आयकर अपीलीय न्यायाधिकरण, रायपुर न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

(Through Virtual Court at Raipur)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI JAMLAPPA D. BATTULL, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos. 290/RPR/2016
निर्धारण वर्ष / Assessment Year : 2012-2013

Sheo Bhagwan Goel
121, Mapel Parthivi Pacific,
GE Road, Raipur (C.G.)
PAN : AIKPG 3811 D .....अपीलार्थी / Appellant

बनाम / V/s.

Asstt Commissioner of Income Tax,
Circle – 4(1), Raipur C.G) .....प्रत्यर्थी / Respondent

Appearances

Assessee by	:	Shri G. S. Agrawal
Revenue by	:	Shri G. N. Singh

सुनवाई की तारीख / Date of conclusive Hearing	:	09/02/2022
घोषणा की तारीख / Date of Pronouncement	:	01/04/2022

आदेश / ORDER

PER JAMLAPPA D. BATTULL, AM;

The present appeal of the assessee is assailed against the order of the first appellate Commissioner of Income Tax - Appeals-1, Raipur [for short **"CIT(A)"**] passed u/s 250 vide order dt 16/05/2016, which in turn sprung from the assessment order [for short **"Ao"**] dt 28/02/2015 passed by the Ld Assessing Officer [for short **"Ld AO"**] u/s 143(3) of the Income-tax Act, 1961 [for short **"the Act"**] for assessment year [for short **"AY"**] 2012-2013.

2. The only dispute under this appeal is that, it challenges the legality of ad-hoc disallowance carried out in the assessment without specific findings vis-à-vis reasoning.

3. Effectively there is a solitary ground assailed in the present appeal, however before advancing the matter on facts for adjudication, we reproduce ground/s challenged by the appellant as under;

> *"1. Because, the Ld. Commissioner of Income Tax (Appeals) erred in law as well as on facts while confirming the ad hoc addition of Rs1,70,000/- made by Ld. Assessing Officer"*
>
> *"2. Because, the Ld. CIT(Appeals) has erred in overlooking and summarily rejecting the detailed statements of facts submitted along with written submission of appeal and accepted the incorrect version of the learned assessing officer."*
>
> *"3. The appellant reserves the right to add, amend or alter any ground or ground/s of appeal"*
> *(Emphasis supplied)*

4. The facts scooped out of the case are tersely;

4.1 The appellant assessee is a resident individual and proprietor of Shree Sadguru Steel Agency, for the AY 2012-2013 filed his return of income [for short "**ITR/ROI**"] on 28/09/2012 with a retuned income of ₹29,37,760/-, which was first summarily processed u/s 143(1) of the Act and then selected for scrutiny through CASS. The scrutiny assessment u/s 143(3) of the Act was culminated with a total income of ₹31,07,760/- on account of a solitary addition ₹1,70,000/- made on ad-hoc basis **for disproportionate increase in freight charges incurred**.

4.2 Aggrieved assessee carried the matter in an appeal before the first appellate forum, wherein Ld CIT(A) echoing the views of Ld AO, perfunctorily upheld the disallowance without recoding the merits thereof.

4.3 The appellant being aggrieved with the order of Ld CIT(A), is in appeal before us with the grounds of appeal set herein before at Para 3.

5. We have heard the rival contentions of both the parties; perused material placed on records and duly considered the facts of the case in the light of settled legal position and the case laws relied upon by the appellant assessee as well the respondent revenue.

6. **On a careful contemplation of the assessment and first appellate records, it revealed that;**

6.1. The assessee has newly commenced trading business of Ferro Alloys & Iron Steel in the name & style of Shree Sadguru Steel Agency and for the purpose of this business, following mercantile system of accounting has maintained such books of accounts as required by section 44AA of the Act, and such books were subjected to tax audit u/s 44AB of the Act for the year under consideration. The tabulated comparative profitability and turnover position of the aforesaid business since its commencement as placed before the Ld AO showcased as;

Sr	AY	Turnover		Gross Profit		Net Profit	
		Amt	Period	Amt	Ratio %	Amt	Ratio %
1	2012-2013	9,60,49,458	12 months	29,79,201	3.10	9,18,063	0.96
2	2011-2012	1,34,39,578	3 Months	5,50,641	4.10	2,55,732	1.90

6.2. Thitherto the amount of freight charges incurred for the business under consideration for the corresponding turnover is concern, following was the position stemmed out of records produced before the lower tax authorities;

Sr	AY	Turnover		Freight		Increase over Previous Period (No of Times)	
		Amt	Period	Amt	% of T/o	Turnover	Freight
1	2012-2013	9,60,49,458	12 months	10,24,587	1.0667	7.15	19.37
2	2011-2012	1,34,39,578	3 Months	52,900	0.3936	Base	Base

6.3. On a test verification, the Ld AO observing the multi-fold and disproportionate increase in freight charges incurred over increase in turnover, dissatisfied with the records of expenses on account of **incomplete information contained therein**, as to Distance covered for transportation in number of Kilo-Meter, Charges per km/per ton (per ton per km), Capacity of the vehicle utilized for transportation and some of the vouchers which were either self-signed or remained unsinged. The aforestated observations instigated the Ld AO in disallowing ₹1,70,000/- out of the total freight expenditure debited for the year under consideration.

6.4. Aggrieved by such impugned addition, the assessee filed an appeal before the CIT(A), wherein the Ld CIT(A) categorically notified the disproportion increase in the turnover over 9 times (approx.) with that increase in freight expenses over 20 times and reproducing the AO's contention, confirmed the impugned disallowance in wholesome.

6.5. During the course of hearing, the learned counsel for the assessee [for short **"AR"**] adverting the disallowance argued that, ignoring the unequal period of operation, Ld AO had in a most arbitrary manner disallowed portion of inward freight charges / expense applying ad-hoc percentile and which has been sustained by the Ld CIT(A), despite of the fact that, all expense including freight debited to

profit & loss account [for short **"P&L"]** and claimed in the return of income has all the valid characteristic laid in section 37(1) of the Act and hence disallowance were unwarranted.

6.6. It is further stated that, the solitary basis for making arbitrary addition and sustaining the ad-hoc disallowance by the lower tax authorities was that, the some of the aforementioned expenditure were supported only by self-made vouchers in the absence of third-party evidence. The counsel for the assessee opposed the same proposing that, without specifying the vouchers, amounts and reasons the disallowance was unlawful and should not sustained. Per contra, the Ld DR supported the order of the authority below citing the equi-reasons thereof.

7. Our careful consideration of assessment records and the records of appellate proceedings it transpired that, **neither of the lower tax authorities had pointed any such vouchers, the genuineness of the expenditure therein claimed to have been incurred by the assessee wholly and exclusively for the purpose of its business did not inspire any confidence, nor it was the case of the revenue that any part of the expenditure in question was either found to be bogus or fictitious, nor was found to have not been incurred by the assessee wholly and exclusively for the purpose of his business.** Indeed, it showcased an exercise of running around the circle by both the lower tax authorities while dealing with the present case.

8. We neither could come across any provision in the present Income Tax Statute, nor it has been brought to our notice by either parties to dispute, which subscribes vis-à-vis authorises the tax authorities to arrive at this logic of subscribing ad-hoc

disallowances. Evidently, there has been no clear findings as to number of vouchers requiring denial of allowances with the amount of expenditure and nature of defects therein or therewith, moreover department could not bring out any deprecative material on record to substantiate its conclusion as logical. We couldn't also see remotely there is any mention of rationale in arriving at and applying the percentile of disallowance in the present case, consequently we find substantial force in the claim of the assessee that devoid of any specific infirmity qua the assessee's claim for deduction of the aforementioned expenditure by the lower tax authorities, and for the reason, the ad-hoc disallowance carried out in a most arbitrary manner could by no means be held to be justified.

9. We hold a view that, the section 37(1) of the Act, subject to certain explicit conditions, panoramically provides for allowability of expenditure by way of deduction while computing the income under the head Profits & Gains of business or profession. Precisely the statute provided that, any expenditure of **revenue nature(1)**, in **relation to business or profession(2)** of the assessee **incurred during the previous year(3)**, and **incurred wholly and exclusively(4)** in relation to such business or profession in question and **neither prohibited(5)** by any law for the time being in force **nor of a personal nature(6)** shall qualify for the deduction unless the expense claimed violates any of the conditions laid aforesaid. Thus, the allowability or disallowance of any individual head of expenditure debited to P&L account and claimed in the return of income filed by the assessee, unless put to aforesaid litmus test as envisaged in section 37(1) should not be arrived at.

10. Where **any expenditure** is debited to P&L account and claimed in the return of income as deductible, then the primary onus is undoubtedly casted upon the claimant assessee to vindicate that, **each transaction** falling within a particular head of expenditure foretaste litmus test, duly supported by **genuine and satisfactory proof** [for short **"GSP"**], accompanied by reasonable explanation. Consequently, during course of assessment or reassessment proceedings, the burden of proof of deductibility of expense in relation to queried transaction stands discharged upon the submission of GSP accompanied by relevant voucher and reasonable explanation when called for.

11. We can find the statutory force and support in aforestated view from the ration laid down by Hon'ble Apex Court in CIT Vs Indian Molasses reported at 78 ITR 474, CIT Vs Calcutta Agency reported at 19 ITR 191 (SC) and I. H. Sugar Factory & oil Mils Pvt Ltd Vs CIT reported at 125 ITR, 293 (SC), wherein the Hon'ble Lordship have held that, the primary onus of providing necessary facts and produce evidence in substantiating the claim in order to avail the deduction under Section 37(1) is on the assessee.

12. Once the assessee is absolved in aforesaid terms, the onus is then shifted on revenue to prove negative litmus test, deprecating the GSP and explanation tendered by the assessee by clear findings on record. More precisely such exercise shall require before arriving at percentile / percentage to be applied for each of the expense (head of expenditure) that disqualifies for allowance as non-deductible and in the absence of any such logic conclusion based upon such exercise, the AO is precluded from making any disallowance merely on surmise & conjecture.

13. Consequently, in the instant case, the Ld AO blatantly ignored the period of operation while comparing the figures of present year with that of earlier year and moreover failed to place any deprecative material qua rationale negativizing litmus test, hence is precluded from making any disallowance on surmise or conjecture and this aforesaid view is fortified by the judgment of the Hon'ble High Court of Madras in **"V.C. Arunai Vadivelan Vs ACIT" (TCA No 612 of 2019 dt 05/02/2021),** wherein the lordships have held para 7 as;

> ***"Given the nature of the industry in which the assessee operates, we can take judicial notice of the fact that, computer generated vouchers may not always be issued by the transporters unless they are an organization owning a large fleet and If the Assessing Officer had any doubt with regard to the genuinity of any one of the vouchers produced he could have drawn sample vouchers and called upon the assessee to establish its genuineness. Without doing so, making an adhoc disallowance by not specifically assigning any reason to a voucher or bunch of vouchers is not legally tenable."***
> *(Emphasis supplied)*

14. Considering the entire conspectus of case, we, do not find favour with the views lower tax authorities, consequently we set aside the order of Ld CIT(A) and direct Ld AO to delete the ad-hoc disallowance in its entirety and **allow the ground/s raised.**

12. Resultantly, the appeal of the assessee is allowed in aforesaid terms, with no order as to cost.

Order pronounced on this Friday 01st day of April, 2022.

Sd/-	Sd/-
RAVISH SOOD	**JAMLAPPA D. BATTULL**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

रायपुर / RAIPUR ; दिनांक / Dated : 01st April, 2022

<u>आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :</u>

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur(C.G.)
4. The Pr. CIT, Raipur (C.G.)
5. विभागीय प्रतिनिधि,आयकर अपीलीय न्यायाधिकरण,रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,
निजीसचिव / Private Secretary

आयकरअपीलीयअधिकरण, रायपुर / ITAT, Raipur.