

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C', NEW DELHI
BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 4084/Del/2016
Assessment Year: 2012-13

INDIAN GEOTECHNICAL SERVICES,
C-91, G.F. SHIVALIK, MALVIYA NAGAR,
NEW DELHI - 110 017
(PAN: AAAF12029M)

VS. ACIT, CIRCLE-62(1)
NEW DELHI

(APPELLANT)

(RESPONDENT)

Assessee by : Sh. B.K. Anand, CA.
Revenue by : Sh. Amit Katoch, Sr. DR.

ORDER

PER H.S. SIDHU, JM

The Assessee has filed the Appeal against the Order dated 17.5.2016 of the Ld. CIT(A)-20, New Delhi pertaining to assessment year 2012-13 on the following grounds:-

1. That on the facts and in the circumstances of the case the Ld. CIT(A) erred in confirming the disallowance out of expenses claimed under the heads Site Expenses (Rs. 5.00 lakhs) and Consumable (Rs. 3.00 lakhs).
2. That on the facts and in the circumstances of the case the Ld. CIT(A) erred in confirming the addition of Rs. 3,18,279/- u/s. 68 of the Act being the difference as per the accounts of the assessee and the amounts on which TDS had been deducted by the parties as per Form 26AS, the authenticity of which the assessee had no access.
3. That the orders of the Ld. authorities below being contrary the facts and circumstances of the case and in law the appeal be allowed.

2. The brief facts of the case are that the assessee filed his return of income on 20.9.2012 declaring income at Rs. 51,98,820/- and later the case of the assessee was selected for scrutiny and notice u/s. 143(2) of the Income Tax Act, 1961 (in short "Act") was issued on 6.8.2013. Again notices u/s. 142(1) of the Act alongwith detailed questionnaire were issued to the assessee. In response to the same, the AR for the assessee attended the assessment proceedings and filed the details. The assessee was asked vide order sheet entry dated 5.3.2015 to clarify the differences on the addition on account of undisclosed income and in response to the same, assessee submitted the letter dated 5.3.2015 and 9.3.2015 and the relies of the assessee was considered by the AO but not accepted because the assessee failed to provide the copy of ledger a/c of the parties and also the TDS deducted and claimed was not clarified with documentary proof. Hence, the AO added the difference of Rs. 3,18,279/- to the income of the assessee as undisclosed income. AO further observed that due to non-production of vouchers, he made the adhoc disallowance of Rs. 5 lacs on account of unverifiable purchases to cover up any possible leakage of revenue on disallowance out of site expenses and also made adhoc addition of Rs. 3 lakhs on account of disallowance out of consumables on the same reason and also made various additions by assessing the income of the assessee at Rs. 79,60,220/- u/s. 143(3) of the Act vide order dated 16.3.2015. Aggrieved with above disallowances the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 17.5.2016 has partly allowed the appeal of the assessee, but

confirmed some of the additions. Against the impugned order dated 17.5.2016, assessee is in appeal before us.

3. During the hearing, Ld. counsel for the assessee has stated that Ld. CIT(A) has wrongly confirmed the disallowance out of expenses claimed under the heads Site Expenses (Rs. 5.00 lakhs) and Consumable (Rs. 3.00 lakhs). He further submitted that Ld. CIT(A) also wrongly confirming the addition of Rs. 3,18,279/- u/s. 68 of the Act being the difference as per the accounts of the assessee and the amounts on which TDS had been deducted by the parties as per Form 26AS, the authenticity of which the assessee had no access. In support of his contention, he filed a small Paper Book containing pages 1-51 i.e copy of letter to CIT(A) with enclosures i.e. copy of balance sheet and accounts for the year ended 31.3.2012; copy of ledger account and bill raised on Pratiba Industries; copy of ledger account and bills raised on Pratiba Cfrg Venture; copy of ledger account of L&T ECCD Division and Bills raised and copy of Form 26AS relating to Assessment year 2012-13 and also relied upon the decision of the Hon'ble High Court of Punjab and Haryana in the case of CIT, Faridabad vs. SSP (P) Ltd. in ITA No. 535 of 2010 dated 20.7.2011.

4. On the other hand, Ld. DR relied upon the orders of the authorities below and stated that they have passed well reasoned orders, which do not need any interference and needs to be upheld.

5. We have heard both the parties and perused the records especially the impugned order and the rival submissions and the case law cited by the Ld. AR for the assessee. As regards disallowance of site expenses and consumables are concerned, it is noted that some of the vouchers in claim of the expenditures were missing. However, as per Section 37 of the Act, the deduction is allowed when the expenditure is incurred wholly and exclusively for the purpose of business / profession. The primary onus of proving such expense are incurred wholly and exclusively for the purpose of the business lies on the assessee. In this case some of the bills/ vouchers were not produced during the assessment proceedings. Therefore, the AO is justified in disallowing a fraction of these expenditures for want of proper verification. Hence, the case law cited by the Ld. Counsel for the assessee are on distinguished facts. It is further noted that AO has only disallowed Rs. 5 lacs out of Rs. 2.10 crore claimed as site expenses and Rs. 3 lakhs out of Rs. 1.24 crore claimed as expenses on account of consumables, hence, the amount of disallowances are quite justified and accordingly, the Ld. CIT(A) has correctly confirmed the additions on these counts, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on these additions and accordingly, the ground no. 1 raised by the assessee stand dismissed.

5.1 As regards addition of Rs. 3,18,279/- u/s. 68 of the Act is concerned, we find that this addition relates to differences in the receipts declared by the assessee and the receipts shown in Form 26AS in mainly

on account of mobilization advance which is taken into receipts as and when settled. However, the assessee has not filed any such details. In absence of proper reconciliation, the AO was justified in making the addition on account of difference as compared to the Form 26AS. Accordingly, Ld. CIT(A) has rightly did not interfere in the findings of the AO and upheld his action by dismissing the issue raised by the Assessee before him. In our considered opinion, the action of the Ld. CIT(A) in confirming the addition in dispute does not require any interference, on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 2 raised by the Assessee.

6. In the result, the Appeal of the Assessee is dismissed.

Order pronounced on 20-03-2019.

Sd/-

**[L.P. SAHU]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 20/03/2019

SRBhatnagar

Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4.CIT (A) 5. DR, ITAT

By Order,

Assistant Registrar, ITAT, Delhi Benches