

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.7003/Del/2019
(Assessment Year : 2016-17)

Vishakhapatnam Port Road Company Ltd., G-5 and 6, NHAI Building Sector – 10, Dwarka, New Delhi-110 075 PAN No. AABCV 3781 F (APPELLANT)	Vs.	ACIT Circle – 26(2) New Delhi (RESPONDENT)
---	-----	--

Assessee by	Ms. Khushboo, C.A.
Revenue by	Shri M. Baranwal, Sr. D.R.

Date of hearing:	07.07.2022
Date of Pronouncement:	21.07.2022

ORDER

PER ANIL CHATURVEDI, AM :

The present appeal filed by the assessee is directed against the order dated 20.05.2019 of the Commissioner of Income Tax (Appeals)-9, New Delhi relating to Assessment Year 2016-17.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company which is stated to be engaged in the business of constructing, operating and maintaining of toll roads

for adequate connectivity to Vishakapatnam Port Trust. Assessee electronically filed its return of income for A.Y. 2016-17 on 11.10.2016 declaring loss of Rs.6,35,42,251/-. The case was selected for scrutiny and, thereafter, assessment was framed u/s 143(3) of the Act vide order dated 21.12.2018 and the total loss was determined at Rs.6,33,08,451/-.

4. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 20.05.2019 in Appeal No.10450/18-19 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

- “1. That the Ld. CIT(A) failed to appreciate the fact that the Ld. AO has erred on facts and in law in making addition of Rs.2,33,800/- u/s 68 on account of non-confirmation of credit balances Rs.99,000/- payable as provision for internal audit to TR Chadha and Co. and Rs.1,34,880/- payable as leave and pension contribution to deputationist Ms. P Meera Anusha who came from State Govt. as undisclosed credit balances.*
- 2. That the Ld. CIT(A) failed to appreciate the fact that the Ld. AO has ignored the fact that Rs.99,000/- was the provision for internal audit fees for the period 01.04.2015 to 31.03.2016. The bill for the same was raised by T R Chadha in F.Y. 2016-17 since the same got completed in F.Y. 2016-17. That is why the same was not reflected in TR Chadha books of accounts in F.Y. 2015-16.*
- 3. That the Ld CIT(A) failed to appreciate the fact that the Ld AO has ignored the fact that Ms. P Meena Anusha was a State Govt Employee who came on deputation in the company. The company has to pay the leave and pension contribution yearly after request letter sent by the State Govt. Also the AO had not considered the submission of copy of claims made by her.*
- 4. That the Ld CIT(A) failed to appreciate the fact the Ld AO had ignored the fact that payment to above mentioned creditors had been made an account payee cheque in subsequent year. So non confirmation of balances from the creditors is not the only basis of making an addition and ignoring other relevant facts produced during the assessment proceedings.*

5. *That any other or further ground of appeal may be allowed to be taken at the time of hearing of appeal, which may be deemed necessary in the facts and circumstances of the case.*
6. *That the appellant be allowed to filed additional evidence, if so, required for proper prosecution of the case, based on the facts and circumstances, which has not been or cannot be educed or filed before lower authorities either because proper and sufficient opportunity was not provided or because it was not solicited or its need was not appropriated.”*

5. Before us, at the outset, Ld. AR submitted that though the assessee has raised various grounds but the sole controversy is with respect to making of addition of Rs.2,33,800/- u/s 68 of the Act.

6. During the course of assessment proceedings, AO on perusing the details of the sundry creditors noticed that assessee had shown Rs.99,000/- payable to M/s. T. R. Chadha & Co. and Rs.1,34,880/- payable to M/s. P. Meera Anusha. AO sent letters u/s 133(6) of the Act to the aforesaid parties seeking their confirmation and to verify the genuineness of the business transactions. AO has noted that in response to the information sought u/s 133(6) of the Act, M/s. T. R. Chadha & Co. vide reply dated 04.12.2018 had furnished the ledger account. He noted that the perusal of the ledger account the creditor i.e. M/s. T. R. Chadha & Co. revealed that it had not shown any debit balance in ledger account but on the contrary the assessee had shown credit balance of Rs.99,000/- against M/s. T. R. Chadha & Co. in its books. AO accordingly, rejected the claim of balance of Rs.99,000/- shown in the ledger account and made its addition.

7. With respect to M/s. P. Meera Anusha; AO on the basis of the email reply received from M/s. P. Meera Anusha, concluded that she does not know about the transactions made with the company during the year under consideration. He therefore, considered the amount of Rs.1,34,800/- as shown by the assessee as payable to be incorrect and made its addition. When the matter was carried before the CIT(A), CIT(A) upheld the order of AO. Aggrieved by the order of CIT(A). assessee is now before us.

8. Before us, Learned AR submitted that M/s. T. R. Chadha & Co. are the internal auditors of the company and they are paid Rs.99,000/- as internal audit fees per annum. She submitted that in the books of accounts, assessee had made provision towards audit fees payable for the period 01.04.2015 to 31.03.2016 but M/s. T. R. Chadha & Co. has raised the bill in Financial Year 2016-17 as the assignment of internal audit was completed in F.Y. 2016-17 and therefore, they had not reflected the amount of internal audit fees in their books of accounts in F.Y. 2015-16. She further submitted that the confirmation of Rs. 99,000/- given by T. R. Chadda & Co. on 04.07.2015, which is noted by the AO in the order, was with respect to the internal audit fees paid to them for A.Y. 2015-16. She further submitted that while making provision for audit fees, the assessee had deducted TDS and the said payment was made in subsequent year. In support of her contentions, she pointed to the copy of ledger account placed in the paper book. She therefore, submitted that since the payment has been made in subsequent year and

which has been accounted by M/s. T. R. Chadha & Co. in subsequent year and since the assessee was following the accrual method of accounting, no disallowance is called for more so, when the payment of internal audit fees has not been doubted by the Revenue.

9. With respect to the credit balance of Rs.1,34,880/- payable to M/s. P. Meera Anusha; she submitted that she was a State Government employee who had come on deputation to the assessee. As per the understanding, assessee was required to pay her apart from her salary, the leave and pension contribution once in a year after receiving a request from the State Govt. She was also to be reimbursed the quarterly expenses like telephone, newspaper, medical and children education allowance etc. She submitted that at the year end, assessee was required to pay Rs.95,414/- against the leave and pension contribution and Rs.39,466/- against reimbursement of expenses and accordingly the provision for Rs.1,34,880/- was made on 31.03.2015 . She pointed to the copy of the claims made by her in the paper book. With respect to reply submitted in response to the notice u/s 133(6) of the Act, she submitted that in the reply she has not stated that she has not an employee of the assessee and she being a technical person could not submit the reply as expected by the authorities. She further submitted that the payments have been made to her in subsequent year as is evident from the details furnished in paper book. She further submitted that

aforesaid payments are not in doubt and therefore there is no reason in making its additions.

10. Learned DR on the other hand supported the order of lower authorities.

11. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the additions namely addition of Rs.99,000/- and Rs.1,34,880/-. With respect to the payment of Rs.99,000/-, it is the contention of the assessee that the amount of Rs.99,000/- was made as a provision entry for F.Y. 2015-16 relevant to A.Y. 2016-17 towards internal audit fees payment to M/s. T. R. Chadha & Co., who the internal auditors of the company. Since M/s. T. R. Chadha & Co. has raised invoice in subsequent Financial Year i.e. in F.Y. 2016-17 after the completion of work, it was not reflected in their confirmation. Assessee has also produced the copy of account which evidences the payment of Rs. 99,000/- made to M/s. T. R. Chadha & Co. in subsequent financial year. The aforesaid contention of the assessee has not been controverted by Revenue. Considering the totality of the aforesaid facts, we are of the view that no addition was called for more so, when no evidence about the expenses being bogus in nature has been brought on record by the Revenue. We, therefore, direct the deletion of addition made by AO.

12. With respect to the addition of Rs.1,34,880/- payable to M/s. P. Meera Anusha, it is the contention of the assessee that she is an employee of State Govt. on deputation to the company and as per the understanding with State Govt., assessee is required to pay her in addition to her salary, the leave and pension contribution and reimbursement of expenses like Telephone, newspaper etc. The assessee has also placed on record the copy of the claims towards the expenses and the leave and pension contribution made by the assessee through her parent organization. Assessee has also demonstrated that the aforesaid amount has been paid to the assessee in subsequent year. Considering the totality of the aforesaid facts and in the absence of the any evidence placed by the Revenue to demonstrate that the payment is bogus in nature, we are of the view that no disallowance of aforesaid expenses is called for in the present case. We, therefore, direct its deletion **thus the ground of assessee is allowed.**

13. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 21.07.2022

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 21.07.2022

PY*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT