

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA No.6110/Del./2018
(ASSESSMENT YEAR : 2014-15)

Dynamix India Drill-Con Co.,
C/o Bhupinder Shah & Co., CA
C – 12, Raj Nagar, Chambers,
Pitampura,
New Delhi – 110 034.

vs. ACIT, Circle 62 (1),
New Delhi.

(PAN : AADFD2170K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri S. Krishnan, Advocate
REVENUE BY : Ms. Indu Bala Saini, Sr. DR

Date of Hearing : 13.03.2023
Date of Order : 16.03.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal by the assessee is directed against the order of Id. CIT (Appeals)-20, New Delhi dated 23.07.2018 pertaining to the Assessment Year 2014-15.

2. The grounds of appeal taken by the Revenue read as under :-

“1. On the facts and in the circumstances of the case and in law, the order passed by the Ld. CIT (A) is arbitrary, unjustified and bad in law.

2. The Ld. CIT(A) erred in law and on facts in not deleting the addition of Rs. 576731/- being alleged difference in contract receipts as compared with Form 26AS. That the CIT (A) ignored the apparent factual position that the contractees had wrongly declared TDS details in their TDS returns.

3. That the Ld. CIT(A) erred in law and on facts in setting aside to AO the matter of addition of Rs.576731/- in the name of verification of appellant's claim with Form 26AS while the AO had admittedly made the addition solely on the basis of same Form 26AS.

4. On the facts and in the circumstances of the case, the Ld. AO erred in making and the Ld. CIT (A) erred in confirming the arbitrary and ad-hoc addition of Rs. 3 lac out of sub-contractor charges expenses in the name of 'plugging the leakage of revenue' without any legally or factually sound basis.

5. On the facts and in the circumstances of the case, the Ld. AO erred in making and the Ld. CIT(A) erred in confirming the arbitrary and ad-hoc addition of Rs. 2 lac out of establishment expenses and allowances in the name of 'plugging the leakage of revenue' without any legally or factually sound basis.

6. On the facts and in the circumstances of the case, the Ld. AO erred in making and the Ld. CIT(A) erred in confirming the arbitrary and ad-hoc addition of Rs.87351/-out of business promotion expenses in the name of 'plugging the leakage of revenue' without any legally or factually sound basis.

7. That the Ld. CIT (A) erred in law and on facts in not properly appreciating the explanation furnished by the assessee during appellate proceedings and rejecting the same in a routine manner and also not considering the case law on the issue in respect of additions of Rs.3,00,000/-, Rs. 2,00,000/- & Rs. 87351/- as referred to in aforesaid grounds No.4, 5 & 6.”

3. One issue in this appeal relates to difference between contract receipts as compared with Form 26AS.

4. AO in the assessment order noted that assessee could not offer any explanation, hence the sum of Rs.5,76,731/- being the difference as under is added to the income of the assessee :-

S. No.	Name of the Party	Turnover as per		Difference (Rs.)
		Form 26AS	Books	
1	CityCom Networks Private Limited	70,477/-	0	70,447/-
2	Haryana City Gas Distributors Ltd.	20,28,755/-	15,22,501/-	5,06,254/-
Total				5,76,731/-

5. Upon assessee's appeal, ld. CIT (A) gave part relief with following directions :-

“4.3.4 The appellant has further mentioned that the Assessing Officer at no point of time during assessment proceedings ever asked the appellant for any such justification or proposed to make any addition with respect to alleged difference in turnover pertaining to the aforesaid two parties. Considering this and as 26AS of the respective years are available with the Assessing Officer, Assessing Officer is directed to verify the claim of the appellant with 26AS and give the relief to the appellant if it has already been offered for taxation in earlier years as per the method of accounting which is mercantile in the case of the appellant.”

6. Against the above order, assessee is in appeal before us. We have heard both the parties and perused the records.

7. Ld. Counsel of the assessee submitted that his plea on this account is very limited that reconciliation should be done with the entries of 26AS

& assessee's books and the assessee should be permitted to explain the same before the AO.

8. We agree with the above proposition and accordingly direct the AO to examine the issue of difference between Form 26AS and the books of accounts after giving assessee appropriate opportunity of being heard.

9. Other ad hoc disallowance of Rs.3,00,000/- on the issue of disallowance out of sub-contractor charges expense. AO noted that assessee has debited Rs.6,37,62,122/- as sub-contractor expenses. Assessee was asked to submit vouchers but AO noted that the assessee could not substantiate with adequate supporting vouchers hence he made ad hoc disallowance of Rs.3,00,000/-

10. Similar ad hoc disallowance was made out of establishment expenses & allowances amounting to Rs.2,00,000/- against the total expenditure of Rs.45,72,236/-. AO further made ad hoc disallowance of 10% of the business promotion expenses amounting to Rs.87,351/- on the ground that proper vouchers were not available.

11. Upon assessee's appeal, Id. CIT (A) compared the assessee's net profit and gross profit ratio for AYs 2013-14 & 2014-15 and noted that net profit of the assessee has decreased from 6.96% in AY 2013-14 to 5.90% in AY 2014-15. Hence, he proceeded to confirm the disallowances.

12. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

13. Ld. Counsel of the assessee submitted that these additions made have been done on ad hoc basis without cogent reasoning. AO has not pointed out specific documents which were missing. He further submitted that just because ratio has fallen a little bit, it does not give blanket permission to make ad hoc disallowances.

14. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below.

15. Upon careful consideration, we find ourselves in agreement with the contention of ld. Counsel of the assessee that the disallowances have been done on ad hoc basis without specifying particular mistake. Such approach cannot be supported by noting that there is slight fall in the GP ratio as done by the ld. CIT (A). Accordingly, we set aside the orders of the authorities below and decide the issue in favour of the assessee.

16. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 16th day of March, 2023.

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

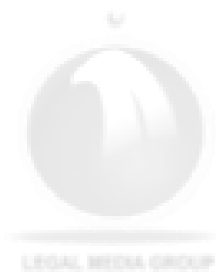
**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 16th day of March, 2023
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-20, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.



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