

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.2901/Del/2014
(Assessment Year: 2010-11)

Phool Singh, 147, Harsukh Apartment, Sec-7, Dwarka, New Delhi PAN:AATPS3016K	Vs.	ACIT, Circle-38(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Sh. Ved Jain, Adv Sh. Ashish Chadha, CA
Revenue by:	Sh. FR Meena, Sr. DR
Date of Hearing	06/04/2017
Date of pronouncement	11/04/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-XXVIII, New Delhi dated 11.10.2013 for the Assessment Year 2010-11.
2. The appeal of the assessee is delayed by 112 days and assessee has moved an application for condonation of delay in filing of the appeal. The reasons given by the assessee is that the office assistant of the applicant Mr. Naresh Kumar on 18.11.2013 received the order of the Id CIT(A) and thereafter, he could not bring it to the notice of the assessee or his counsel. Suddenly, at the time of finalization of the accounts, it was asked about the pending appeal before the Id CIT(A) and during the verification on 02.05.2014, it came to the knowledge of the assessee that appeal has not been filed. The assessee immediately filed the appeal on 09.05.2017 and thereby causing delay of 112 days. The explanation is supported by an affidavit and further it was submitted that the mistake has happened due to inadvertence as well as due to ignorance of importance of documents by the concerned staff of the assessee. Therefore it was pleased that delay caused is inadvertent and unintentional therefore, may be condoned.
3. The Id DR objected to the application of condonation of delay stating that delay caused of 112 days is not explained.

4. We have carefully considered the rival contentions and also gone through the reasons of delay in filing of the appeal. The assessee has given the cogent reason that the order of the Id CIT(A) was inadvertently placed by the office assistant and was traced at the time of finalizing the accounts only. The Hon'ble Supreme Court in Ramnath Sao Vs. Gobardhan Sao AIR 2002 SCC 1201 has held that pedantic and hyper-technical approach should not be taken to defeat the valuable right of the parties to have the decision on merit. No one benefits by causing delay against his own cause or against his own interest. According to us the application for condonation is bona fide and there is sufficient cause shown for the delay. In view of this we allow the application for condonation of delay of the assessee and admit the appeal to be decided on merit.
5. The assessee has raised the following grounds of appeal:-
- “1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.*
 - 2(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.26,57,303/- made by AO on account of purchases made from Suresh Hyp. Enterprises.*
 - (ii) *That the above addition has been confirmed despite the assessee bringing all material evidences and explanation on record to prove the genuineness of the expenditure incurred during the year.*
 - 3(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of AO in making addition of an amount of Rs.25,38,995/- on account of purchases from Suresh Enterprises.*
 - (ii) *That the addition has been confirmed rejecting the detailed explanation and evidences brought on record by the assessee.*
 - 4(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the disallowance of Rs.91,847/7 made by the AO by invoking the provision of Section 14A of the Act. (ii) That the disallowance has been confirmed despite the fact that the assessee has not earned any tax free income during the year.*
 - 5(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in upholding the action of the AO in disallowing a sum of Rs.53,007/- being 10% of the total expenditure incurred on telephone.*
 - (ii) *That the above said disallowance has been confirmed despite the fact that the disallowance made by the AO is adhoc and arbitrary,*

- (iii) That the expenses having been incurred wholly and exclusively for the purpose of business, the learned CIT(A) was not justified in upholding the disallowance of Rs.53,007/- on account of telephone expenses.
- 6 (i) on the facts and circumstances of the case, the learned CIT (A) has erred both on facts and in law in upholding the action of the AO in disallowing a sum of Rs.47,537/- being 10% of the total expenditure incurred on vehicle running and maintenance.
- (ii) That the above said disallowance has been confirmed despite the fact that the disallowance made by the AO is adhoc and arbitrary.
- (iii) That the expenses having been incurred wholly and exclusively for the purpose of business, the learned CIT(A) was not justified in upholding the disallowance of Rs.47,537/- on account of vehicle running and maintenance.
- 7(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in upholding the action of the AO in disallowing a sum of Rs.31,898/- being 10% of the depreciation on vehicles.
- (ii) That the above said disallowance has been confirmed despite the fact that the disallowance made by the AO is adhoc and arbitrary.
- (iii) That the expenses having been incurred wholly and exclusively for the purpose of business, the learned CIT(A) was not justified in upholding the disallowance of Rs.31,898/- on account of depreciation on vehicles,
- (iv) That the disallowance of the depreciation on account of personal use is otherwise untenable in law.
- 8(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in upholding the action of the AO in disallowing a sum of Rs.19,225/- being 10% of the total expenditure incurred on business promotion.
- (ii) That the above said disallowance has been confirmed despite the fact that the disallowance made by the AO is adhoc and arbitrary.
- (iii) That the expenses having been incurred wholly and exclusively for the purpose of business, the learned CIT(A) was not justified in upholding the disallowance of Rs.19,225/- on account of business promotion expenses,
- (iv) That the disallowance made by the AO is otherwise unsustainable in the absence of any instance being pointed out that the expenditure being personal in nature.
- 9(i) On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in upholding the action of the AO in disallowing a sum of Rs.75,885/- being 10% of the total expenditure incurred on conveyance.
- (ii) That the above said disallowance has been confirmed despite the fact that the disallowance made by the AO is adhoc and arbitrary.

- (iii) *That the expenses having been incurred wholly and exclusively for the purpose of business, the learned CIT(A) was not justified in upholding the disallowance of Rs.75,885/- on account of conveyance expenses,*
 - (iv) *That the above disallowance of conveyance expenses incurred during the course of business and by the staff is untenable particularly in the absence of specific instance being pointed out that the expenditure being in personal nature.*
- 10(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in upholding the action of the AO in disallowing a sum of Rs.55,000/- being 10% of the total expenditure incurred on, on site expenses.*
- (ii) *That the above said disallowance has been confirmed despite the fact that the disallowance made by the AO is adhoc and arbitrary.*
 - (iii) *That the expenses having been incurred wholly and exclusively for the purpose of business, the learned CIT(A) was not justified in upholding the disallowance of Rs.55,000/- on account of on site expenses,*
 - (iv) *That the onsite expenses being incurred during the course of business the AO was not justified in making allegation of personal expenses in this regard."*
6. Brief facts of the case is that the assessee is an individual carrying on the business of civil construction and trading of building materials in the name and style of M/s. PS Construction Co. maintaining its books of accounts on mercantile systems of accounting furnished its return of income on 12.10.2010 declaring income of Rs. 14372010/-. The assessment u/s 143(3) of the Act was made on 28.02.2013 wherein, several additions were made and total income was assessed at Rs. 25740197/-. The assessee aggrieved with the order of the AO preferred an appeal before the Id CIT(A), who sustained the additions to some extent and therefore the assessee is in appeal before us.
7. The first ground of appeal is general in nature and therefore same is dismissed.
8. The second ground of appeal is with respect to the addition of Rs. 2657303/- on account of purchases made from Suresh HYP Enterprises amounting to Rs. 3192806/- for the reason that the 133(6) enquiry letter sent to that party came back un served because of incorrect address. The assessee produced copy of account, income tax return and bank statement of the party. On verification of the bank statement Id Assessing Officer found that whenever the cheque is credited in that bank account, cash is immediately withdrawn. The AO was further of the view that account is opened by depositing Rs.1000 and closing balance is also meager. Therefore, the Id

Assessing Officer issued letters u/s 133(6) from the bankers of the party who provided incomplete details. The introducer of the account was found to be assessee. Further, the summons issued u/s 131 was not complied. On appeal, The Id CIT(A) after obtaining the remand report sustained the addition on the same grounds.

9. The Id AR submitted that assessee has submitted the copy of ledger account, income tax return, bank statement, and confirmation of those parties. He further submitted that the party is a regular supplier for many years and in the past the assessment have been made in case of the assessee u/s 143(3) of the Act and purchases and payments have been accepted from these parties. In view of this the disallowance made by the AO and confirmed by the Id CIT(A) is not correct. He further submitted that as the supplier is assessed to tax and further the payments have been made through banking channels after deduction of tax at source the disallowance could not be made.
10. The Id DR vehemently supported the orders of lower authorities and submitted that as the assessee is the introducer of the bank account of the supplier and as the enquires made u/s 133(6) and summons issued u/s 131 of the Act are not complied with, the addition is rightly made.
11. We have carefully considered the rival contentions. The assessee is regularly purchasing material from the above party and in the past the assessment u/s 143(3) were made in case of the assessee wherein purchases from these parties are accepted. The purchases are made from the party through account payee cheques and the proper adequate bills supporting purchases were submitted. The assessee has submitted the confirmed copy of the account from the books of the supplier and also stated that he is assessed to income tax with ITO Ward 25/4 New Delhi. Further regarding the address supplied by the assessee on which notices u/s 133(6) remained unserved, assessee supplied the same address which is also shown in the income tax return of the supplier. Non compliance of summons u/s 131 by the suppliers cannot be the concern of the assessee. It is not the case of the revenue that assessee was asked to produce the supplier. In fact purchases material have been used at various sites. The material for Bill No. 1 was issued at Jaipur Site and similarly, bills with other material have gone to Mathura,

Karuli, Rajgarh, Udaipur and other sites. As the suppliers are separately assessed to tax the issue of the low balance is required to be addressed by them and it cannot be a reason for disallowance of the purchases from that party, as many times purchases are also made from bank borrowers. Furthermore, merely the assessee being the introducer for opening the bank account also do not support the contention of the AO, unless there is some connivance of the assessee is proved in withdrawal of cash from the bank accounts. To verify this Id AO could have obtained these instruments from the bank which he has failed to do. Further, during the course of assessment proceedings, the AO has verified the books of accounts, bills, vouchers, master rolls, bed sheet and logbooks and on such verification, no defect in the books of the assessee was pointed out. The Assessing Officer made the whole addition by pointing out certain lacunas in the bank account of the suppliers of the assessee, which cannot be permitted. Merely because 133(6) notices issued to the party returned un-served though it was the same address, which was supplied by supplier while filing its income tax return, no fault can be put on the shoulder of assessee. Further, the Id CIT(A) confirmed the finding of the Id Assessing Officer without giving any reason but merely reiterating the findings of the Assessing Officer. In view of this the addition made by the Id Assessing Officer of Rs.2657303/- from Suresh HYP Enterprises cannot be sustained and hence, deleted. In the result ground No. 2 of the appeal of the assessee is allowed.

12. Ground No. 3 of the appeal of the assessee is against confirmation of addition of Rs. 2538995/- on account of purchases on Suresh HUP Enterprises. The assessee has debited purchase of Rs. 2073117/- and labour charges of Rs. 465878/- from this party. During the year the assessee paid a sum of Rs. 953564/- after deduction of tax and the Assessing Officer made additions of Rs. 3031479/- which includes opening balance too. The facts relating to this disallowance are identical to the issue decided by us in ground No. 2 of the appeal to which both the parties agreed. In view out decision in ground No. 2 of the appeal wherein on identical facts and circumstances we have deleted the disallowance or addition on account of purchases from Suresh HYP Enterprises we also direct the Id Assessing Officer to delete the disallowance of Rs. 3031479/- on account of purchases from M/s Suresh HYP

Enterprises. In the result ground No. 3 of the appeal of the assessee is allowed. S

13. Ground No. 4 of the appeal of the assessee is against disallowance of Rs. 91847/- u/s 14A of the Act. It was submitted that the assessee has not earned any exempt income during the year. The fact is also verifiable from page no. 2 and 3 of the computation of total income wherein the Id DR could not point out any exempt income. From the profit and loss account of the assessee also it is evident that assessee has not claimed any income under exemption. In view of the decision of the Hon'ble Delhi High Court in Cheminvest Ltd Vs. Cit 378 ITR 33 wherein, it has been held that no disallowance can be made where no exemption is claimed. Therefore, in view of the above decision we direct AO to delete the disallowance of Rs. 91847/- u/s 14A of the Act. In the result ground, No. 4 of the appeal of the assessee is allowed.
14. Ground No. 5 to 10 of the appeal of the assessee are against disallowance of following expenditure on adhoc basis:

S. No.	Nature of expenses	Percentage	Amount of disallowance
1.	Telephone expenses	10	53007/-
2.	Vehicle running and maintenance	10	47537/-
3.	Depreciation on vehicles	10	31898/-
4.	Business promotion	10	19225
5.	Expenditure on conveyance	10	75885/-
6.	On site expenses	10	55000/-

15. The Id Assessing Officer has made above disallowances on adhoc basis and for the reason that there may be personal expenses or not wholly and exclusively incurred for the purposes of the business. The Id CIT(A) has confirmed the above disallowances stating that disallowances are very reasonable and on account of personal expenses or not wholly and exclusively incurred by the assessee for the purposes of business.
16. Ld. A R vehemently contested that neither the AO nor the CIT appeal has pointed out any such instances of such expenses which are been incurred not for the purpose of the business though the full books of accounts,

vouchers bills etc were produced before them. He submitted that ad hoc disallowance without pointing out any instances of such expenses cannot be made.

17. Ld DR supported the order of the lower authority and submitted that instances of personal expenses as well as the expenses for non-business purposes cannot be ruled out and therefore the disallowance has rightly been made.
18. We have carefully considered the rival contentions. Any expenditure which is not supported by proper bills and vouchers or if it is shown that such expenditure has not been incurred wholly and exclusively for the purposes of the business then definitely such expenditure is not allowable u/s 37(1) of the Act; but for making disallowance of any expenditure it is for the revenue to show that such expenditure is personal in nature or incurred for any other object. In absence of any such finding the ad hoc disallowance made specifying certain percentage to which the assessee has not agreed at all is not sustainable. We could not find any instances noted by the Assessing Officer about any of the expenditure, which are not incurred for the purpose of business. Merely because telephone call register is not maintained or vehicle logbook is not available, expenses cannot be disallowed on ad hoc basis when the telephone is installed and used for the purpose of business and vehicles are also owned and used by the assessee for the purpose of business. In view of this the disallowance made by the Id Assessing Officer and confirmed by the Id CIT(A) in ground No. 5 to 10 of the appeal are deleted. In the result ground Nos. 5 to 10 of the appeal of the assessee are allowed.
19. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 11/04/2017.

-Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 11/04/2017
A K Keot

Copy forwarded to

1. Applicant

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

ASSISTANT REGISTRAR
ITAT, New Delhi