

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "A", KOLKATA

[Before Hon'ble Shri N.V.Vasudevan, JM & Shri M.Balaganesh, AM]

ITA.223/Kol/2013

Assessment Year : **2007-08**

A.C.I.T., Circle-Suri
Birbhum

-versus-

M/s.S.B.Construction
Birbhum

(PAN:ABAFS1504L)

(APPELLANT)

(RESPONDENT)

For the Appellant : Shri Pinaki Mukherjee, JCIT, Sr.DR

For the Respondent : Shri T.P.Kar, FCA

Date of Hearing : 17.02.2016.

Date of Pronouncement : 02.03.2016.

ORDER

Per Shri N.V.Vasudevan, JM

This is an appeal by the Revenue directed against the order dated 29.11.2012 of CIT(A)-Durgapur relating to A.Y.2007-08.

2. Ground No. 1 raised by the Revenue reads as follows:

"1) That on the facts and in the circumstances of the case the Ld. CIT(A) was not justified in deleting the disallowance of Rs. 74,31,156/- made out of 'Labour Charges' in absence or proper supporting evidences."

3. The Assessee is a partnership firm. It is engaged in executing civil construction contracts. For AY 2007-08, the Assessee filed return of income declaring total income of Rs.19,13,142/-. The AO noticed that the Assessee in computing its business income had claimed as a deduction a sum of Rs.3,71,57,835 on account of labour charges and wages. Initially the AO explored the question whether on the payments made as aforesaid Tax at Source ought to be deducted u/s.194C of the Income Tax Act, 1961(Act). He however found that the Assessee was maintaining a muster roll and therefore it was not a case where any payments were made to a contractor for carrying out any work but to workers directly. Therefore the provisions of Sec.194C of the Act were not applicable. Consequently the attempt made by the

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AO to disallow the aforesaid expenses u/s.40(a)(ia) of the Act for non-deduction of tax at source did not materialise.

4. The AO thereafter embarked upon an enquiry as to how the Assessee could muster 1400 workmen required for executing works that were being carried out at different sites without the help of a contractor. According to him it was unbelievable that 1400 workmen would be readily available to carry out construction contracts at various sites spontaneously. According to him it could not be believed that reasonable common man would take a chance whereby he would wait for 1400 workmen to come and report spontaneously for work at various site. According to the AO the Assessee could not explain his conduct. Thereafter the AO observed that the Assessee has not produced any wage-sheet and that the muster roll produced was not complete and was not maintained properly. He thereafter concluded that over booking of expense was a very common phenomenon in the contract business. He accordingly disallowed 20% of the expenses claimed under the head labour charges and wages, resulting in an addition of Rs.74,31,156/- to the total income of the Assessee.

5. On appeal by the Assessee, the CIT(A) deleted the addition made by the AO, observing as follows:

“It is observed that though the A.O. had initially sought to apply the provisions of section 40(a)(ia) to this case, ultimately he has abandoned that and made an estimated disallowance. While doing so the A.O. has observed that the appellant could not produce any wage sheet and muster roll was also not properly maintained. However, the A.O. is seen to contradict himself here. He mentions that the appellant could not produce any wage sheet, but at the same time, mentions that muster roll was produced. Similarly, he has mentioned in the assessment order that no dates were mentioned in the muster roll and at the same time he has mentioned that part of the muster roll pertained to F.Yr.2005-06. These contradictions are evident in the assessment order. It is also noted that no dissatisfaction of the A.O. is noted in the assessment order regarding maintenance of books of accounts by the appellant. Nor has there been any rejection of such books of accounts. In my opinion, the figure of 20% which the A.O. has applied to make his disallowance is entirely arbitrary as no logic for such has been advanced in the assessment order. Neither, it is seen, has the A.O. brought any material on the record to establish his surmise that the appellant has inflated his claim of expenses. It is to be mentioned that the appellant had submitted details of its claims during the appellate proceedings which were duly forwarded to the A.O. by letter No. CIT(A)/ Asl./2011-12/44 dated 29.04.2011. The A.O's report as contained in his letter No.DCIT/CIR-SURI/2011-12/215 submitted on 19.08.2011 is on record. On this issue, the A.O's

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comment is "Labour charges of Rs.74,31,156/- @ 20% of Rs.3,71,57,857/- was added back to net profit u/s. 40(a)(ia) of the I.T.Act. During the course of hearing Sri B. Mukherjee, A/R appeared and produced Muster Roll of different sites regarding payments to labourers. The then A.O. disallowed @ 20% of labour charges instead of 100%. However, as the assessee maintained Muster Roll for payments to labour, the provision of section 194C of the LT. Act is not applicable." No dissatisfaction on the material submitted is seen in the A.O's report. Therefore, it is assumed that on facts the A.O. has no adverse comments to make on the appellant's maintenance of records. The issue of application of section 194C is not relevant here, as discussed earlier, since the disallowance has not been made u/s 40(a)(ia). Under the circumstances, in my view, the disallowance made is not justified. It is directed to be deleted. This ground of appeal is allowed."

6. Aggrieved by the order of the CIT(A), the revenue has raised ground no.1 before the Tribunal. We have heard the submissions of the learned DR who relied on the order of the AO. The learned counsel for the Assessee relied on the order of the CIT(A).

7. We have considered the rival submissions. As rightly held by the CIT(A), the AO has not found any defects in the maintenance of books of accounts by the Assessee. The reference by the AO in the order of assessment about absence of wage-sheet is irrelevant as the muster roll was enough to find whatever details the AO wanted. The reference by the AO in the order of assessment to the defects in the muster roll are vague and the AO has not spelt out his difficulty in finding out any aspect of the genuineness of the claim of the Assessee for deduction on account of labour charges and wages. The provisions of Sec.194C of the Act are not applicable and the AO has accepted this fact in his remand report. In these circumstances, the disallowance made by the AO was rightly held to be based on surmises and conjectures and rightly deleted by the CIT(A). We find no grounds to interfere with the order of the CIT(A). Consequently Gr.No.1 raised by the Revenue is dismissed.

8. Gr.No.2 & 3 raised by the revenue reads as follows:

"2) That on the facts and in the circumstances of the case the ld. CIT(A) was not justified in deleting the disallowance or 'Fooding & Lodging Expenses' which the assessee had not been able to substantiate with supporting evidences."

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3) That on the facts and in the circumstances of the case the Ld. CIT(A) was not correct in law as well as in fact in holding that self-made vouchers were acceptable documents/evidences and that comparison with earlier or subsequent year cannot make a claim for the current year invalid.”

9. The Assessee had claimed as a deduction in computing its business income a sum of Rs.9,76,963/- being expenditure incurred in providing “fooding and lodging”. The Assessee explained that it was provided to office staff, partners who were supervising work and sometimes it was provided to daily wage labourers also as “Khoraki” after completion of the final work. The Assessee explained that there were no hotels near some of the work sites and the staff and partners and workers were provided with meal. A decision was therefore taken to cook meals and hence the aforesaid expenditure were incurred.

9.1. The AO rejected the claim of the Assessee for two reasons (i) that there was no copy of management decision to cook meal that was produced. (ii) In the earlier year and the subsequent year no such expenditure was incurred by the Assessee. The AO disallowed the entire sum and added the same to the total income of the Assessee.

10. On appeal by the Assessee, the CIT(A) deleted the addition made by the AO for the following reasons:

“In this ground the appellant is disputing the A.O's action in disallowing its claim of expenses on providing food and lodging to its labourers. The A.O's case is that the appellant could not submit copy of the decision by the management to provide such amenities and furthermore the accounts of the previous and subsequent year shows that no such expenditure has been incurred. The appellant's case is that it is not mandatory for management to record all decisions taken from time to time and for the purposes of business even an oral decision can be taken and implemented. The appellant has also relied on a number of case laws like (IT v. Gackwar Mills Ltd. (1991) 99 CTR 19; (1992) 193 ITR 734, 738(Guj) and in the case of CIT v. Central India Builders (1987) 61 CTR 203, which states that expenditure incurred by an assessee to provide messing facilities to its employees, which were neither lavish nor extravagant could not be disallowed. In my opinion, the amount claimed as food expenses cannot be called extravagant given the volume of work undertaken by the appellant. The A.O. in his remand report in No. DCIT/CIR-Suri/20 11-12/215 dt. Nil which was received in the office of CIT(A), Asansol, on 19.08.2011 has mentioned that the appellant could not produce any vouchers for these expenses. However, the A.O. appears to have missed the point that these vouchers were attached to the appellant's submission on the basis of which remand report was called for. Admittedly, these are self-made vouchers but then

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for these expenses which are essentially of a petty nature one cannot expect proper bills. It is also seen that the expenditure has been made in rural areas and therefore would entail purchases from locals. Under the circumstances, I do not see how proper bills for expenses would be available in such a case. It is also observed that non-appearance of a debit in the previous year or a subsequent year cannot make a claim for the current year invalid. The appellant is a contractor and has been engaged in the construction of rural roads. As per the assessment order itself a substantial number of labourers have been hired. Given those facts, in my opinion, the amount claimed is not excessive or unjustified. The disallowance made is therefore directed to be deleted. This ground of appeal is allowed.”

11. Aggrieved by the order of the CIT(A), the revenue has raised Gr.No.2 & 3 before the Tribunal. We have heard the submissions of the learned DR who relied on the order of the AO. The learned counsel for the Assessee relied on the order of the CIT(A).

12. We have considered the rival submissions. In our view the order of the CIT(A) does not call for any interference. The Assessee has produced evidencing incurring of these expenses. The fact some of the vouchers were self-made does not render the expenditure in question as not a genuine expenditure. Keeping in mind the nature of Assessee's business which calls for working in remote areas, such deficiencies cannot be said to be fatal calling for disallowance of the entire expenditure. The reason that there was no management resolution for providing food and that in earlier and subsequent years such expenditure was not claimed cannot be conclusive to hold that the expenditure claimed was not genuine. We therefore uphold the order of the CIT(A) and dismiss Gr.No.2 & 3 raised by the Revenue.

13. In the result appeal by the Revenue is dismissed.

Order pronounced in the court on 02.03.2016.

Sd/-
[M.Balaganesh]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Date: 02.03.2016.

R.G.(.P.S.)

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Copy of the order forwarded to:

1. M/s. S.B.Construction, Nabapally, P.O. + P.S.-Rampurhat Birbhum, Pin-7731224.
- 2 The A.C.I.T., Circle-Suri.
3. The CIT-Durgapur. 4. The CIT(A)-Durgapur.
5. DR, Kolkata Benches, Kolkata

True Copy,

By order,

Deputy /Asst. Registrar, ITAT, Kolkata Benches