessee is not into any production / manufacturing and all the workers are working in the premises of its clients, there is no justification for such expenses. However, Id. CIT (A) has deleted all the additions except disallowance of 10% of vehicle maintenance amounting to Rs.1,18,571/- and telephone expenses of Rs.10,95,122/- which has not been disputed by the assessee.

16. Bare perusal of the impugned order passed by the Id. CIT (A) goes to prove that when the assessee is engaged in sourcing of labour both skilled and unskilled to the manufacturing units and assessee has maintained the entire details of the expenses in which no specific defects have been pointed out, the disallowance made by the AO is not sustainable. So far as travelling and conveyance expenses are concerned when the same are incurred by way of cheque and no specific findings have been returned by the AO that

such expenses are not business expenses, disallowance is not sustainable. So, finding no illegality and perversity in the order passed by the Id. CIT (A), this ground is also determined against the revenue.

17. In view of what has been discussed above, all the three appeals filed by the revenue are hereby dismissed.

**Order pronounced in open court on this 26<sup>th</sup> day of July, 2016.**

**Sd/-  
(J.S. REDDY)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 26<sup>th</sup> day of July, 2016  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XXIII, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**