

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “D”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.1493/M/2023
Assessment Year: 2017-18**

ACIT, Circle-4(2)(1), Room No.642, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	Vs.	M/s. Merchant Agri Global Private Limited, 74 Krishna Niwas, 496, Kalbadevi Road, Kalbadevi, Mumbai – 400 002 PAN: AAJCS5633B
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Vimal Punmiya, A.R.
Revenue by : Shri H.M Bhatt, D.R.

Date of Hearing : 12 . 01 . 2024

Date of Pronouncement : 27 . 03 . 2024

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Merchant Agri Global Private Limited (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 28.02.2023 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2017-18 on the grounds inter-alia that :-

“Whether on facts and circumstance of the case and in law The Ld.CIT(A) has erred in deleting addition made by the Assessing Officer of Rs. 7,85,54,891/-being 10 percent out of various expenses.

The appellant crave leave to add, amend, alter and/or vary any of the grounds of appeal before or at the time of hearing.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : assessee’s return of income for the year under consideration declaring total income at Rs.3,22,87,840/- was subjected to scrutiny. Assessing Officer (AO) during the scrutiny proceedings noticed that the assessee has claimed direct expenses to the tune of Rs.78,55,48,913/-. In reply to the explanation called by the AO assessee stated that it is having turnover of Rs.600 crores and there are voluminous vouchers for expenses and it is difficult to upload all the vouchers on the Income Tax Business Application (ITBA) portal. AO noticed that the assessee has not furnished even the documentary proof for the major expenses claimed under the heads freight, transport, coolie and cartage, loading/unloading charges, godown expenses, other expenses, brokerage/commission on purchases etc. nor has filed ledger in relation to these expenses. So the AO reached the conclusion that the assessee has failed to substantiate the expenses, hence made adhoc disallowance of 10% of the expenses which comes to Rs.7,85,54,891/- and thereby framed the assessment under section 143(3) of the Income Tax Act, 1961 (for short ‘the Act’.)

3. The assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has confirmed the addition by dismissing the appeal. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly the AO has made adhoc disallowance of expenses claimed by the assessee to the tune of Rs.78,55,48,913/- @10% of the total expenses. It is also not in dispute that books of assessee are duly audited under section 44 AB of the Act. It is also not in dispute that the AO while making adhoc disallowance has not rejected the books of account.

6. In the backdrop of the aforesaid undisputed facts the Ld. CIT(A) has deleted the addition by returning following findings:

“4.3 I have carefully considered the submission put forth along with supporting documents contain in paper book furnished, perused the facts of the case including impugned assessment order and other material brought on record. I found from the submission of the appellant as well as from assessment order that during the assessment proceedings, the appellant, in fact, had submitted prima facie all the requisite documents viz Balance Sheet, Tax Audit report, ledger copy and bank statement etc. Since turnover of the company is Rs.600 crores, various books and supporting documents like ledger, billst, vouchers were voluminous, and the appellant could not/did not submit each and every sledger and sample bills through the online submission mode. The claim of the appellant that submitting such voluminous M documents/vouchers in an online mode, which requires first scanning each and every page, was extremely difficult is quite reasonable and believable. The books of accounts of the appellant are audited and appellant maintained contemporary records of the all documents. Further, the AO has not found any fault or discrepancy with the audited books of account as well as tax audit report of the appellant. If there was any item-wise defect noticed by the AO, then he could have pointed it out, raised further specific query and item/expenses if the appellant had failed HOME to have disallowed stich TAY DEPAR the claim with supporting voucher/bills/documents. Instead, the AO proceeded with an ad-hoc disallowance at a flat rate of 10% which seems quite unreasonable and without any basis and reason. Furthermore, if the

AO would have found any discrepancy or fault in the accounts and other details, he could have proceeded to reject the books of account of the appellant, which clearly was not done by the AO. In light of this, the ad hoc disallowance of expenses hardly holds any ground.

4.4 The appellant has further pleaded for a comparative analysis of previous years income and expenses. It can be observed from the comparative statement as well as assessment order of A.Ys 2014-15, 2015-16, 2016-17, 2018-19 and 2019-20, there were no disallowances of expenses from the computation total income of the appellant. This means that expenses claimed by the appellant were allowed in preceding and subsequent assessment years. This fact, though not a conclusive argument in support of the appellant, further substantiate the claim of the assessee that the ad-hoc disallowance was arbitrary and without any concrete basis and findings. Books of account of the appellant is duly audited u/s. 44AB of the I. T. Act and under companies Act, and no discrepancy has been noticed/pointed out by the auditors. It seems that ledger copies of most of the heads of expenses were produced/filed before the AO online, and also that TDS was also deducted wherever applicable. Further, most of expenses were paid through banking channel and the appellant is having turnover of Rs. 600 crores.

4.5 I have carefully considered the matter, During the appellate proceeding, the appellant has submitted relevant documents through paper book which has been duly perused. I find no negative infirmity with such documents. Further, the appellant has prima-facie submitted most of the ledge and other books of accounts during the assessment proceedings. The AO further has not pointed out/found any specific infirmity or discrepancy in the ledge/books of accounts or expenses claimed. The AO has only pointed out that detailed ledger and sample vouchers were not submitted by the assessee. I do not find this reason reasonable and sufficient enough to make a universal ad-hoc disallowance of 10% of expenses All the more so, because the books of accounts of the assess were audited and the AO did not find any infirmity in them, and also because, had the AO found any discrepancy/infirmity, he should have rejected the books of account of the appellant, which he clearly had not done, before proceeding further Moreover, in earlier cassessment years such expenses were allowed which is apparent from the earlier assessment orders. Even if the submission of the assessee may be considered not complete or considered as insufficient evidence, it will not grant a right to the AO to make an ad-hoe disallowance. What the AO should have done was to ask for specific evidence before making a decision in such specific instances.

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4.8 In the light of above discussion and finding and on going through the detailed facts and circumstances of the case, and also considering the decision of the Hon'ble Apex Court, referred above in para 47, I am

of the considered opinion that the ad- hoc disallowance made by the AO is not justified and needs to be deleted. Thus, the additions of Rs. 7,85,54,891/made by the AO on ad hoc basis is hereby deleted, and thus these grounds of appeal are allowed.”

7. We are of the considered view that when books of account maintained by the assessee having been duly audited have not been rejected by the AO the adhoc disallowance made on the basis of surmises is not sustainable in view of the law laid down by the Honorable Supreme Court of India in case of Principal Commissioner of Income Tax vs. R.G. Buildwell Engineers Ltd. (2018) 99 taxmann.com 284 (SC) wherein it is held as under :

"Where High Court upheld order of Tribunal setting aside adhoc disallowance of expenses claimed on ground that assessee's books of account were not rejected, SLP filed against said order was to be dismissed. The Apex Court has held that "Section 37(1) of the Income-tax Act, 1961 Business expenditure - Allowability of (Onus to prove) - In course of assessment, assessee claimed deduction of expenses towards bricks, machinery repair, cartage, labour expenses etc. Assessing Officer disallowed to per cent of said expenses on ground that insufficient evidence was adduced Tribunal set aside said adhoc disallowance on two grounds, firstly, assessee's books of account were not rejected and secondly, such expenses were allowed consistently in past in scrutiny assessments - High Court upheld order passed by Tribunal – Whether SLP filed against view taken by High Court was to be dismissed - Held, yes [Para 2] [In favour of assessee]"

8. Furthermore the Ld. CIT(A) has dully thrashed the facts by perusing the relevant documents to allow the expenses claimed by the assessee qua freight, transport, coolie and cartage, loading/unloading charges, godown expenses, other expenses, brokerage/commission on purchases etc.

9. No doubt the relevant evidence has not been produced by the assessee before the AO hence he proceeded to make the adhoc disallowance. However now the Ld. CIT(A) during the appellate proceedings has duly perused the bills, vouchers, balance sheet, tax audit report, ledger copy and bank statement etc. qua the expenses

claimed by the assessee in the light of the fact that the assessee is having turnover of Rs.600 crores and duly audited books of accounts of the assessee have not been rejected by the AO and proceeded to delete the adhoc disallowance.

10. Moreover identical disallowances are reported to have been allowed by the revenue in the earlier years. assessee expenses claimed during the year under consideration are commensurate to the expenses claimed by the assessee during the earlier years which is extracted for a ready perusal as under:

The ratio of other direct expenses to turnover is also comparable with preceding previous year considering increase in cost of expenses during the year which resulted in marginally increase:

Description	31.03.2017	31.03.2016
Turnover	6000529921	6509255187
Other Direct Expenses	785548913	831130260
% to turnover	13.09	12.77

* *The ratios of expenses incurred on Freight, Transport, Coolie and Cartage incurred during the year is also comparable with preceding previous year:*

Description	31.03.2017	31.03.2016
Turnover	6000529921	6509255187
Freight, Transport, Coolie and Cartage (Net)	664352439	742453209
% to Turnover	11.07%	11.41%

11. Furthermore the assessee has also brought on record the comparative chart of gross profit earned by it during the year under consideration vis-a-vis. preceding years which shows that trading results are comparable with the preceding years. For ready perusal comparative chart of gross profit earned by the assessee is extracted as under:

Description	31.03.2017	31.03.2016
Turnover	6000529921	6509255187
Change in inventory	170198582	105267937
Total	6170728503	6614523124
Cost of Material Consumed	5007538714	5385159143
Employees benefit Expenses	32608533	21903794
Direct Expenses	785548913	831130260
Total	5825696160	6238193197
Gross Profit	345032343	376329927
% to Turnover	5.75	5.78

12. So in view of the matter we are of the considered view that the Ld. CIT(A) has rightly and validly deleted the disallowance made by the AO. Finding no illegality or perversity in the impugned findings returned by the Ld. CIT(A) the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 27.03.2024.

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 27.03.2024.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.