

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 03/Ahd/2021
Assessment Year 2014-15**

The ITO, Ward-6(1)(1), Ahmedabad (Appellant)	Vs	Shri Umed Meghraj Jain, 201, Shyamgunathirth Flat, Gurudev Society, Nr. Ratilal Hall, Bhairavnath Road, Maninagar, Ahmedabad-380008 PAN: ADIPJ511B (Respondent)
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Assessee by: Shri Dhinal Shah, A.R.

Revenue by: Shri Akhilendra Pratap Yadav, CIT-D.R.

Date of hearing : 05-10-2023

Date of pronouncement : 06-12-2023

आदेश/ORDER

PER : T. R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This is appeal filed by the Revenue against the appellate order dated 21-09-2020 passed by Commissioner of Income Tax (Appeals)-VI, Ahmedabad arising out of the ex-parte assessment order passed under section 144 r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred as the Act) relating to the A.Y. 2014-15.

2. The Registry has noted that there is a delay of 23 days in filing the above appeal. This appeal was filed by the assessee on 04.01.2021. This period falls under COVID-19 Pandemic situation, thus following Hon'ble Supreme Court judgment dated 23.9.2021 in M. A. No. 665 of 2021 in suo-moto Writ Petition (Civil) No.3 of 2020, the Hon'ble Supreme Court has excluded time limit for filing appeal from 15.3.2020 till 02.10.2021. Thus, there is no delay in filing the above appeal and we take up the Revenue appeal for adjudication.

3. The brief facts of the cases, the assessee is an individual and proprietor of Shri Maruti Travels and Shreeji Roadlines engaged in the transport business. For the assessment year 2014-15, the assessee filed his return of income declaring total income on 2,60,630/-. The return was taken for scrutiny assessment and notices of hearing given on seven occasions. However, the assessee failed to comply with any of the notices thereby the Assessing Officer passed an ex-parte assessment order making various additions and disallowances.

4. Aggrieved against the same, the assessee filed an appeal before CIT(A), wherein he filed additional evidences under Rule 46A of the Income Tax Rules. The CIT(A) called for a remand report from the Assessing Officer and verifying the same deleted the various additions made by the Assessing Officer. Aggrieved against the appellate order, Revenue is in appeal before us.

5. Heard rival contentions and perused the materials available on record including the paper book filed by the assessee which is running to 240 pages and also additional information furnished before CIT(A) running to 143 pages. By and large, the additions and disallowances made by the A.O., since the assessee has not co-operated in the assessment proceedings by not responding to the seven notices issued. During the appellate proceedings, the assessee filed all the necessary documents by invoking Rule 46A of the IT Rules. In the remand report, the Assessing Officer after verification of the documents accepted the claim of the assessee, thereby deleted the additions. The ld. CIT-D.R. appearing for the Revenue could not contravene the findings of the Assessing Officer in the remand report and also could not find fault with the findings arrived by the CIT(A). In other words the Revenue is not really aggrieved against this impugned appellate order.

6. We deal with each ground raised by the Revenue as follows:-

Ground No. 1 *The CIT(A) has erred in law and on facts in deleting the addition of total unsecured loan amounting to Rs. 1,68,00,000/- received from Jigar Transport Co. for an amount of Rs.31,50,000/- Ashram Travels of Rs.1,34,00,000/- and Hiraben Patel of Rs.2,50,000/- treated as unexplained u/s.68 of the I.T. Act.*

6.1 The Assessing Officer in his remand report accepted the contentions of the assessee as under:-

"I have perused the submission of the assessee. The assessee has now submitted the confirmation a/cs. and copy of PAN card in respect of the loans obtained during the year. In respect of loans obtained from Jigar Transport Co.

and Hiraben Patel, it is seen that the same are squared up a/cs. during the year. In respect of loans obtained from Arham Travels, it is seen that there is closing balance of Rs.63,16,126/-. The assessee has filed confirmation a/cs. along with the list of unsecured loans with copy of accounts as per books also.

The assessee during the course of remand proceedings, also filed copy of ITR and bank a/c, statements of the lenders so as to verify the creditworthiness of the lenders.

Therefore, in view of that the assessee has now filed necessary details/documents which establish the identity, credit worthiness and genuineness of the creditor, the source of credit in the books of account of the assessee credited from the above mentioned parties has now been explained."

6.2 Since the Assessing Officer has accepted that the assessee established the identity, creditworthiness and genuineness of the creditors, the additions made by him is liable to be deleted. This ground no. 1 raised by the Revenue is hereby dismissed.

Ground No. 2 *The CIT(A) has erred in law and on facts in deleting the addition of Rs.1,73,49,658/- made on account of disallowance of depreciation of vehicles.*

6.3 The remand report of the Assessing Officer on the above ground is as follows:

"I have perused the submission of the assessee. The assessee has filed copy of ledger a/c. for buses and motor car purchased. The assessee has also filed working of depreciation claimed. Further, it is seen that the assessee has now during the course of remand proceedings also, submitted copy of bills and RTO registration certificates for such addition made to fixed assets. The audit report shows the main business of the assessee as transport business in the name of his proprietary concern i.e. Shri Maruti Travels and Shriji Roadlines, plying the city buses in Rajkot city under the contract of Rajkot Municipal Coporation (RMC). On detailed verification of RTO registration certificates, it is seen that the same has been registered as city bus under the name of assessee's proprietary concern i.e. M/s. Maruti Travels. Keeping in view the nature of business undertaken and the revenue offered and the details and documents filed, it is seen that the vehicles purchased were used as commercial vehicle.

Therefore, from the details and documents filed now, the depreciation claimed 30% on buses and motor car and that is for plying in transport business is verifiable."

6.4 Since the Assessing Officer is satisfied that the vehicles were purchased by the assessee and used for commercial purposes thereby justified the depreciation claimed by the assessee. Therefore, this ground raised by the Revenue is hereby dismissed.

Ground No. 3 *The CIT(A) has erred in law and on facts in deleting the disallowance of Rs.1,45,02,235/- for expenses claimed out of expenses of Rs.9,66,81,568/- in the P & L account towards fuel charges, cleaning wages, greasing etc.*

6.5 During the Remand proceedings, the Assessing Officer has accepted the expenses claimed by the assessee in his report as follows:-

"On perusal, it is seen that in respect of purchases, the assessee has filed some of vouchers/bills. In respect of salary expenses, the assessee has filed copy of salary register for the months of May, 2013 and Jan., 2014 along with ledger a/c of unpaid salary and bonus expenses showing payment made in April, 2014. On detailed verification, it is seen that the salary register shows the details of employee such as name of driver and vehicle number and the signature of the recipient on the revenue stamp. Thus, on test check of such vouchers/bills/register filed by the assessee and considering the turnover and the nature of business activities undertaken by the assessee, the said expenses are found to be verifiable."

6.6 The Assessing Officer made detailed verification of the expenses, satisfied with the salary register details of employees, salary vouchers, bills and satisfied with the expenses claimed by the assessee. Therefore the disallowances made by the A.O. is hereby deleted and the ground no. 3 filed by the Revenue is hereby dismissed.

Ground No. 4 *The CIT(A) has erred in law and on facts in deleting the disallowance u/s. 37 of the I.T. Act for the expenses claimed of Rs.46,340/- in the P & L account towards telephone, staff welfare, office uniform expenses etc.*

6.7 The Assessing Officer made adhoc disallowances of 15% on the expenses of Rs. 3,08,936/-. However, during the remand proceedings the A.O. was satisfied after verification of the sample telephone bills and supporting vouchers for office expenses, uniform expenses. Therefore, the addition made by the A.O. is liable to be deleted and this ground no. 4 raised by the Revenue is hereby dismissed.

Ground No. 5 *The CIT(A) has erred in law and on facts in deleting the disallowance of sundry creditors of Rs.73,12,133/- u/s. 41(1) of the I.T. Act.*

6.8 On this issue, the findings of the Id. CIT(A) is as follows:

13.4 During the appeal proceedings submitted only the ledger accounts of sundry creditors. The AO in his remand report submitted that the assessee during remand proceedings filed party-wise details of amount outstanding shown in the balance sheet. The assessee submitted ledger a/c. showing name, address, Ph. No., PAN details, etc. with contra a/cs from the parties concerned to verify the genuineness of the transactions with the creditors. The assessee has filed confirmation a/c. along with the list of creditors with copy of accounts as per books The AO further submitted that the assessee filed necessary details/documents to establish the identity, credit worthiness and genuineness of the creditor.

6.9 We do not find any infirmity in the order passed by the Id. CIT(A) deleting the alone addition made u/s. 41(1) of the Act. Thus, this ground raised by the Revenue is hereby dismissed.

Ground No. 6 *The CIT(A) has erred in law and on facts in deleting the disallowance under section 28 of the I.T. Act for unpaid salary of Rs.2,77,56,533/-.*

6.10 The Assessing Officer in his remand report accepted the expenses claimed by the assessee as follows:

"On perusal, it is seen that in respect of purchases, the assessee has filed some of vouchers/bills. In respect of salary expenses, the assessee has filed copy of salary register for the months of May, 201 and Jan., 2014 along with ledger a/c. of unpaid salary and bonus expenses showing payment made in April, 2014. On detailed verification, it is seen that the salary register shows the details of employee such as name of driver and vehicle number and the signature of the recipient on the revenue stamp. Thus, on test check of such vouchers/bills/register filed by the assessee and considering the turnover and the nature of business activities undertaken by the assessee, the said expenses are found to be verifiable."

6.11 Thus, adhoc disallowances made by the Assessing Officer is liable to be deleted. This ground raised by the Revenue is dismissed.

Ground No. 7 *The CIT(A) has erred in law and on facts in Deleting the addition of Rs.1,00,00,000/- on account of cash sales of garbage vans. 8.*

6.12 The Assessing Officer made addition on the ground that the assessee has sold four garbage vans amounting to Rs. One crore (each for Rs. 25 Lakhs). But the fact is that the assessee sold 20 garbage vans each for Rs. 5 Lakhs in cash. During the remand proceedings, the assessee adduced evidences of confirmation of 20 buyers with their PAN details and also shown the depreciation chart on sale of block assets. Considering the above facts, the ld. CIT(A) deleted the additions by observing as follows:-

"16.6 However, such contentions of the AO is born out of his ignorance of law, the sale of assets from of a block of assets needs to be reduced from the WDV of the block of assets and depreciation is to be claimed on the resultant WDV The question of showing any income arising out of the sale of assets only arises when the block of assets ceases to exist, which is not the case of the appellant. It is noted that the appellant has reduced the block of assets from the above item and claimed depreciation on reduced block of assets. Therefore, the additions made by the AO is not sustainable. Accordingly, the additions made by the AO are deleted and this ground of appeal is allowed."

Ground No. 8 On the facts and circumstances, the Id.CIT(A) ought to have upheld the order u/s 144 rws 143(3) of the Act passed by the AO.

Ground No. 9. *It is therefore prayed that the order of the Ld.CIT(A) may be set aside and that of the order of the Assessing Officer be restored to the above extent.*

6.13 Remaining ground nos. 8 and 9 are general in nature which do not require any adjudication.

7. We do not find any infirmity in the order passed by the Id. CIT(A). Thus, grounds raised by the Revenue are devoid of merits and the same are hereby dismissed.

8. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 06-12-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 06/12/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद