

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.2796/DEL/2023  
Assessment Year 2016-17

<b>Assistant Commissioner of Income Tax Noida</b>	Vs.	<b>Grass Valley India Private Limited</b> Level 11-B, Max Towers Plot No.C-001/A/1, Sector 16B, NOIDA, Gautam Buddha Nagar.
TAN/PAN: AADCG5510B		
(Appellant)		(Respondent)

Appellant by:	Shri Tapas Ram Misra, Advocate		
Respondent by:	Shri Vivek Kumar Upadhyay, Sr.DR		
Date of hearing:	17	01	2024
Date of pronouncement:	16	02	2024

**ORDER**

**PER PRADIP KUMAR KEDIA-A.M. :**

The captioned appeal is directed against the first appellate order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ('CIT(A)' in short) dated 09.08.2023 arising from the assessment order dated 10.12.2018 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2016-17.

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

*"1. That the Ld. CIT(Appeals)/NFAC has erred in law and on facts by deleting the aggregated additions of Rs.4,26,79,864/- made by the AO on account of disallowance of Purchase of Spare Parts amounting to Rs. 1,73,89,877/-, disallowance of Employee Benefit Expenses amounting to Rs.93,15,662/-disallowance of Other Expenses amounting to Rs. 1,59,74,325/-, without appreciating the facts mentioned by the AO in the assessment order.*

*2. That the Ld. CIT(Appeals) erred in law and on facts in deleting the disallowances without verification of the expenses from ledgers / bills / vouchers even though the assessee had shown its willingness to produce the same during appellate proceedings.*

*3. That the Ld. CIT(Appeals) erred in law and on facts in deleting the*

*disallowances without verification on his/her own and even without remanding the issues to AO for verification even though CIT(A) has powers under section 250(4) of the Income Tax Act, 1961 to do so.*

*4. That the order of CIT(Appeals) being erroneous in law and on facts deserves either to be set aside/cancelled, or to be remanded back to the file of CIT(A)/Assessing Officer for fresh adjudication as the assessee itself has submitted that it is now in a position to provide all bills/vouchers with ledger.”*

3. The assessee filed e-return declaring taxable income at ‘NIL’ for the Assessment Year 2016-17 in question. The case was selected for complete scrutiny assessment. In the course of the assessment proceedings, it was observed by the AO that assessee has provided part details. A show cause notice dated 28.11.2018 was issued seeking documentary evidences to support the expenses claimed on account of;

(a) purchase of spare parts - Rs.52169633/-

(b) employees benefit expenses - Rs.2,79,46,988/-

(c) other expenses - Rs.15974325/-.

3.1 The assessee however failed to comply with the show cause notice and asked for adjournment. The AO accordingly disallowed Rs.4,26,79,864/- towards 1/3 of such expenses as proposed in the show cause notice and informed to the assessee. The income was thus assessed at Rs.4,26,79,864/- as against NIL income returned.

4. Aggrieved by the estimated disallowance of Rs.4,26,79,864/- out of total expenses, the assessee preferred appeal before the CIT(A).

5. The assessee, by its written reply and statement of facts, pointed out that at the time of the assessment, the assessee was unable to dig out all the accounting vouchers and ledgers on time due to large volume of quantity and short period of time given to him for compliance. The assessee however contended that it is in a position to provide all accounting vouchers and ledgers etc to corroborate the expenses in the course of appellate proceedings and sought opportunity to present its case and documents. In this backdrop, the CIT(A) however, by a very

brief, cryptic and non descript order adjudicated the issue in favour of the assessee. The relevant decision making process may be relevant to extract herein:

*“3. Grounds of appeal:*

*1. As already mentioned in statement of facts assessee was unable to dig out all the accounting vouchers and ledgers on time due to large volume of quantity and short period of time given to him. We are now in the position to provide all the accounting vouchers and ledgers and therefore request you to please consider our case and let us give an opportunity to present our case and documents. As the company operations in India is very low and they are managing with few manpower to dealt with the company was not able to produce the documents requested on time as some of the staff members were also on leave. Please provide us list of expenses where we need to produce the supporting vouchers and documents. In above context please find below some of the case laws where opportunity was given to the assessee to produce the necessary documents for assessment*

*4. Decision:*

*In this case the Assessing Officer has made adhoc disallowance on following items:*

- 1. An amount of Rs.1,73,89,877/- being 1/3rd of purchase of spare parts amounting to Rs.5,21,69,633/-*
- 2. An amount of Rs.93,15,662/- being 1/3 of employee benefit expenses Rs.2,79,46,988/-*
- 3. An amount of Rs.1,59,74,325/- being 1/3rd of other expenses amounting to Rs.4,79,22,976/-*

*While making disallowance the Assessing officer has stated that the assessee has no supporting documents regarding the expenses under the above head. Facts of the case and submissions made by the assessee were perused and it is observed that assessee has made disallowance on adhoc basis without bringing any valid documentary evidence against the assessee. The Assessing Officer does not seem to have conducted any independent inquiry by invoking the provisions of section 133(6) and 131 of the IT Act. The Assessing Officer has not drawn the basis to arrive at such conclusion and has not found any invalid/inadmissible documentary evidences. The Assessing Officer is duty bound to bring out detailed facts on record before modifying the taxable income. Adequate materials should have been gathered and placed on record to established that it warrants upwards modification of the taxable profit. Based on the facts available on record, it is observed that the Assessing Officer had not pointed out any non genuine entries in the books of accounts of the assessee and has not established that any particular*

*expenditure has not been wholly and exclusively incurred for the purpose of business. Further the A.O has not found any expenditure to be bogus or fictitious. Hence, the addition made by the Assessing Officer is considered unwarranted and the same is deleted. Grounds of appeal on this issue stand allowed.*

*In this case the Assessing Officer has not rejected the books of account of the assessee before making this adhoc disallowance. Following case laws support the claim of the assessee that adhoc allowance is not permissible in the provisions of the Income Tax Act:*

*1. Dynamix India Drill-Con Co. Vs. ACIT, Circle 62 (1), in ITA No. 6110/Del./2018, A.Y.2014-15*

*2. Sheo Bhagwan Goel Vs. Asstt Commissioner of Income Tax, Circle - 4(1), Raipur C.G) in ITA Nos. 290/RPR/2016, A.Y.2012-13*

*3. Mokshstar International Vs. The ACIT, Gandhidham in ITA No. 397/Rjt/2017 A.Y.2014-15.*

*5. As a result, appeal of the assessee is allowed.”*

6. Aggrieved by the relief granted by the CIT(A) to the assessee, the Revenue is in appeal before the Tribunal.

7. The Id. DR for the Revenue pointed out that CIT(A) has decided the issue in haste and in an abrupt manner without giving any finding on facts. The Id. DR supported the action of the AO and pointed out that despite specific show cause notice served on the assessee, no relevant material has been produced by the assessee to corroborate the large expenses claimed while filing the return of income for which the assessee was duty bound. No inquiries have been made by the CIT(A) himself on the corroboration of expenses as desirable in exercise of co-terminus and co-extensive powers on such crucial aspects. The CIT(A) wrongly shifted the onus on the AO to bring documentary evidences against the assessee before making estimated disallowance notwithstanding the fact that no basic documents were filed before the Assessing Officer. The CIT(A) held that the action of the AO is unwarranted without any finding that such expenditure are bogus or fictitious without realizing that such question will arise only where the documents are made available for necessary inquiries. The CIT(A) also found fault with the action of the

AO on the ground that AO has not rejected the books before making adhoc disallowance. The Id. DR pointed out that the AO was within its right to make inquiry on particular expenditure incurred and if not satisfied about the correctness or completeness thereof fully or partly, can adopt appropriate course of action and there is no absolute requirement of rejection of books in entirety while making inquiry on a specific expenditure item. The AO has proceeded to frame assessment by making estimated disallowances in the manner which was found best to his judgment in the given circumstances and factual matrix. The Id. DR thus submitted that the CIT(A) grossly erred in readily accepting the plea of the assessee and fixing wrong onus on the AO overlooking factual aspects that no evidence were admittedly filed to support the expenses claimed in the return of income. The Id. DR thus sought reversal of the cryptic order passed by the CIT(A) in an indolent manner.

8. The Id. counsel for the assessee, on the other hand, supported the action of the CIT(A) and submitted that the accounts of the assessee are duly audited and the expenses claimed have been subjected to audit by an independent Chartered Accountant. The Id. counsel pointed out that the AO had hardly given any opportunity to comply with the summons by giving a very short period for such compliance. The Id. counsel further submitted that *ad hoc* disallowance of expenses are not permissible under the provisions of the Act in view of several judgments as taken note of by the CIT(A). The Id. counsel thus submitted that no interference with the order of the CIT(A) is called for.

9. We have carefully considered the assessment order as well as the order of the CIT(A) and the material referred to and relied upon in the course of hearing. The controversy in the present case relates to additions on account of estimated disallowances out of expenses incurred towards purchase of spare parts, employee's benefit expenses and some undefined other expenses. The issue is essentially factual in nature and thus wholly dependent on examination of facts threadbare.

9.1 The AO, in the course of assessment, issued show cause notice seeking corroboration of impugned expenses and in the absence of any corroboration in response to the show cause notice, the Assessing Officer resorted to an estimated disallowance being 1/3 of such expenses recorded in the books in accord with the show cause notice. The CIT(A), in the first appeal, however reversed the action of the AO without either making inquiry himself or causing to make such inquiry through the AO by remand proceedings. The assessee submitted before the CIT(A) that the documents and evidences are available to corroborate the expenses which could not be co-related in the assessment proceedings. Despite such willingness of the assessee to corroborate the expenses, the CIT(A) surprisingly ignored such request and proceeded to dislodge the addition/disallowance finding fault with the AO that such *ad hoc* disallowances are not permissible without bringing any valid documentary evidences against the assessee and without conducting any independent inquiry on claim of such expenses.

9.2 The observations made by the CIT(A) are *prima facie* bizarre and self defeating. It is not understandable as to how and what inquiry can be conducted by the AO in the absence of basic documents made available to him and where the primary onus has not been discharged by assessee at the first place. The burden can never be shifted to the AO at the first instance in such a situation. It is only when the documents are placed before the AO and he finds anything alarming in such claim, the burden is shifted to the AO to make inquiry and unearth real state of affairs. The observations of the CIT(A) are intriguing in the absence of any material facts placed before him. The CIT(A) further wrongly observed that while making *ad hoc* disallowances of specific expenditure, rejection of books would be necessary.

9.3 The CIT(A), to our mind, merely accepted the mundane and stereo typed defenses raised on behalf of the assessee in a perfunctory manner without making any preliminary inquiry himself despite total absence of corroboration before the Assessing Officer and without traversing glaring

facts. The Assessing Officer, on its part, has also failed to give reasonable opportunity to the assessee to discharge the primary onus which lay upon the assessee. Thus, both the AO and the CIT(A) have failed to discharge their *quasi judicial* duties in a just and proper manner. The CIT(A) has passed a non descript and cryptic order without dealing with the fundamental aspects of the matter.

9.4 It is trite that scope of powers vested with CIT(A) under Section 251 are co-terminus with that of AO exercising quasi judicial functions. The CIT(A) is not only the appellate authority but also possess the power of adjudicating authority similar to that of an AO. The powers of inquiry thus, in a sense, run concurrently. Proper appreciation of all material placed before him was incumbent in law. The CIT(A) ought to have made suitable inquiries on the propriety of the expenses claimed in question in the light of the documentary evidences in corroboration instead of brushing aside the action of the AO in a loop sided manner.

10. In our considered view, the process of reasoning by the CIT(A) grossly lacks any comprehension whatsoever. The CIT(A), as noted above, has ignored the basic facts of absence of corroboration in the assessment proceedings and wrongly alleged that AO failed to do independent inquiry or failed to allege that such expenses incurred are bogus or fictitious. The fallacy in the action of the CIT(A) is quite visible and hence the impugned first appellate order cannot be countenanced in law.

11. The appellate order passed by the CIT(A) is thus set aside. In accord with circumstances existing in the case, the matter is however restored to the file of the Assessing Officer for fresh determination of the *bona fides* of the expenses in question in the light of the documentary evidences as may be placed before him and after making such inquiries as may be considered expedient by the AO. The assessee shall be given suitable opportunity to adduce evidences and offer explanation as may be considered expedient to defend its claim.

12. With these observations, the matter is remitted back to the command of AO for fresh determination in accordance with law.

13. In the result, the appeal of the Revenue is allowed for statistical purposes.

**Order pronounced in the open Court on 16/02/2024**

**Sd/-**

**[KUL BHARAT]  
JUDICIAL MEMBER**

DATED: /02/2024

*Prabhat*

**Sd/-**

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**