

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**

(Conducted Through Virtual Court)

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.107/RJT/2018
Assessment Year : 2012-13**

Amitsinh Nababha Rana At. Divijay Nagar Wankaner.	Vs	ITO, Ward-1 Morbi.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Written Submissions
Revenue by :	Shri B.D. Gupta. Sr.DR

सुनवाई की तारीख/**Date of Hearing** : **01/06/2022**
घोषणा की तारीख/**Date of Pronouncement**: **08/06/2022**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNANT MEMBER:

This is assessee's appeal against the order of Id.CIT(A)-3, Rajkot dated 9.12.2018 relating to the Asst.Year 2012-13.

2. The grounds raised by the assessee are descriptive in nature, which in fact raise and interconnected issue that is the learned CIT-A erred in confirming the addition made by the AO in part amounting to Rs.12,01,860.00 and Rs.80,259.00 instead of deleting the same in entirety.

3. The facts in brief are that the assessee in the present case is an individual and is a proprietor of the firm namely M/s Vijay trading Co. and Vasuki Trading Co. The assessee is also a partner in the

partnership firm. The AO during the assessment proceedings found that the assessee has, inter-alia, not shown certain receipts/income from various parties despite the fact that these parties have deducted the TDS in the name of the assessee as evident from form 26AS. The necessary details of the parties, amount of gross income, amount of TDS is detailed below:

Section	Name of the party	Amount	TDS
194A	Gruh Finance Ltd.	6895	690
194C	IVRCL Ltd.	2091670	20918
193	Sahara India Real Estate Corporation Ltd.	2595	519
194D	Bajaj Allianz Life Insurance Co. Ltd.	80259	8026
		2181419	30513

4. On question by the AO, the assessee submitted that it has executed the contract which was awarded by the company namely IVRCL LTD. based in Hyderabad for an amount of Rs. 20,91,670.00 which was outsourced to various parties. As such, the assessee against such project has earned an income of Rs.8,90,000 which has been duly accounted in the books of accounts and offered to tax. As such the assessee has outsourced the work at a cost of Rs.12,01,860 against the value of the contract awarded to it for Rs. 20,91,670.00 only. Accordingly, the assessee contended that he has already accounted the project receipt in the books of accounts for Rs.20,91,670 only.

5. The assessee, likewise, submitted that the entire amount of gross receipt of Rs.80,259.00 from Bajaj Allianz life insurance

company Ltd cannot be made subject matter of addition. According to the assessee, the element of profit embedded in such commission received from Bajaj Allianz life insurance company Ltd should be made subject to tax. However the AO disregarded the contention of the assessee on the reasoning that there was no agreement furnished by the assessee in support of the contract outsourced to various parties amounting to ₹ 12,01,860.00 only. Furthermore, the payment for outsourcing the work was made in cash and without deducting the TDS. Thus, the AO was pleased to make the addition of Rs.20,91,670.00 to the total income of the assessee.

7. The AO, likewise, against the receipt of commission of Rs.80,259.00 from the Bajaj Allianz life insurance company Ltd was of the view that the assessee has already claimed expenses on account of maintaining his office at Wankaner. Thus, as per the AO, there cannot be allowed any other deduction against such income in the name of the expenses. Accordingly the learned AO was pleased to confirm the addition of Rs.80,259.00 to the total income of the assessee.

8. Aggrieved assessee preferred an appeal to the learned CIT-A who has confirmed the addition in part by observing as under:

“6.4 The receipt of Rs.80,259/- has been received from Bajaj Alliance Life Insurance Corporation Ltd. The appellant has not disputed that this item should have been included in P&L a/c; his only argument is about grant of certain expenses mainly office expense against this receipt. So far as grant of additional expenses other than what has already been claimed and granted in P&L a/c. is concerned, I am of the opinion that same cannot be acceded to due to want of any supporting evidences from the appellant. Administrative expenses have already been granted towards maintenance of the office in the general (consolidated) P&L a/c which includes receipts and expenses pertaining to two proprietary concerns and separate job work. The said addition is confirmed. However AO is directed to grant TDS against said receipt. Ground no. 5 is allowed.”

6.5 Lastly an amount of Rs.20,91,670/- has been received from M/s. IVRCL Ltd. TDS on this amount has been deducted u/s. 194C and therefore this receipt is definitely from contractual work. The appellant has argued that against this contract, sub contract was given of Rs. 12,01,670/- to various persons on oral agreement and net contractual income of Rs.8,90,000/- has been offered by him in his P&L a/c. It is a fact that appellant has not been able to provide details i.e. Name, Address, Copies of Oral Agreement, PAN No., etc. in respect of so called sub contractual payments even during the appellate proceedings. It is also a fact that said amount has been paid in cash without deduction of any TDS. The appellant's P&L a/c was perused and it was seen that the appellant has shown receipts of only Rs.8,90,000/- as "Explosive Job Work Income" in place of Rs.20,91,670/-. In the said P&L a/c. appellant has claimed various expenses including purchases, administrative expenses, etc. The AO has added the entire item of Rs.20,91,760/- only on the ground that appellant has not shown any receipts from IVRCL in his P&L a/c. I don't agree with the AO in adding the entire receipts of Rs.20,91,760/-. Appellant has already shown Rs.8,90,000/- as "Explosive Job Work Receipts." Meaning thereby that implicitly expenses of Rs.12,01,670/- as payments to sub contractor had been claimed. AO's action should have limited to this sum to decide whether the same should be allowed or not. Appellant's general argument that such expenses against the receipts from IVRCL should be granted is correct. The appellant has claimed certain expenses (against the receipt of Rs.8,90,000/-) in his P&L a/c. and which has been allowed by the AO. The problem remains only with the sum of Rs.12,01,860/- which is the sum allegedly paid by the appellant to certain sub contractor whose details including their PAN No. etc. could not be submitted by the appellant. Moreover no TDS has been deducted against this payments by the appellant. In these circumstances these expenses cannot be allowed u/s. 37 as well as due to mischief of 40(a)(ia). I direct AO to restrict the addition to Rs.12,01,860/-. Ground no. 3 is partly allowed."

9. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

10. The learned AR before us submitted as under:

"1. As per para 4 page 2 of the assessment order relates 10 kon inclusion of contract amount received by the assessee as per section 149C IVRCL Ltd. of Rs 2091670 where for TDS is made at 1% of Rs 20918. Thus it is evidence and admitted by the Ld. AO that this transition relates to contract receipt.

2. Moreover, as per para 6.5 pages no. 10 of the appeal order the Ld. CIT (A) it is mention that lastly an amount of Rs. 2091670 has been received from M/s. IVRCL Ltd. TDS on this amount has been deducted

u/s. 194C and therefore this receipt is definitely from contractual work. Thus it is Evidence and admitted even by the Ld. CIT(A) that this transition relates to contract received,

3. Thus, the department accept that this is contract receipt Then even if it is remain to be disclosed what should be rate of the taxability of such income. The Hon I TAT, special bench has been kind enough to hold that if should be taxed @ maximum bruin rate as described by the department at 8% only.

4. In this case out of amount of Rs.291760 assessee has already shown Rs.890000 which is more than 8% requiring no addition.

5. Alternatively from the balance of Rs.1201670 not accepted by the ld.CIT(A) who him self admitted that entred receipt cannot be tax. Therefore, 8% this Rs.1201670 may kindly be directed to be added and balance may be directed to be reduced.”

11. On the other hand, the learned DR vehemently supported the order of the authorities below.

12. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion we note that it was alleged by the AO that the assessee has received a contractual amount from the party namely for an amount of Rs.20,91,670.00 which was not disclosed in the books of accounts. Accordingly the same was added to the total income of the assessee. However the learned CIT-A found that out of the contractual amount of Rs.20,91,670.00, a sum of Rs.8,90,000 has already been accounted for in the books of accounts of the assessee which was offered to tax. Thus, the balance amount of Rs.12,01,860 which has been claimed as an expense by the assessee was subject matter of dispute. As the assessee failed to furnish the supporting evidences for the so-called expenses of Rs.12,01,860.00, the learned CIT-A confirmed the addition for 2 reasons. Firstly, there was no documentary evidence in support of such expenses and therefore the same cannot be allowed as deduction under the provisions of section 37 of the Act. Secondly, the assessee has not deducted the TDS on such expenses amounting to

Rs.12,01,860 under the provisions of section 40(a)(ia) of the Act. Thus, the learned CIT-A confirmed the addition made by the AO to the tune of Rs.12,01,860.00 after giving part relief of Rs.8,90,000.00 only.

13. From the preceding discussion, we note that there is no ambiguity to the fact that the amount received by the assessee from the company namely IVRCL LTD. for Rs.20,91,760.00 represents the contract receipt/business receipts. Thus the entire amount cannot be added to the total income of the assessee. In our considered view only a percentage of profit embedded in such amount of contractual receipts can be brought to tax. In this regard we find support and guidance from the order of the Hon'ble Gujarat High Court in the case of CIT vs. President Industries reported in 258 ITR 654 where it was directed to make the addition only to the extent of gross profit of undisclosed business receipts. The relevant extract of the order is reproduced as under:

“The amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represent the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that the investment by way of incurring cost in acquiring goods which have been sold has been made by the assessee and that has also not been disclosed, the question whether entire sum of undisclosed sales proceeds can be treated as income, answers by itself in the negative.”

However, in the given facts and circumstances we note that the assessee has already offered an income of Rs.8,90,000 against such contract receipt of Rs.20,91,760 which constitute 42% approximately. Accordingly, we are of the view that no further addition can be made under the provisions of section 37 of the Act despite the fact that the assessee failed to furnish the supporting evidences.

14. It is also an admitted position that the assessee failed to deduct the TDS in respect of the contractual payments made by him on

outsourcing basis. Before reaching to the conclusion that the assessee failed to deduct the TDS under the provisions of section 194C of the Act, it is pertinent to see whether the provisions of TDS are applicable to the assessee being an individual. In other words the provisions of TDS shall be applicable in case of an individual if its books of accounts are subject to audit in pursuance to the provisions of section 44AB of the Act. But there is no such finding qua to this provision of law. Until, it is brought on record that the assessee was subject to the provisions of section 194C of the Act, we are of the view that no disallowance can be made of the expenses claimed by the assessee under the provisions of section 194C of the Act read with section 40(a)(ia) of the Act on account of non-deduction of TDS. In view of the above, we disagree with the finding of the learned CIT-A and direct the AO to delete the addition made by him.

15. With respect to the addition of Rs.80,259.00 made by the authorities below, we note that the learned counsel for the assessee has not advanced any argument in the written submission filed by him. In the absence of any written submission on this issue from the side of the assessee, we do not want to disturb the finding of the authorities below. Hence, we confirm the addition made by the authorities below for Rs.80,259.00 only. Hence, the ground of appeal of the assessee is dismissed.

16. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the Court on 8th June, 2022 at Ahmedabad.

**Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad, dated 8/06/2022

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