

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C': NEW DELHI**

**BEFORE,
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.7209/Del/2018
(ASSESSMENT YEAR-2013-14)**

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| Kartar Singh Chouhan 107, Amrit Kaur Market Phar Ganj New Delhi-110 055 PAN-AKMPC 3558P (Appellant) | Vs. | Income Tax Officer Ward-62(5) New Delhi (Respondent) |
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|---------------|----------------------------------|
| Appellant by | None |
| Respondent by | Sh. Sandeep Kumar Mishra, Sr- DR |

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| Date of Hearing | 16/10/2023 |
| Date of Pronouncement | 26/10/2023 |

ORDER

PER YOGESH KUMAR U.S., JM:

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-20, New Delhi ["Ld. CIT(A)", for short], dated 31/08/2018 for Assessment Year 2013-14.

2. Grounds taken in this appeal are as under:

"1. The order of assessing officer is bad in law and against the facts of the case.

2 The CIT (A) has wrongly confirmed the some disallowance and additions made by AO.

3 The CIT (A) has wrongly confirmed disallowance of Rs. 12.00 Lac under the head Salaries which needs to be allowed.

4. *The CIT (A) has wrongly confirmed disallowance of Rs. 10.00 Lac under the head Wages which needs to be allowed.*

5. *The CIT (A) has wrongly confirmed addition of Rs 404300/- because of Low Drawings which needs to be deleted.*

6. *The CIT (A) has wrongly confirmed action of AO for not allowing deduction u/s 80C of Rs 1.00 Lac which needs to be allowed.*

7. *The CIT (A) has wrongly confirmed @20% of disallowance under the head Salary, Daily Allowance and Festival Expenses & @10% of other expenses under the head of Telephone, Vehicle. General, Travelling, Business Promotion, Staff Labour Cost of Uniform which needs to be allowed.*

8. *That appellant reserves its right to add/delete/amend/rectify any of the ground of appeal mentioned above before the hearing and during course of hearing.”*

3. None appeared for the assessee even after serving several notices to the registered address of the assessee. The assessee also engaged the service of Chartered Accountant who has filed the power of attorney, but both the Assessee as well as the representative of the Assessee remained absent before the Tribunal, therefore, we are compelled to decide the captioned appeal on hearing the Ld. Departmental Representative and after perusing the material available on record.

4. Brief facts of the case are that, the assessee who takes the parking sites on auction from Delhi Government, filed return of income declaring income at Rs. 5,63,595/- for the Assessment Year 2012-13. The case of the assessee was selected through CASS. On perusal of the balance sheet and the profit & loss A/c of the assessee, it was found that the assessee has shown net profit of Rs. 6,38,649/- as against gross total receipt of Rs. 5,42,36,584/-which included

interest of Rs. 5,84,348/-, thus, the assessee had shown only Rs. 54,301/- net profit on the parking receipt of Rs. 5,36,52,236/- showing only 0.1% net profit on the gross parking receipts. On perusal of P & L Account of the assessee and the list of employees provided by the assessee, it was found by the A.O. that the assessee made arrangement of cash income/adjustment to suppress his profitability, accordingly, the assessment order came to be passed on 30/03/2016 by making assessment of the income at Rs. 89,29,310/- by making various additions/disallowances.

5. As against the assessment order dated 30/03/2016, the assessee preferred an appeal before the CIT(A), the Ld. CIT(A) vide order dated 31/08/2018, restricted the disallowance made by the A.O. under the head of salary from 25,28,872/- to 12,00,000/-, restricted the disallowance made under the head of wages of Rs. 22,91,791/- to Rs. 10,00,000/- and also granted the partial reliefs on other disallowances. Aggrieved by the order of the CIT(A) dated 31/08/2018 the assessee preferred the present Appeal on the grounds mentioned above.

6. Ground No. 1 & 2 are general in nature which requires no adjudication. Ground No. 3 & 4 are regarding disallowance of Rs. 12,00,000/- under the head of salary and Rs. 10,00,000/- under the head of wages claimed by the assessee. As per the Ground No. 3 & 4 of the assessee, the CIT (A) wrongly confirmed/ restricted the above disallowances.

7. The Ld. Departmental Representative relying on the assessment order and the order of the CIT (A) submitted that the Ground No. 3 & 4 are meritless and the same are deserves to be dismissed.

8. We have heard the Ld. Departmental Representative and perused the material available on record. During the assessment proceedings, the A.O. found that the assessee shown net profit of Rs. 6,38,649/- against the gross total receipt of Rs. 5,42,36,584/- which includes interest of Rs. 5,84,348/- on FDR, thus, shown only Rs. 54,301/- net profit on the total receipt of Rs. 5,36,52,236/-, thereby shown only 0.1% net profit on the gross parking receipts. The assessee debited Rs. 50,57,744/- under the head of salary and Rs. 45,83,581/- and under the head of wages. The Ld. A.O. found that the assessee is paying almost 24% of gross receipt on salary and wages. The assessee was asked to furnish the details of employees, their attendance register, payment schedules and proof of payment. On verifying the list of employees provided by the assessee, the A.O. found that the assessee is paying the maximum employees more salary than maximum taxable income and also found that the assessee is paying more than 20,000/- per month to 12 employees found that the assessee has shown two payments of less than 20,000/- twice in every month. Since the payment of salary twice in a month is impractical and the same is found be arrangement of cash income-adjustment made by the assessee to suppress the profitability. In the absence of any concrete evidence regarding the payment made on account of

salary/wages and bonus and in the absence of producing complete books of account with supporting vouchers/bills and considering the violation of ESI/PF registration, though the assessee claiming into have more than 40 employees and workers are working under him, the A.O observed that actual expenses claim on account of salary and wages are not verifiable and quite irrational and by denying excess and fictitious claim, 50% on the expenses of salary and wages have been disallowed and added back to the income of the assessee.

9. Aggrieved by the said additions, the assessee preferred Appeal before the CIT(A), the Ld. CIT(A) while deciding the issue held as under:-

“6.2. Ground No. 5 & 6

6.2.1 In ground no. 5 of the appeal the appellant had challenged the addition made by the AO of Rs. 25,28,872/- i.e. 50% of the salary paid and in ground no.6 the appellant has challenged the addition made by the AO of Rs. 22,91,791/- i.e. 50% of the total wages paid. The AO has discussed in a great length that the appellant has failed to produce books of accounts during the course of assessment proceedings and if income from other source of Rs.5,84,348/- is excluded from the gross receipt, the business income shown by the appellant is only of Rs.54,301/- on the gross receipt of Rs. 5,36,52,236/- which is only 0.1% of the net profits. The appellant deals with the business of contract of parking receipt. The AO has discussed in detail the discrepancies in claiming such huge expense of salary and wages which is summarized as under:-

- ❖ The details of eighteen employees was produced by the appellant*
- ❖ No TDS on salary was made for any employee.*

- ❖ *The salary payment made to twelve employees more than 20,000/- was in cash violating the provision of Section 40A(3).*
- ❖ *The books of accounts and supporting bills and vouchers could not be produced before the Assessing Officer.*
- ❖ *The attendance register could not be produced by the appellant.*
- ❖ *The appellant was not having any PF/ESI registration number despite the fact that forty employees and workers are claimed to have been working under him.*
- ❖ *Presuming that they are skilled and graduate minimum wages rate was calculated by the Assessing Officer of Rs.20,72,304/- instead of Rs. 50,57,744/- as claimed by the appellant.*
- ❖ *Similarly, for wages the AO has mentioned the following discrepancies.*
- ❖ *Address & ID proof of the workers could not be produced.*
- ❖ *The details of twenty two workers was produced by the appellant*
- ❖ *Appellant was working on different locations at four sites but attendance register of all the workers was common which was humanly impossible to sign at one place.*
- ❖ *The appellant was not having any PF/ESI registration number despite the fact that forty employees and workers are claimed to have been working under him.*
- ❖ *The rate of unskilled workers at parking sites as per minimum wages Act is Rs.19,15,056/- for twenty two workers against the claim made by the appellant of Rs.45,83,581/-.*

6.2.2 *The appellant, on the other hand has claimed in the written submission mentioned supra in para 5 that the AO have not disputed the genuineness of the expenditure claimed but made the disallowance to curb the possible revenue loss and filed many*

decisions in his favour in support of the ad-hoc disallowances which is made.

6.2.3 The appellant has also claimed that the ledger account of salary, bonus and staff fooding and boarding was produced before the AO. Similarly, for wages the appellant has claimed that identity proof of twelve workers were produced and there is no valid basis for disallowance on this account. Further, the appellant has also claimed that default under no other Act can be a ground to suggest that there is a default under Income Tax Act also.

6.2.4 The contention of the Assessing Officer and the submission of the appellant has been considered and it is gathered that the appellant could not produce the books of accounts and other supporting evidences and has failed to produce this during the course of assessment proceedings despite given sufficient opportunities. The AO has given a valid and reasonable ground for making disallowance under the head salary and wages. The net profits shown by the appellant is very low and such type of work is given on contract basis where certain ratio of profit is shown by the appellant before obtaining such tender which is not less than 10%. However, the appellant could not give any justification that why there is such a low profit in this contract business. Even during the course of appellate proceedings, these evidences could not be produced by the appellant. In the written submission also, in support of all the expenses the appellant has claimed that it is supported by P & L account. Once the case of the appellant is selected in scrutiny, the appellant is duty bound to produce his books of accounts and supporting evidences before the AO in support of the claim of the 'Return of Income. The onus is on the

appellant to support such a low profit shown in the 'Return' of income and not on the AO, who has given a good reasoning for making disallowance under these heads. The details submitted by the appellant under the head salary and wages have already been considered.

6.2.5 However, I find merit in the submission of the appellant that Assessing Officer has taken minimum wages rate even for the employees and rate of unskilled workers for wages. Considering the disallowances made by the Assessing Officer, the net profit of the appellant's business has been taken by the Assessing Officer of Rs.83,44,962/- (8929310 - 584348) after reducing the interest on FDR which is @15.55% on the gross receipt of Rs.5,36,52,236/- /which is excessive. Hence, in the interest of justice, the disallowance made by the Assessing Officer of Rs.25,28,872/- and Rs.22,91,791/- under the head 'salary and 'wages' respectively is restricted to Rs.12,00,000/- and Rs.10,00,000/- respectively. Even after confirming such disallowance including the disallowance made in ground no. 9 of Rs.14,39,114/-, the net profit of the appellant comes to Rs.36,39,114/- which is @6.78% of the gross receipt of Rs.5,36,52,236/- and is reasonable considering the business of the appellant.”

10. The assessee has not produced books of account and other supporting evidence before the A.O. or CIT(A) to substantiate the expenses claimed under the head of salary and wages. It is the duty of the assessee to produce his books of account and supporting evidence before the A.O. to substantiate the claim of the returned income, it is for the assessee to produce cogent evidence in support of low profit shown in the return of income, failing which the A.O. is

the duty bound to make the disallowance. The Ld. CIT(A) by taking into consideration that the net profit of the Assessee's business has been taken by the A.O. of Rs. 83,44,963/- (Rs.89,29,310/- - 5,84,388/-) after deducting the interest on FDR which is at 15.55% on the gross receipt of Rs. 5,36,52,236/- which is held to be excessive, therefore, rightly restricted the disallowance made by the A.O. under the head of salary from 25,28,872/- to 12,00,000/- and disallowance made under the head of wages of Rs. 22,91,791/- to Rs. 10,00,000/-. In our considered opinion, the order of the CIT(A) does not suffer from any infirmity and we find no merit in Ground No. 3 & 4 of the assessee, accordingly, Ground No. 3 & 4 of the assessee are dismissed.

11. Ground No. 5 is regarding addition of Rs. 4,04,300/- on account of low Drawings. During the assessment proceedings it is found that the assessee had shown withdrawal of Rs. 2,55,700/- for house hold expenses. Considering the reply filed by the assessee, the A.O. found that the same is not tenable as the assessee had three children and two are studying, the maximum cost of school fee/college fee/tuition fee and other study related expenses is approximately Rs. 7,500/- per month to a child and living cost in a city like Delhi for a family consist of four members will be approximately 40,000/- per month, the total minimum household withdrawals worked by the A.O. to Rs. 6,60,000/-. Since the assessee received major cash in his business, the A.O. was of the opinion that the assessee used the unaccounted cash for household withdrawal. Therefore, difference amount of Rs. 4,04,300/-(6,60,000/- -

2,55,700/-) on account of undisclosed household expenses has been added back to the income of the assessee. The ld. CIT(A) confirmed the addition made by the A.O. It is found that the Ld. A.O. while making the above disallowance considered the various facts such as cost of school fee/college fee/tuition fee, other study related expenses per child, minimum cost of moderate standard of living in a city life Delhi for a family consist of four members and estimated at Rs. 40,000/- per month which is just in the facts and circumstances of the case, therefore we find no merit in the Ground No. 5 of the assessee.

12. Ground No. 6 is regarding deduction u/s 80C of Rs. 1,00,000/-. The Ld. A.O. made addition of Rs. 1,00,000/- u/s 80C of the Act as the assessee has not furnished any evidence. Even during the appellate proceedings the assessee has not produced any evidence in support of claim of deduction u/s 80C of the Act, the A.O. found that the assessee has made a wrong claim, accordingly rejected the claim made u/s 80C of the Act which has been upheld by the CIT(A).

13. Considering the fact that the assessee had claimed the deduction u/s 80C of the Act, but not produced any iota of document to substantiate his claim, the A.O. rightly made the addition which has been confirmed by the CIT(A), thus we find no merit in Ground No. 6 of the assessee, accordingly, the Ground No. 6 of the Assessee is dismissed.

14. Ground No. 7 is regarding disallowing at 20% under the head of salary, daily allowance and festival expenses and disallowance of 10% of other expenses under the head of telephone, vehicle, general, travelling, business, promotion, staff labor cost of uniform. During the assessment proceedings, the assessee was asked to produce the complete books of accounts, documents with supporting vouchers and bills to substantiate the claim by the assessee has not produced the books of account and in the absence of books of accounts, the assessee had debited his profit and loss account on following expenses:-

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| <i>Telephone Expense</i> | Rs. 83,255/- |
| <i>Vehicle Running & Maintenance</i> | Rs. 71,540/- |
| <i>General Expense</i> | Rs. 29,512/- |
| <i>Travelling & Conveyance Expense</i> | Rs. 1,88,751/- |
| <i>Business Promotion Exp.</i> | Rs. 58,650/- |
| <i>Staff and Labour Welfare</i> | Rs. 3,02,750/- |
| <i>Cost of Uniform</i> | Rs. 78,145/- |
| <i>Festival celebration expense</i> | Rs. 6,25,151/- |
| <i>Daily allowance</i> | Rs. 17,38,600/- |
| <i>Establishment expense</i> | Rs. 44,25,526/- |

15. Though the assessee claimed that the above expenses have been incurred for the purpose of business, but could not produce the books of accounts and supporting bills and vouchers, therefore, 40% of the above expenses i.e. Rs. 30,40,752/- has been added to the income of the assessee due to non verification of expenses. In the Appeal before the CIT(A), the Id. CIT(A) in the facts and circumstances, the expenses deducted under the daily

allowances, festival celebration expenses and establishment expenses have been confirmed to the extent of 20% and further the remaining expenses under the head of telephone expenses, vehicle running and maintenance, general expenses, travelling and conveyance expenses, business promotion, staff and Labour welfare and cost uniform expenses have been restricted at 10% of the expenses. In our considered opinion, the said action of the CIT(A) is reasonable and the same is neither excessive nor erroneous considering the turnover of the assessee. Accordingly, we find no merit in the Ground No. 7 of the assessee.

16. In the result, the Appeal filed by the Assessee is dismissed.

Order pronounced in open Court on 26th October, 2023.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Dated: 26/10/2023

Pk/R.N, Sr.ps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI