

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri Amit Shukla, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 3928/Del/2016
Assessment Year: 2012-13**

Ralhan Construction Company, S-44, Greater Kailash-II, New Delhi. PAN- AAAGR4038H (Appellant)	vs.	ACIT, Circle 62(1), New Delhi. (Respondent)
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Appellant by	S/sh. Salil Agarwal & Shailesh Gupta, Adv.
Respondent by	Sh. Surender Pal, Sr. DR

Date of Hearing	21.02.2019
Date of Pronouncement	09.04.2019

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order of ld.CIT(A)-XX, New Delhi dated 29.04.2016 for the assessment year 2012-13 on the following grounds :

1. *That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining an adhoc disallowance of a sum of Rs.5,00,000/- on account of purchase of material and that too, without pointing out any discrepancy in the books of accounts so maintained by the assessee - appellant and as such, the said disallowance needs to be deleted.*

1.1. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate the basic fact that all the purchases were duly backed by*

materials/ evidences, which have been arbitrarily brushed aside and that too without rebutting the documentary evidences so furnished by the assessee - appellant and thus, the addition so made needs to be deleted.

2. That the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in sustaining a disallowance of Rs. 1,03,295/- and Rs. 13,521/- out of total disallowances of Rs. 2,06,589/- and 27,042/- on account of vehicle running, maintenance, depreciation and telephone expenses and the said disallowance being made on account of alleged personal element involved needs to be deleted, as such.

3. That the learned Commissioner of Income Tax (Appeals) has grossly erred in sustaining the part disallowance and that too, without providing to the assessee, a fair, proper and meaningful opportunity of being heard, thereby violating the principles of natural justice and thus, such an order of is vitiated both on fact and in law.”

2. The brief facts of the case are that the assessee filed its return of income on 30.09.2012 declaring income of Rs.72,89,670/-. The return was selected for scrutiny and statutory notices were issued to the assessee. The assessee is engaged in the business of contractor for Mahanagar Telephone Nigam Limited, Central Public Works Department etc. The net profit was declared @ 5.13% on the gross receipt of Rs.14,19,88,700/-. In the assessment proceedings, the Assessing Officer asked to produce original books of accounts, bills, vouchers, muster-rolls, wage sheets etc. which were produced and checked on test check basis. On perusal of the profit and loss account, the assessee had debited a sum of Rs.7,93,70,407/- on account of purchase of material. The assessee was asked to produce bills/vouchers for the same. On verification, the Assessing Officer noticed that some bills/vouchers are missing and the assessee also explained that these might have been misplaced due to work at various sites or many a time, they are incurred out of imprest

account. The Assessing Officer made disallowance of Rs.5 lacs on account of unverifiable purchase to plug the leakage of Revenue.

3. In the assessment proceedings, the Assessing Officer noticed that the assessee had claimed expenses of Rs.5,42,015/- and on account of depreciation of Rs.4,90,928/-. The Assessing Officer for want of logbook made disallowance of 1/5th of the said expenses to prevent the revenue leakage against personal use of vehicle and accordingly made an addition of Rs.2,06,589/-.

4. Further, the Assessing Officer noticed that the assessee had debited telephone expenses to the extent of Rs.1,35,211/- in the profit and loss account. The assessee did not maintain any personal telephone call register for partners/employees. Therefore, in order to prevent leakage of Revenue on account of personal use, he disallowed 1/5th of these expenditures, amounting to Rs.27042/- u/s. 37(1) of the Act. The assessee carried the matter in appeal before the Id. CIT(A), who after considering the submissions of the assessee upheld the addition of Rs.5 lacs on account of purchase of material and reduced the disallowance of vehicle expenses and telephone expenses by 50%. Aggrieved, the assessee is in appeal before the Tribunal.

5. The Id. AR of the assessee, reiterating the submissions made before the Id. CIT(A), submitted that all the bills and vouchers were produced before the

Assessing Officer and without pointing out any specific vouchers, the Assessing Officer has made lump sum disallowance to plug the leakage of Revenue of Rs.5,00,000/- whereas total purchases of the assessee have been accepted. He also placed reliance before us on the assessment order for the A.Y. 2014-15 in which no such addition has been made on these counts whereas the facts were similar. It was further submitted that the motor car and telephone have been used exclusively for the purpose of business. Therefore, the additions made by Assessing Officer and reduced by Id. CIT(A) is not sustainable in the eyes of law.

6. On the other hand, the Id. DR supported the impugned order. He submitted that complete bills/vouchers were not produced before the Assessing Officer and personal use of vehicle and telephone cannot be denied. Therefore, the Id. CIT(A) was justified to sustain the impugned additions.

7. After hearing both the parties and going through the entire material on record we find that the AO has noticed that some bills/vouchers were missing and the assessee has also accepted that vouchers might have been misplaced due to work at various sites or many a times, these would have been incurred out of imprest account. However, the findings of the Assessing Officer could not be rebutted properly. Therefore, the lower authorities are justified in making addition of Rs.5,00,000/-. The primary onus lies upon the assessee to prove the expenses claimed in the profit and loss account. The assessee has submitted before the Id. CIT(A) that all payments were made by account

payee cheques, but he had not produced complete bills and vouchers before the Assessing Officer. We, therefore, do not find any justification to interfere with the order of the Id. CIT(A) on this addition.

8. Regarding disallowance out of vehicle expenses of Rs.1,03,295/-, it is observed that the depreciation of Rs.49,093/- is included in it. The depreciation is fixed expenditure in nature whether it is used exclusively for the business or partially for personal use. Thus, the element of some personal use has no role to play while granting depreciation on vehicle. Therefore, the assessee deserves deduction of depreciation of Rs.49,093/- and rest of the addition deserves to be sustained for want of proper verification. In respect of telephone expenditure, we are of the opinion, that the Id. CIT(A) has rightly dealt with this issue and we do not find any justification to interfere with the same. It is also mentioned that principle of res judi cata is not applicable in the income-tax proceedings and the income of the assessee is assessed on the basis of facts and circumstances attending to a particular year. Accordingly, the appeal of the assessee deserves to be partly allowed.

9. In the result, the appeal is partly allowed.

Order pronounced in the open court on 09.04.2019.

Sd/-

(Amit Shukla)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 09.04.2019

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