

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.6520/Del/2018
Assessment Year : 2014-15

M/s Singhal Exim Pvt.Ltd.,
101-102, First Floor,
Padam Singh Road,
Karol Bagh,
New Delhi.
PAN : AANCS4336H.
(Appellant)

Vs. Income Tax Officer,
Ward-23(4),
C.R. Building,
New Delhi.

(Respondent)

Appellant by : Shri S.R. Wadhwa,
Shri Ajay Wadhwa, Advocates &
Ms. Aayushi Gupta, CA.
Respondent by : Shri S.S. Rana, CIT-DR.

Date of hearing : 12.03.2019
Date of pronouncement : 12.04.2019

ORDER

PER G.D. AGRAWAL, VICE PRESIDENT :-

This appeal by the assessee for the assessment year 2014-15 is directed against the order of learned CIT(A)-30, New Delhi dated 14th August, 2018.

2. Ground Nos.1 & 2 of the assessee's appeal are general in nature for which no specific arguments were raised. Accordingly, they need no adjudication.

3. Ground Nos.3, 3.1 and 3.2 read as under :-

“3. That in view of the facts and circumstances of the case, the Id.CIT(A) has erred in confirming the addition of Rs.59,51,29,517/- made by the Assessing Officer on the ground that genuineness of the high seas sales made in cash to the found parties, namely, (i) M/s System Telco, (ii) M/s Blues and Jacks Overseas (iii) M/s VKS Concepts, (iv) M/s Scum Trading, were not genuine and, therefore, liable to be added either u/s 68 or 69C of the Act.

3.1 That the Id.CIT(A) was not justified in confirming the above addition of Rs.59,51,29,517/- despite producing all the necessary evidence regarding purchase of goods; namely mobile phones imported from China and corresponding high sea sales made to the above four parties.

3.2 That during the course of assessment proceedings, statement of Director Shri Deepak Aggarwal was recorded u/s 131(1) of the Act, wherein he clearly explained the modus operandi of the trading business of mobile phones carried on by the appellant company and also produced bills with respect to mobile phones imported from China and copies of high sea sales agreements and hence, the Id.CIT(A) was not justified in confirming the addition made by the Assessing Officer.”

4. At the time of hearing before us, it is stated by the learned counsel that the assessee derives income from import of mobile phones from China and its sale in India. That during the year under consideration, total sales were at ₹62,91,41,642/-, out of which, high sea sales are at ₹59,11,29,517/- and the local sales at ₹3,80,12,124/-. That the assessee has a meager capital and its nature of business is that he enters into an agreement for purchase of mobile phones on credit basis from China and most of the times, the shipment itself is sold on the basis of high sea sales. The assessee recovers the sale consideration and then makes the payment to the China party against the purchases made by the assessee. That to expedite the transaction, the assessee, most of the times, receives the payment in cash from high sea sales. That the high sea sales are supported by the

sale agreements which are duly approved by the custom authorities. That the delivery of goods from the customs is taken by those parties who have purchased the goods from the assessee by way of high sea sales. Import duty on such goods is paid by them. That the Assessing Officer has accepted the trading result. Thus, on one side the Assessing Officer accepted the sales as genuine by accepting the trading results as disclosed by the assessee and, on the other hand, held the high sea sales to be not genuine. Thus, there is apparent contradiction in the order of the Assessing Officer. Further, while making the addition, the Assessing Officer has mentioned that "the amount of Rs.59,11,29,517/- is hereby disallowed u/s 68 of the Act". He stated that the above finding of the Assessing Officer clearly indicates that the Assessing Officer was totally confused because disallowance can only be of expenditure and not the sales and moreover, for making any disallowance, Section 68 of the Act is not relevant. He stated that the Assessing Officer held the sales to be non-genuine merely on the ground that the notices issued under Section 133(6) were returned with the postal remarks "left or not existence". He stated that if a buyer of goods from the assessee is not found at his address after about two years of the transaction, it cannot be held that the transaction of sales was not genuine. That the purchase of goods is not doubted. If the Assessing Officer is of the opinion that there was no sale of goods, then the trading account of the assessee would be required to be recasted and such goods should have been considered in the assessee's stock. However, the Assessing Officer has accepted the trading result. He also stated that at the relevant time, there was no prohibition of the cash sales or cash receipt. Cash receipt has been prohibited under Section 269ST only with effect from 1st April, 2017. That as per Customs Act/Rules, each and every high sea sales agreement is to be approved by the custom authorities and in assessee's case also, each and every high sea sales agreement is duly

approved by them and copies of all such approvals by the office of Commissioner of Customs are furnished in the paper book. He also stated that complete details of the buyer are to be given to the custom authorities and no high sea sales agreement can be approved unless the buyer has an importer exporter code. He stated that the assessee makes the high sea sales to mainly four buyers and all of them are having importer exporter code. The details with regard to such importer exporter code in respect of each buyer is furnished in the paper book. That the delivery of goods from the custom authorities is taken by those buyers after the payment of excise duty. The necessary document in this regard was also produced before the Assessing Officer and copy of the same is given in the assessee's paper book. He, therefore, stated that merely because the consideration of the high sea sales was received in cash, would be no ground for holding the sales to be non-genuine. He stated that Section 68 would be applicable in respect of cash credit. In this case, it is only the realisation of the sale consideration from the buyer of the goods and there is no cash credit in the assessee's books of account. In fact, as the goods were sold by the assessee, the buyer became the debtor of the assessee in respect of sale consideration and receipt of cash from them is the realisation of the sale consideration. The buyers were never the creditor of the assessee but they remained debtor till they made the payment of the value of the goods purchased by them. Thus, Section 68 is not at all applicable in this case. He also stated that on these facts, the decision of Hon'ble Apex Court in the case of Sumati Dayal Vs. CIT – [1995] 214 ITR 801 (SC) relied upon by the Assessing Officer is not applicable.

5. Learned DR, on the other hand, stated that Section 68 is a deeming provision. The Assessing Officer issued notice under Section 133(6) to the alleged buyers of the mobile phones of the assessee. All

the notices issued remained unserved. That the alleged buyers claimed to have purchased the goods worth crores of rupees and therefore, they should not be small persons who may not have any fixed offices. If the buyers have changed the office, the assessee should have given new address. No such new address is given by the assessee. In view of the incomplete/incorrect address, the Revenue could not make necessary verification from the buyer with regard to the huge cash payment. That such huge cash payment is not a normal circumstance and therefore, the decision of Hon'ble Apex Court in the case of Sumati Dayal (supra) would be squarely applicable. He also relied upon the following decisions :-

1. N.K. Proteins Ltd. Vs. CIT – 2017-TIOL-23-SC-IT.
2. N.K. Industries Ltd. Vs. DCIT - - 2017] 292 CTR 354 (Gujarat).
3. Prem Castings (P) Ltd. Vs. CIT – 2018-TIOL-274-SC-IT,
Prem Castings (P) Ltd. Vs. CIT – [2017] 88 taxmann.com 189 (Allahabad).
4. Konark Structural Engineering (P) Ltd. Vs. DCIT – [2018] 96 taxmann.com 255 (SC),
Konark Structural Engineering (P) Ltd. Vs. DCIT – [2018] 90 taxmann.com 56 (Bombay).
5. CIT Vs. MAF Academy (P) Ltd. – 361 ITR 258.
6. CIT Vs. Navodaya Castle Pvt.Ltd. – 2014] 367 ITR 306 (Del).
7. Navodaya Castle Pvt.Ltd. Vs. CIT – [2015] 56 taxmann.com 18 (SC).
8. PCIT Vs. NDR Promoters Pvt.Ltd. – 2019-TIOL-172-HC-DEL-IT.
9. Sumati Dayal Vs. CIT – SC 1995 AIR 2009 (SC).
10. CIT Vs. Durga Prasad More – 82 ITR 540 (SC).
11. CIT Vs. O. Mohankala – 291 ITR 287.
12. Pratham Telecom India Pvt.Ltd. Vs. DCIT – 2018-TIOL-1983-HC-MUM-IT.

13. PCIT Vs. Bikram Singh 399 ITR 407 (Delhi).

6. In the rejoinder, it is stated by the learned counsel that none of the decisions relied upon by learned DR would be applicable because in this case, it is not in fact a credit at all but it is the recovery of the sale consideration of the goods sold by the assessee.

7. We have carefully considered the arguments of both the sides and perused the material placed before us. Admittedly, the assessee derives income from import of mobile phones from China and its sales in India. The major portion of the assessee's sales is by way of high sea sales i.e., out of the total sales of ₹62.91 crores, ₹59.11 crores of sales is on high sea sales basis. Such high sea sales is claimed to have been made to four parties viz., System Telecom, Blues And Jacks Overseas, M/s V.K.S. Concepts and M/s Skum Trading. The Assessing Officer issued notice under Section 133(6) to the above buyers. However, such notices were returned. The Assessing Officer also noted at page 15 of the assessment order the details of month-wise cash deposited in the bank. The total cash deposit in the bank in the whole year was ₹49,67,99,207/-. The Assessing Officer, on the basis of these two facts i.e., the receipt of major portion of sale consideration in cash and return of notices under Section 133(6), reached to the conclusion that the high sea sales are not genuine. Accordingly, he made the addition of ₹59,11,29,517/-. His finding in this regard at page 16 of the assessment order reads as under :-

“Therefore keeping in view of the above facts and material on record and I am satisfied that the cash deposits amounting Rs.59,11,29,517/- credited on the books of the assessee are not genuine and I also rely upon the judgment of Hon'ble Supreme Court of India in the case of Sumati Dayal the amount of Rs.59,11,29,517/- is hereby disallowed u/s 68 of the Act and added back to the total

income of the assessee company. Since I am satisfied that the assessee company has filed inaccurate particulars of income therefore the penalty u/s 271(1)(c) is hereby initiated. Since I am satisfied that the assessee company has filed inaccurate particulars of income therefore the penalty u/s 271(1)(c) is hereby initiated.

Addition :- Rs.59,11,29,517/-

Without prejudice stand

The above mentioned addition also falls u/s 69C of the Act as the assessee company has claimed that its all expenses are done by the funds deposits in the form of cash in its bank account and the source of this expenditure remains unverified and I am not satisfied with the explanation given by the assessee company in this matter and relying upon the circumstantial evidence and the facts of the matter; hence amount of Rs.59,11,29,517 is disallowed u/s 69C and added back to the total income of the assessee company. Since I am satisfied that the assessee company has filed inaccurate particulars of income therefore the penalty u/s 271(1)(c) is hereby initiated.

Addition :- Rs.59,11,29,517/-“

8. In the first paragraph above, the Assessing Officer mentioned “*the amount of Rs.59,11,29,517/- is hereby disallowed u/s 68 of the Act and added back to the total income of the assessee company*”. It seems that the Assessing Officer has probably not understood the scope of Section 68. Section 68 is not for the purpose of allowability or disallowability of any deduction and moreover, the question of disallowance may arise in respect of any expenditure or allowance claimed by the assessee. In respect of a sale consideration, there cannot be any question of any disallowance. In the second paragraph above, the Assessing Officer has alternatively applied Section 69C. Section 69C is also for unexplained expenditure. Admittedly, there is no question of any unexplained expenditure in the case under appeal before us and therefore, Section 69C is also not applicable.

9. Further, we find the stand of the Assessing Officer to be contradictory. On one hand, he mentioned the high sea sales to be not genuine and on the other, he has accepted the business income disclosed by the assessee. Admittedly, the business income disclosed by the assessee has been worked out after considering the purchases and sales of mobile phones. The sales included the high sea sales also. Once the Assessing Officer has accepted the trading results, he has accepted the sales including high sea sales. Therefore, his stand while making the addition under Section 68 or 69C is contradictory to his stand taken while accepting the business income which is not permissible in law.

10. Be that as it may, let us further examine whether on these facts, the Assessing Officer was justified in holding the high sea sales to be not genuine. That the purchase of mobile phones in China and their import are not in dispute. The only dispute is with regard to high sea sales. The assessee has given complete documentation in respect of high sea sales from pages 105 to 286 of the assessee's paper book. We have carefully gone through the same and we find that each and every transaction of high sea sales is supported by high sea sales agreement which is executed on the stamp paper and duly attested by Notary Public, Delhi. The assessee applied for approval of high sea sales to the custom authorities. The custom authorities in the documents for giving approval of such high sea sales agreement have given the particulars of date and bill of lading number, date of agreement, IGM number and date, name of the party who made the high sea sales (i.e., the assessee) and the name of the party to whom the high sea sales are made, the name of the supplier, description of goods, quantity of goods, value of goods before high sea sales and after high sea sales etc. Thus, custom authorities have approved high sea sales agreement after taking into account all relevant facts. The

assessee has also produced documents which prove that the delivery of such goods from the custom authorities was taken by the parties to whom high sea sales were made. In such documents in the details of importer, the name of the persons who have purchased the goods on high sea sales basis is mentioned. The Revenue has not doubted the correctness of all these documents produced in the paper book. All these documents clearly prove the genuineness of sales beyond doubt.

11. The Assessing Officer has doubted the genuineness of sales mainly on two grounds – (i) the buyer parties were not found available at the address given by them and (ii) they made most of the payment in cash for the goods purchased by them. However, we find that in the documents of custom authorities giving approval of high sea sales agreement, the name and address of the buyer of goods is mentioned and it is the same address which is given by the assessee to the income tax authorities. Therefore, it cannot be stated that such party was not available at the time when the assessee made the sales. Moreover, all the buyers of goods from high sea sales have importer exporter code. Copy of importer exporter code of all the buyers is placed in the paper book and we find that this importer exporter code also gives the name and address of the parties to whom importer exporter code is given, its phone number, e-mail address, date of establishment, banker details, name of the directors etc. That the delivery of goods is taken from the custom authorities by those buyers and not the assessee. In the document for export clearance, the name of those buyers is mentioned as importer of the goods and not the assessee. That the return of notices issued under Section 133(6) unserved by the postal authorities is certainly a ground for raising suspicion with regard to identity of the parties. However, it is not sufficient to reach to the conclusion that sales to those parties are not genuine. In fact, the documentary evidences produced by the

assessee i.e., approval of high sea sales by custom authorities and clearance of goods from customs after payment of import duty by the buyers on high sea sales basis proves the genuineness of sales beyond doubt.

12. Coming to the cash payment of sale consideration, we are of the opinion that it certainly raises the doubt but again, when there are documentary evidences from the government agencies like custom authorities, the genuineness of sales cannot be doubted. Moreover, at the relevant time, there was no law which prohibited receipt of sale consideration in cash.

13. The Revenue has relied upon the decision of Hon'ble Apex Court in the case of Sumati Dayal (supra). In this case, Hon'ble Court has given the guidelines for considering the surrounding circumstances and application of test of human probability while examining the genuineness of a transaction. In the above case, the assessee carried on business as a dealer in art pieces, antiques and curios in Bangalore. During the assessment year 1971-72, she claimed that she received a total amount of Rs.3,11,831 by way of race winnings in jackpots and treble events in races at turf clubs in Bangalore, Madras and Hyderabad. The said amount was shown by the appellant in the capital account in the books. For the assessment year 1972-73, she claimed receipts of Rs.93,500 as race winnings in two jackpots at Bangalore and Madras and the same amount was credited in the capital account in the books. The Income-tax Officer included these amounts as income from other sources and assessed them. The Appellate Assistant Commissioner confirmed the order. The appellant referred the matter to the Settlement Commission. The Settlement Commission by a majority held that the explanation of the assessee was not genuine for the following reasons : (i) The appellant's

knowledge of racing was very meager. (ii) A jackpot is a stake of five events in a single day and one can believe a regular and experienced punter clearing a jackpot occasionally but the claim of the appellant of having won a number of jackpots in three or four seasons not merely at one place but at three different centres, namely, Madras, Bangalore and Hyderabad appeared, prima facie, to be wild and contrary to statistical theories and experience of frequencies and probabilities. (iii) The appellant's books did not show any drawings on race days or on the immediately preceding days for the purchase of jackpot combination tickets, which entailed sizeable amounts varying generally between Rs.2,000 and Rs.3,000. The drawings recorded in the books could not be co-related to the various racing events at which the appellant made the alleged winnings. (iv) While the appellant's capital account was credited with the gross amount of race winnings, there were no debits either for expenses and purchases of tickets or for losses. (v) In view of the exceptional luck claimed to have been enjoyed by the appellant, her loss of interest in races from 1972 assumed significance. The Settlement Commission took the view that winnings in racing became liable to income-tax from April 1, 1972, but one would not give up an activity yielding or likely to yield a large income merely because the income would suffer tax and that the position would be different, however, if the claim of winnings in races was false and what were passed off as such winnings really represented the appellant's taxable income from some undisclosed sources. On appeal to Hon'ble Supreme Court, it was held as under :-

“Held, dismissing the appeal, that the Settlement Commission after considering the surrounding circumstances and applying the test of human probabilities had rightly concluded that the appellant's claim about the amount being her winnings from races was not genuine.”

13.1 Now, coming to the facts of the assessee's case, there is no dispute with regard to purchase and import of mobile phones by the assessee from China. The major portion of the imported mobile phones was sold when the goods were in transit by way of high sea sales. Such sale is supported by the sales agreement duly attested by Notary Public. The custom authorities have approved the high sea sales agreement. The custom clearance documents of such goods show that the delivery of goods was taken by the buyer on high sea sales. On these surrounding circumstances, the only conclusion based on human probability that can be drawn is that the buyer of goods on high sea sales who has already taken the delivery of goods from custom authorities would make the payment for such goods. Therefore, on the facts of the case under appeal before us, the decision of Hon'ble Apex Court in the case of Sumati Dayal (supra) supports the case of the assessee rather than the Revenue.

14. The Revenue has relied upon other various decisions in support of its claim. We have gone through those decisions and we find that the facts in all those cases are altogether different and none of them would be applicable to the facts under appeal before us.

15. In view of the above, we hold that the Assessing Officer was not right in concluding that the high sea sales are not genuine. Moreover, Section 68 would also not be applicable in respect of recovery of sales consideration. Once the assessee sold the goods, the buyer of the goods becomes the debtor of the assessee and any receipt of money from him is the realisation of such debt and therefore, we are of the opinion that in respect of recovery of sale consideration, Section 68 cannot be applied. In view of the above, we find no justification for upholding the addition of ₹59,51,29,517/-. The same is deleted.

16. Ground No.4 of the assessee's appeal reads as under :-

"That on the facts and circumstances of the case, the Ld.CIT(A) has wrongly confirmed the addition of Rs.1,02,00,000/- made u/s 68 of the Act on the ground that the appellant company failed to prove the genuineness of the unsecured loans taken from the following persons who are also the directors in the appellant company :-

<i>(i) Shri Deepak Aggarwal</i>	<i>-</i>	<i>Rs.32 lakhs</i>
<i>(ii) Smt. Krishna Aggarwal</i>	<i>-</i>	<i>Rs.50 lakhs</i>
<i>(iii) Shri Ram Kumar Aggarwal</i>	<i>-</i>	<i>Rs.15 lakhs</i>
<i>(iv) Smt. Minakshi Aggarwal</i>	<i>-</i>	<i>Rs.5 lakhs"</i>

17. At the time of hearing before us, it is stated by the learned counsel that all the above persons are directors in the assessee company. They all are assessed to tax in their independent capacity. They have duly furnished their confirmation along with bank account as well as computation for assessment year 2013-14 and 2014-15. They have also explained that the above amounts were deposited with the assessee company out of the sale proceeds of the shares of M/s Monix Exim Pvt.Ltd. That the shares were transferred to Shri Dharmender Rathee and complete details i.e., name and address of Shri Dharmender Rathee and his permanent account number was also given to the Assessing Officer. The Assessing Officer did not accept the credit in the name of the above persons merely on the ground that he did not appear in response to summon issued under Section 131. He stated that the assessee has duly discharged the onus of proving the credit in its bank account. That the Assessing Officer never directed the assessee to produce Shri Dharmender Rathee. Otherwise, the assessee would have produced him and even if the Bench directs the assessee to produce Shri Dharmender Rathee, the assessee is ready to produce him.

18. Learned DR, on the other hand, relied upon the order of the Assessing Officer and he stated that the assessee has not been able to discharge the onus of proving the credit in its books of account. All the four creditors have claimed to have deposited the money out of the sale proceeds of shares of M/s Monix Exim Pvt.Ltd. but those shares have been transferred in the next financial year. Ordinarily, the sale consideration would be received at the time of transfer of shares and not earlier. He, therefore, submitted that the order of the Assessing Officer should be sustained.

19. In the rejoinder, it is stated by the learned counsel that during the year under consideration, all the above four creditors have received the advance from Shri Dharmender Rathee against the proposed sale of shares of M/s Monix Exim Pvt.Ltd. These facts have been duly stated in the confirmation of all the above creditors.

20. We have carefully considered the arguments of both the sides and perused the material placed before us. We find that the Assessing Officer has treated the credit in the name of above four parties on the only ground that Shri Dharmender Rathee did not appear before him in response to summon issued under Section 131. In the assessment order, the Assessing Officer has mentioned "Summon u/s 131 was issued to Sh. Dharmender Rathee on 16.12.2016 however no one attended". It is not clear from the assessment order whether such summon was served upon him and, if served, on which date he was supposed to appear before the Assessing Officer. It is also not clear when the summon was actually sent and whether it was tried to be served through notice server or by post and, if by post, when the summon was actually posted. The date of assessment order is 29th December, 2016. The above facts clearly show that the Assessing Officer has made the assessment in a hurried manner. He has not

made any discussion with regard to the evidences filed by the assessee i.e., the confirmation of the creditors and their income tax details. The assessee has agreed before us to produce Shri Dharmender Rathee before the Assessing Officer. Considering all these facts, in our opinion, it would meet the ends of justice if the orders of authorities below on this point are set aside and matter is restored to the file of the Assessing Officer. We order accordingly and direct the Assessing Officer to consider all the evidences produced by the assessee in this regard. We further direct him if after considering the evidences produced by the assessee he requires the presence of Shri Dharmender Rathee, he will give a suitable date and direct the assessee to produce him. Thereafter, he will readjudicate the matter in accordance with law after considering all the evidences as have been produced or as may be produced by the assessee before him. Needless to mention that he will allow adequate opportunity of being heard to the assessee.

21. Ground No.5 of the assessee's appeal reads as under :-

"That on the facts and circumstances of the case, the Id.CIT(A) is not justified in confirming the disallowance of petty cash expenses amounting to Rs.11,03,294/- without giving any cogent reasons."

22. We have heard the arguments of both the sides and perused the material placed before us. The Assessing Officer made the disallowance of the entire expenditure claimed by the assessee with the following finding :-

"The assessee company has claimed miscellaneous expenses at Rs.11,03,294/- and from the details filed by the assessee company it is seen that all these expenses are made in cash with the threshold of Rs.20,000/- during

the year and assessee company failed to produce the vouchers of these expenses and therefore these remained unverified expenses and therefore hereby disallowed u/s 69C as not found satisfactory explanation of the assessee company. Since I am satisfied that the assessee company has filed inaccurate particulars of income therefore the penalty u/s 271(1)(c) is hereby initiated.

Addition :- Rs.11,03,294/-."

23. From the above, it is seen that the Assessing Officer has disallowed the expenditure under Section 69C. Section 69C reads as under :-

"69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year:

[Provided that, notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.]"

24. From the above, it is clear that Section 69C would be applicable when – (i) the assessee has been found to have incurred an expenditure and (ii) he offers no explanation about the source of such expenditure. In the case under consideration before us, the Assessing Officer has doubted with regard to the genuineness of incurring of the expenditure itself while the precondition for applicability of Section 69C is that there is no dispute with regard to incurring of expenditure. Section 69C would come into play only when the Assessing Officer doubts the source of incurring such expenditure. In this case, there is no doubt with regard to the source of such expenditure because the same is duly debited in the assessee's books of account. Therefore,

Section 69C is wrongly applied by the Assessing Officer for the purpose of disallowance of expenditure. Now coming to the allowability of the expenditure, it was stated by the learned counsel that the Assessing Officer has never asked the assessee to produce the vouchers of the expenditure. He did not raise any query before making above disallowance and no adequate opportunity of being heard was allowed to the assessee.

25. Learned DR, on the other hand, relied upon the order of the Assessing Officer and stated that as the assessee failed to produce the vouchers of the expenditure, the Assessing Officer was fully justified in making the disallowance of the miscellaneous expenses claimed by the assessee. He stated that merely because some wrong Section is mentioned by the Assessing Officer should be no ground for deleting the disallowance.

26. After considering the submissions of both the sides and the facts of the case, in our opinion, it would meet the ends of justice if the orders of authorities below on this point are also set aside and restored to the file of the Assessing Officer. We order accordingly and direct the Assessing Officer to allow adequate opportunity of being heard to the assessee and thereafter pass an order afresh in accordance with law.

27. In the result, the appeal of the assessee is deemed to be allowed for statistical purposes.

Decision pronounced in the open Court on 12.04.2019.

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

VK.

Copy forwarded to: -

1. Appellant : **M/s Singhal Exim Pvt.Ltd.,
101-102, First Floor, Padam Singh Road,
Karol Bagh, New Delhi.**
2. Respondent : **Income Tax Officer, Ward-23(4),
C.R. Building, New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar