

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 457/Ahd/2023
(निर्धारण वर्ष / Assessment Year : 2018-19)

Aerotech Enterprise Plot No.1646/1, Sector 2D, Gandhinagar, Gujarat, 382007	बनाम/ Vs.	Income Tax Officer, Ward – 1, Gandhinagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAXFA1816H		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से /Appellant by :	Shri S. N. Divetia & Shri Samir Vora, A.Rs.
प्रत्यर्थी की ओर से/Respondent by :	Smt. Mamta Singh, Sr. DR

Date of Hearing	12/09/2024
Date of Pronouncement	03/10/2024

ORDER

PER SHRI NARENDRA PRASAD SINHA, AM:

This appeal is filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi, (in short ‘the CIT(A)’), dated 05.04.2023 for the Assessment Year 2018-19.

2. The brief facts of the case are that the return of income for A.Y. 2018-19 was filed on 31.10.2018 declaring total income of Rs.16,84,211/-. The case was selected under CASS for complete scrutiny to verify “Low net profit shown by construction contractors and claim of large refund”. In the course of

assessment, the AO found that the assessee had claimed huge expenses under purchases, job work payment and petrol expenses. Further, transport expenses @5% amounting to Rs.75,77,863/- was also claimed as deduction. The AO had called for the ledger account, bills & vouchers in order to verify the transport expenses. The assessee produced ledger account of only 3 parties to whom total payment of Rs.29,68,838/- was made. Thereafter, the AO required the assessee to produce ledger account copies and bills & vouchers in respect of expenditure of Rs.2 Lakhs or more, which also was not fully complied. The AO, therefore, disallowed the transport expenses of Rs.36,33,945/-, which was not supported by any bills & vouchers and in respect of which no evidence was produced before the AO. Accordingly, the assessment was completed u/s 143(3) of the Act on 22/03/2021.

3. Aggrieved with the order of the AO, the assessee had filed an appeal before the First Appellate Authority, which has been decided vide the impugned order and the addition as made by the AO was confirmed.

4. Now, the assessee is in second appeal before us and has taken following grounds in this appeal:

“[1] The Ld. CIT(A) NFAC, Delhi was grievously erred in confirming the disallowance of transport expenses of Rs. 35,85,237/- out of total addition made by the Ld. A.O. of Rs.36,33,945 being not supported by any bill/voucher which is not correct.

The appellant submits that the appellant has submitted the reply on 20th March 2021 by furnishing the necessary attachment/vouchers.

[2] The Ld. CIT(A), NRAC, Delhi was grievously erred in passing an appellate order by confirming an addition of Rs. 35,85,237/- out of addition of Rs. 36,33,945/- made by the Ld. A.O. without considering the reply made by the appellant through online before 20th March 2021.

[3] The appellant therefore requests your goodself to kindly delete the addition made by the Ld. A. O. of Rs. 35,85,237/- looking to the merits of the case.

[4] The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal."

5. Shri S. N. Divatia, Ld. AR for the assessee submitted that the assessee had furnished certain additional evidences before the Ld. CIT(A), which was not properly examined by him. He explained that ledger account copy of all the parties, in respect of which disallowance of Rs.36,33,945/- was made by the AO, was produced before the Ld. CIT(A). After considering these ledger accounts, the Ld. CIT(A) had allowed relief of Rs.48,708/- only and confirmed the balance amount of Rs.35,85,237/-. He further submitted that the transportation invoices in respect of these parties was also produced which was not considered in right perspective. According to the Ld. Counsel, the transport expenditure as claimed by the assessee was not in respect of only transport material but they were composite bills in respect of purchase of materials and transport thereof. He further submitted

that the books of accounts were not rejected by the AO before making the disallowance.

6. Per contra, Smt. Mamta Singh, Ld. SR. DR submitted that the Ld. CIT(A) had duly considered the evidences brought on record before him and had given a categorical finding in respect of each of the party in his order. She further submitted that no TDS was deducted by the assessee in respect of transportation expenses. Further, the assessee had incurred majority of transportation expenses only in last two months and it was not equitably distributed throughout the year. She further submitted that the assessee had not pointed out any specific deficiency in the order of the Ld. CIT(A).

7. In rejoinder, Shri S. N. Divatia, Ld. AR submitted that the transportation expenses were incurred throughout the year and only the bills were raised in the specific period and this fact doesn't raise any doubt on the genuineness of expenditure. As regarding deduction of TDS and transport expenses, he has drawn our attention to provision of Section 194C(b) of the Act and submitted that the transporters were having less than 10 carriages and, therefore, there was no requirement to deduct TDS.

8. We have carefully considered the rival submissions and materials brought on record. The assessee has filed a paper book containing 1 to 80 pages wherein copy of certain invoices and other details in respect of the parties pertaining to whom

transport expense was disallowed, has been filed. It is found that the AO had disallowed the transport expense of Rs.36,33,945/- for the reason that no supporting bills and vouchers or any other evidence was brought on record to this extent. The assessee had not explained as to why the ledger copies of the parties and the bills & vouchers for transportation expense of Rs.36,33,945/- could not be produced before the AO. Nevertheless, this aspect was examined by the Ld. CIT(A) and he had called for specific details in this regard but the detail as requisitioned were also not produced before him. The Ld. CIT(A) has examined the evidences brought on record before him and he has given the following findings in his order:

“11. During the course of appeal preceding the assessee has produced certain details but the details called for through letter dated 09.03.2023 were not submitted. Non-production of these details even before the CIT (A) proves that the assessee wants to conceal something. It does not want that there should be further enquiry and verification. So, the conclusion is derived on the basis of finding by the AO and detail produced during the appeal proceeding. The issue is discussed name- wise in the same serial as mentioned by the assessee.

Bijal J. Patel

12. Ledger account of F.Y. 2016-17 and 2017-18 have been submitted. Ledger account of 2018-19 has not been submitted. It might be that there was no transaction during F.Y. 2018-19. It is to be noted that during two financial years the assessee has only two transactions with Bijal D. Patel. Assessee gave an advance of Rs.2,00,000/- to M/s Patel on 12.07.2016 and the same was squared off on 12.05.2017 by transport expenses of the same amount in round figure. In the two ledgers, there is no mention of any journal voucher which indicates that the ledger is not based on any journal

voucher/journal entry. It lacks evidentiary value. The entry of transportation expenses as on 15.05.2017 does not mention any bill/invoice no. also. The assessee has produced the copy of invoice from Bijal D. Patel. It has been signed by somebody else and it does not have any number (invoice no.). Only date of 15.05.2017 is there and there are four entries of Rs.45,000/-, Rs. 1,36,100/-, Rs. 10,000/- and Rs.8,900/-. All the figures are in round figure. No truck no., no challan no. is there. So, the bill appears to be an accommodation bill and the so-called expenditure is an accommodation entry. I agree with the conclusion of the AO that expenditure is not proved. Not only that the assessee did not submit any detail regarding Ms Bijal D. Patel as asked for through letter dated 20.03.2023. So, I have no other option than to agree with the AO that expenditure is not genuine.

Shree Mahakali Transport

13. The assessee has produced a bill from this transporter. The bill is dated 30.06.2017. This bill is for the transportation of sand in 32 trips. The bill says that 33 trips of sand were transported from 01.04.2012 to 30.06.2017. But the bill was generated on 30.06.2017. This means that the bill was not generated date-wise or trip-wise and this is not a normal and common phenomenon. The bill does not contain any vehicle no. nor any challan no.

14. The bill does not match with the ledger account submitted by the assessee. The bill is for Rs.3,58,745/- whereas debit entry in ledger account is for Rs.3,55,158/-. So the figures do not match. Further the ledger narrates "transportation expenses 5%" whereas in the bill rate of service tax is 0.00%. Ledger does not contain any journal/voucher no. The appellant was asked to submit ledger of three years but ledger of only year was given. Reason for non-submission of other years was not given. So, the bill and ledger has not been maintained on day-to-day basis nor does it mention the vehicle no. and voucher no. So, the claim of this transportation expenses is an accommodation entry. The additional details called for through letter dated 09.03.2023 was also not furnished.

Shivani J. Patel

15. Assessee has submitted one invoice issued by Patel Shivani Jaiminkumar for Rs. 10,73,372/-. This invoice is for transportation of 10,191.670 tons of some goods. Name and nature of the goods is not here in the carting invoice. In the column of description of goods transporter has written; transportation to Naroda/medra, transportation to Dehgam/babalpura, transportation to Memco/Ahmedabad and so on. Invoice no. is 1 and date is 30 Nov. 2017. So, upto 30 Nov. 2017 in financial year 2017-18, the transporter issued only one bill and did the transportation job for assessee only. Not only that the transporter while mentioning her PAN has written, "Company's PAN whereas the status is of individual. All these go against the human probability that the transporter is actually a transporter and there has been any transportation.

16. The appellant assessee has produced the ledger of Shivani Patel. In the ledger credit entry of Rs. 10,73,372/- has been passed on 28.02.2018 though the so-called invoice was issued on 30.11.2017. So, this also falsifies the claim of expenditure. Further the assessee has submitted the ledger of this party for 2018-19 also. This ledger shows some advances/payment to the transporter on different dates starting from 03.04.2018 and a single bill of Rs.12,52,000/- is found credited on 31.01.2019. But here this credit is for job work. So, the transporter in A.Y. 2018-19 became a job work contractor for the assessee in next year. Payments were given in April, July, August and October but one percent TDS was done on 31.03.2019. So, even this ledger indicates that transactions shown are in the nature of accommodation entry and these are bogus.

Nitya Transport

17. The assessee has produced the ledger of Aerotech Enterprises, i.e. the assessee in the books of Nitya Transport whereas in the other cases it has produced the ledger of transporters in its own books. Nitya Transport has issued an invoice of Rs.1,86,467/- on 31.07.2017. Invoice no. is 01 but there is overwriting in the writing of invoice no. Earlier it was written

something like 10,20 and so on but later on first digit was smudged and 1 was written after 0. So, this is not a good evidence.

18. Further from the perusal of ledger of Aerotech Enterprises for F.Y. 2017-18 it is found that journal voucher mentioned against the billing of Rs.1,86,467/- dt. 31.07.2017 is 1 which implies that till 31.07.2017, the transporter has not done any work, meaning that no transaction has been done by the transporter during the year till 31.07.2017. If he could have done any transaction journal voucher should have been a different. It means, he had not done any other transaction so far. This proves that all these bills and ledgers are accommodation entry. However, the quantum of addition made by the AO is not correct. He has made the addition of Rs.48,708/- also which is brought forward from previous assessment year. So, addition should be only for Rs.1,86,467/- and not Rs.2,35,175/-,

Dharmendra Kumar A. Patel

19. From the ledger of this party in the books of the assessee it is found that the party has done transportation work for the assessee. Narration in the ledger is transportation expense 5% but, in the bill, there is no entry of any service tax, GST or VAT So, the transaction appears to be an accommodation entry in connivance with both the parties. The assessee has produced the ledger of A.Y. 2018-19. From perusal of the ledger it is found that he has done job work for the assessee. So, the transporter during A.Y. 2018-19 became a job work contractor for A.Y. 2019-20. This is again an abnormal phenomenon and against human probability. So, after analysis of all these facts, the conclusion reached by the Assessing Officer is correct.

Manishaben G. Patel

20. The Assessing Officer has made an addition of Rs.5,09,204/- as bogus/unexplained expenditure incurred in her name. The Assessing Officer has stated that the assessee has claimed transport expenses which is 5% of the total expenditure and it is very high. He has further stated that the expenditure was not supported by bills/vouchers or any other proof.

21. Six carting invoices of Manisha G. Patel has been produced. The invoices no. 1 and 2 have been generated on 01.01.2018 and 15.01.2018 respectively. Invoice no. 3 and 4 has been generated on 31.01.2018 and invoices no. 5 and 6 have been generated on 15.02.2018. It means that from 01.04.2017 to 15.02.2018, the transporter has generated only six invoices and out of that all six have been generated for the assessee. Ledger gives the impression that during the whole financial year, Manisha G. Patel has done transportation works for the assessee on six occasions totaling Rs. 10,70,013/-. The ledger does not give reference to any bill no. or any journal voucher number. So, ledger does not have any evidentiary value and the carting invoices are just against human probability that the transporter did not do any transporting work for any other person during the financial year from 01.04.2017 to 15.02.2018. So, the expenditure is just an accommodation entry.

Conclusion:-

*22. Under the facts and circumstances discussed above the addition made by the Assessing Officer is confirmed barring an amount of Rs.48,708/- added on account of payment to Nitya Transport as this expenditure is related to assessment year 2017-18. So, out of total addition of Rs. 36,33,945/-, the addition of Rs. 35,85,237/- is confirmed. The assessee gets relief of Rs. 48,708/- only. The next grievance of the assessee is calculation of tax u/s 115BBE. Since, the AO has made the addition of only the outstanding amount and these have been found to be accommodation entry during the course of appeal, the addition should be treated as in the nature of unexplained credit u/s 68. Under these circumstances, calculation of tax has rightly been done by the AO as per the provisions of section 115BBE. So, this ground is rejected. The appeal is **partly allowed.**"*

9. It is, thus, found that the Ld. CIT(A) has meticulously examined the evidences produced before him and given a categorical finding in respect of each of the parties pertaining to whom the transport expense was disallowed and also the reason for upholding the disallowance. In the course of hearing, we had

required the assessee to furnish a comparative chart of transportation expense and to explain the reason for increase in this expenditure, if any, during the year. The assessee has furnished the following comparative details from the annual accounts for the current year and the preceding year:

<i>FY</i>	<i>2016-17</i>	<i>2017-18</i>
<i>Sales/services</i>	<i>4,83,68,199</i>	<i>13,54,03,753</i>
<i>Purchases</i>	<i>1,00,99,162</i>	<i>2,85,63,572</i>
<i>Direct Exps</i>		
<i>Jobwork payment</i>	<i>2,31,29,140</i>	<i>4,46,15,328</i>
<i>Petrol Exp</i>	<i>92,49,635</i>	<i>4,65,69,901</i>
<i>Transport Exps</i>	<i>Included in P & L a/c</i>	<i>Included in P & L a/c</i>
<i>Total</i>	<i>3,23,78,775</i>	<i>9,11,85,229</i>
<i>Transport Exp</i>	<i>3,41,679</i>	<i>75,77,863</i>
<i>5%</i>		

10. It is found that transport expense of Rs.3,41,679/- only was incurred in the preceding year which had increased to Rs.75,77,863/- in the current year. The assessee has not given any explanation for this exorbitant increase in transport expense during the year. The sales had increased by 2.80 times during the year and the purchases were also higher by corresponding figure of 2.8 times as compared to preceding year's figures. The other expenses had also correspondingly increased during the year viz. job work payment had increased by 1.93 times and petrol expense by 5.03 times. In comparison to comparable increase in these expenses, **the transport expense had increased by 22.15 times**

during the year and the assessee has not explained the reason for this abnormal increase in this head. The onus was squarely on the assessee to not only explain the reason for this exorbitant increase in transport expenses but also to support the same with proper bills and vouchers, which the assessee had failed to do. From the sample copy of bills and vouchers of the transport expense brought on record, it is found that these bills were not in respect of transport expense. As rightly pointed out by the Ld. CIT(A), no lorry details are appearing in these bills/vouchers. Further, the details regarding place of transport i.e. the place of origin and the place of destination is not found mentioned in all the bills/vouchers. Only in some of the bills the destination is appearing. Rather these bills are found to be in respect of purchases of materials and have details of goods, weight, rate and total amount. Merely because the word 'transportation' is mentioned in these bills, they cannot be considered as evidence for transport expense as the place of origin, place of destination, lorry number, actual transportation expenses etc. are not appearing in most of these bills. These bills clearly mention that they are for purchase of materials, such as sand, kapdi, dust and other building materials. Further, the evidence as produced does not explain the correctness of expenditure and the exorbitant increase in transportation expense during the year, particularly when the Petrol expense had also increased substantially.

11. In view of the above facts, we do not find any reason to interfere with the order of Ld. CIT(A). In the absence of any

cogent explanation in respect of abnormal increase in transport expense and also in the absence of complete bills and vouchers and evidences for incurring these expenditures, the addition as confirmed by the Ld. CIT(A) is upheld.

12. In the result, the appeal of the assessee is dismissed.

This Order pronounced on 03/10/2024
--

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER

(True Copy)
Ahmedabad; Dated 03/10/2024
S. K. SINHA