

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH 'SMC', LUCKNOW**

BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.474/Lkw/2019
Assessment Year:2014-15

Shri Rajendra Kumar Chowdhary 8/4/18A, Jharkhandi Colony, Rakabganj, Faizabad. PAN:ABWPC1482B	Vs.	Income Tax Officer-II, Faizabad.
(Appellant)		(Respondent)

Appellant by	Shri Akhilesh Kumar Shah, Advocate
Respondent by	Smt. Pinki Mahavar, D.R.
Date of hearing	23/10/2019
Date of pronouncement	04/11/2019

ORDER

This appeal has been filed by the assessee against the order of learned CIT(A)-I, Lucknow dated 20/06/2019 pertaining to assessment year 2014-15. In this appeal the assessee has taken the following grounds:

"1. That the learned AO added Rs.60,000/- to the income of the appellant in respect of his proprietorship firm M/s Chowdhary Filling Station and Rs. 60,000/- to the income of the appellant in respect of his another proprietorship firm M/s Laxmi Trading Company, totaling Rs.1,20,000/- by disallowing salary paid to employee to maintain books of the appellant for which confirmation was submitted that the above expenditure has been incurred in respect of his salary. He does not possessed any technical qualification and was not a technician. Hon'ble CIT(A) did not accept the contention of appellant in this

respect and confirmed the above addition which is unjustified and deserves deletion in full.

2. That the learned AO made addition of Rs.88,357/- for possible leakages and irregularities @10% out of total expenses claimed of Rs.8,83,574/- in respect of tanker running expenses of the proprietorship firm M/s Chowdhary Filling Station of the assessee on adhoc basis while books of account have been accepted and without giving any specific reason. Hon'ble CIT(A) has deleted only 50% of the above addition which should be deleted in full.

3. That the learned AO has made addition of Rs.1,71,125/- on estimate basis @20% out of total expenses claimed of Rs.23,684/- on telephone and mobile charges, vehicle running and maintenance Rs.2,96,359/- depreciation on car of Rs.5,65,584/-, totaling Rs.8,85,627/- on account of expenses claimed in telephone, mobile charges, vehicle running and maintenance, depreciation on car in case of appellant proprietorship firm M/s Chowdhary Filling Station. Hon'ble CIT(A) has deleted only 50% of the above addition which should be deleted in full.

4. That the learned AO has made addition of Rs. 24,276 for possible leakages @20% out of total expenses claimed of Rs.28,563 on telephone and mobile charges and depreciation on car Rs. 92,816, totaling Rs. 1,21,379 in respect of telephone and mobile charges in respect of appellant proprietorship firm M/s Laxmi Trading Company. Hon'ble CIT(A) has deleted only 50% of the above addition which should be deleted in full."

2. At the outset, Learned A. R. submitted that the assessee is proprietor in two firms namely M/s Laxmi Trading Company and M/s Chaudhary Filling Station and in both firms the assessee had debited Rs.60,000/- as salary paid to the accountant and Assessing Officer instead of treating the same as salary, held the same to be in the nature of accounting charges and therefore, held that since the assessee had not deducted TDS and as per the provisions of section 40(a)(ia) of the Act, he made the addition. It was submitted that the Assessing Officer also disallowed 10% of the expenses

out of tanker running expenses without pointing out any discrepancy in the books of account and rejecting the books of account. It was submitted that similarly ad hoc additions were made out of vehicle running expenses, depreciation on cars and telephone & mobile expenses, which again were disallowed without pointing out any discrepancy in the books of account. It was submitted that making disallowance, without rejection of books of account and without pointing out any discrepancy is against the law as held by various Benches of the Tribunal and specifically reliance was placed on a judgment of Hon'ble Allahabad Bench of the Tribunal in case of Shri Sanjeev Vaish vs. ACIT in I.T.A. No.184/Allahabad/2018 and further reliance was placed on Kolkata Bench of the Tribunal in the case of ACIT vs. Shri Debdas Dutta in I.T.A. No.1595/Kol/2014.

3. Learned D. R., on the other hand, heavily relied on the orders of the authorities below.

4. I have heard the rival parties and have gone through the material placed on record. I find that the first disallowance was out of salary paid to the accountant of the assessee for maintaining books of account of two proprietorship concerns. The assessee had filed confirmation from the accountant regarding the fact that the above payment was made against salary and further I find that Assessing Officer has invoked section 194J for holding that the accountant was providing professional and technical services and therefore, the assessee was required to deduct TDS. However, the application of the above section to the assessee is contrary to the facts as the accountant himself had confirmed that he was being paid as an employee. The employee need not be a full time employee and he can be a part time employee also. Simply because the accountant was writing books of account of two firms, cannot be said that he was acting as a

technical person. Therefore, the provisions of section 40(a)(ia) were not applicable and therefore, the assessee was not liable to deduct TDS and therefore, this ground of the appeal is allowed.

4.1 As regards the other grounds of appeal, which are against the ad hoc disallowance, I find that the Assessing Officer has nowhere in the assessment rejected the books of account and has simply disallowed certain expenses to cover up the possible leakage and irregularities. The making of ad hoc disallowances, without rejection of books of account and without pointing out any discrepancy in the books of account, is contrary to law. The learned CIT(A) himself has deleted 50% of the ad hoc disallowances but in my view the additions itself are not sustainable in view of the decision of various Benches of the Tribunal wherein it has been held that without rejection of books of account and without pointing out any discrepancy in the books of account, the ad hoc disallowance cannot be made. The Allahabad Bench of the Tribunal in the case of Shri Sanjeev Vaish vs. ACIT in I.T.A. No.184/Allahabad/2018 vide order dated 19/12/2018 has held that no such ad hoc disallowance can be made without rejection of books of account and has held as under:

"6. The facts are not disputed. It is settled law that where the taxing authorities do not point out any defect in the claim of the assessee, nor are the books of account maintained by the assessee rejected, no such ad hoc disallowance at a whimsical figure can be made and the claim of the assessee required to be accepted as such. In this regard, reference can be made to the following decisions:

1. ACIT vs. Allied Construction [2007] 106 TTJ 616 (I.T.A.T. Delhi Bench).
2. Seasons Catering Services (P) Ltd. vs. DCIT [2010] 43 DTR 397 (I.T.A.T. Delhi Bench)
3. M/s Kanha Vanaspati Ltd. vs. JCIT [2006] 7 MTC 339 (I.T.A.T. Lucknow Bench)

4. CIT vs. Subhash Chand Agarwal [2013] 58 SOT 122
(I.T.A.T. Allahabad Bench)

7. In view of the above, the grievance of the assessee is found to be justified. It is accepted as such. The additions made are, hence, deleted in their entirety.”

5. In view of the above, the ad hoc disallowances sustained by CIT(A) are deleted.

6. In the result, the appeal of the assessee stands allowed.

(Order pronounced in the open court on 04/11/2019)

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:04/11/2019
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T., Lucknow