

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचंद, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM & SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 554/JP/2014
निर्धारण वर्ष / Assessment Year : 2009-10

M/s Rajasthan Explosives & Chemicals Ltd., 2, First Floor, R.K. Puram Market, Sector 8, New Delhi- 110022.	बनाम Vs.	J.C.I.T., Range- Bharatpur, Bharatpur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACR 9819 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Salil Kapoor &
Ms. Ananya Kapoor.
राजस्व की ओर से / Revenue by : Shri R.A. Verma (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 23/03/2017
उदघोषणा की तारीख / Date of Pronouncement : 18/04/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee emanates from the order dated 05/08/2013 passed by the Id. CIT(A), Alwar for the assessment year 2009-10, wherein the assessee has raised following grounds of appeal:-

- (1) That the CIT(A) has in view of the facts and circumstances of the case and in law grossly erred in upholding the disallowance of Rs. 1,71,363 made by the A.O. U/s 40A(3).

- (2) *That the CIT(A) has in view of the facts and circumstances of the case and in law grossly erred in issuing a show cause notice of enhancement U/s 251 to the assessee. The notice issue is illegal, bad in law and without jurisdiction.*
- (3) *That the CIT(A) has in view of the facts and circumstances of the case and in law grossly erred in enhancing the disallowance from Rs. 72 lakhs to Rs. 96 lakhs of the remuneration paid to directors.*
- (4) *That the enhancement made by the CIT(A) is illegal and bad in law. The enhancement is made on incorrect appreciation of facts and is based on surmises and conjectures and guesswork.*
- (5) *That the CIT(A) has grossly erred in upholding the disallowance of Rs. 72 lakhs that was made by the A.O. initially.*
- (6) *That the various observations made by the CIT(A) in the impugned order against the assessee are illegal, bad in law and totally contrary to facts on record.*
- (7) *That the A.O. and CIT(A) have grossly erred in law and on facts in invoking Sec. 40A(2)(b) against the assessee.*
- (8) *That the CIT(A) has grossly erred on facts and in law in upholding the disallowance of Rs. 9,88,940/- on account of expenses incurred for repair and maintenance, travelling and misc expenses.”*

2. In this appeal, there is a delay of 268 days in filing the appeal, for which, the assessee has filed an application for condonation of delay in filing the appeal. We have heard both the sides on the issue of condonation of delay and after hearing the parties and looking to the fact that the delay

in filing the appeal is not intentional and beyond the control of the assessee, therefore the delay of 268 days in filing the appeal is hereby condoned by following the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition Vs. Mst. Katiji & ors. (1987) 167 ITR 471 (SC) wherein the Hon'ble Supreme Court has held as under:-

Making a justice-oriented approach from this perspective, there was sufficient cause for condoning the delay in the institution of the appeal. The fact that it was the "State" which was seeking condonation and not a private party was altogether irrelevant. The doctrine of equality before law demands that all litigants, including the State as a litigant, are accorded the same treatment and the law is administered in an even-handed manner. There is no warrant for according a step-motherly treatment when the "State" is the applicant praying for condonation of delay. In fact, experience shows that on account of an impersonal machinery (no one in charge of the matter is directly hit or hurt by the judgment sought to be subjected to appeal) and the inherited bureaucratic methodology imbued with the note-making, file-pushing, and passing-on-the-buck ethos, delay on its part is less difficult to understand though more difficult to approve. In any event, the State which represents the collective cause of the community, does not deserve a litigant non grata status. The courts, therefore, have to be informed of the spirit and philosophy of the provision in the course of the interpretation of the expression "sufficient cause". So also the same approach has to be evidenced in its application to matters at hand with the end in view to do even-handed justice on merits in preference to the approach which scuttles a decision on merits. Turning to the facts of the matter giving rise to the present appeal, we are satisfied that sufficient cause exists for the delay. The order of the High Court dismissing the appeal before it as time-barred, is therefore, set aside. Delay is condoned."

3. The 1st ground of the appeal is against sustaining the disallowance of Rs. 1,71,363/- U/s 40A(3) of the Act. The brief facts of the case on this issue is that the assessee had made cash payment of Rs. 6,85,363/- from Dhoipur, Delhi, and Waidhan office.

4. The assessee preferred appeal before the Id. CIT(A), who after considering the submissions has granted part relief by holding as under:-

"5.3 I have gone through the order of A.O. and submissions made by the AR in this regard. It has been explained that following payments:-

(i) Ex-gratia payment on 27/10/2008 Rs. 3,96,000/-

(ii) Ex-gratia payment on 27/10/2008 Rs. 1,18,000/-

Were made to the employees in cash on the occasion of Diwali. It is stated that each employee was paid Rs. 2000/- in cash. A copy of the voucher showing such payments to each employee has also been enclosed with the submissions. Further, it is stated that the remaining payments of Rs. 1,71,363/- (6,85,363 - 5,14,000) have been made to the employees for various expenses as reimbursement. However, no such evidence could be produced in the proceedings. Further, no evidence in support of the circumstances which necessitated making such payments in cash was produced either before the A.O. or during the course of present proceedings. Since, each of such expenditure as detailed above (included in the amount of Rs. 1,71,363/-) exceed Rs. 20,000, accordingly, I confirm the disallowance of Rs. 1,71,363/- made on account of payments made in cash, in violation of the provisions of Section 40A(3) of IT Act. The appellant would thus get a relief of Rs. 5,14,000 on this account."

5. We have heard both the sides on this issue. Only amount sustained was Rs. 1,71,363/- for the reason that these amounts were paid to the employees as reimbursement of the various expenses. However, no evidences were filed in this regard before the Assessing Officer as well as before the Id. CIT(A). The Id. CIT(A) also observed that no evidence in support of the circumstances, which necessitated making such payments in cash was filed. Before us also, no evidence with regard to necessity for making cash payment to the employees were filed. Therefore, in absence of any supporting document in support of the claim of the assessee that these were reimbursement of the expenses to the employees and circumstances necessitated such payment in cash, the addition sustained. Hence, we find no infirmity in the order of the Id. CIT(A), therefore, the same is hereby confirmed. The appeal of the assessee on this ground is dismissed.

6. Grounds No. 2 to 7 of the appeal are interlined and with regard to the disallowances made by invoking the provisions of Section 40A(2)(b) of the Act. The Assessing Officer noticed that the assessee company has paid remuneration of Rs. 60 lacs each to Ms. Manisha Solanki and Mr. Yuvraj Solanki during the year. They are daughter and son of Shri K.S. Solanki, Managing Director. The Assessing Officer noted that no such remuneration

was paid in the preceding year. The assessee was asked to submit documentary evidence regarding their educational and professional qualifications, work experience in this line of business, business exigency and benefit accrued to the assessee company from these persons. The assessee submits that Mr. Yuvraj Solanki has got the diploma supplement in Bachelor of Arts with level 6 Bachelor Degree from DE MONTFORT UNIVERSITY with vast knowledge and experience in different modules relating to accounting, analysis, economics, financial markets and services strategic and brand management and many other research issues and analysis. Ms. Manisha Solanki is the degree holding in bachelor of science from the famous and renowned university of "The George Washington University", Washington, with the vast knowledge of above modules, company has gained growth in terms of volumes, work strategy and developed managerial strategy. The documentary evidences and certificates were submitted before the authorities below and the assessee pleaded that the Director's remuneration paid totaling to Rs. 1.20 crores were justified in view of the high degree of foreign qualification and experience. It was also submitted that in the preceding year, Ms. Manisha Solanki and Mr. Yuvraj Solanki were not Director of the company, therefore, remuneration were not paid. It was further submitted that the comparative figure of total turnover of the assessee company, which was

Rs. 53.91 crores in financial year 2008-09 while it was 45.68 crores in financial year 2007-08. The Assessing Officer disallowed the amount of Rs. 72 lacs. The Id. CIT(A) enhanced it to Rs. 96.00 lacs.

7. We have heard both the sides on these issues. The assessee company in its board meeting on 03/10/2008 resolved that the company shall pay managerial remuneration amounting to Rs. 1.20 crores to the following Directors for financial year 2008-09 in the manner given below:

Sl. No.	Name of Directors	Mode of Payment	Amount (in Rs.)
1.	Manisha Solanki	By way of salary and allowances	60,00,000/-
2.	Yuvraj Singh Solanki	By way of salary and allowances	60,00,000/-
	Total		1,20,00,000/-

Thus, the remuneration was for the financial year 2008-09, therefore, the Assessing Officer as well as the Id. CIT(A) has misunderstood this payment of remuneration to the Directors towards the monthly salary. The amount was paid and necessary TDS was deducted. Necessary information in the Form No. 32 under the Companies Act, 1956 was filed declaring such remuneration paid to the Directors filed with the ROC. Both these Directors have shown these amounts in their return of income. Necessary evidence in this regard in the form of ITR placed at page No. 23 and 25 of the paper book. The details of qualifications of both the Directors were submitted before the authorities below. The necessary Board resolution was also filed

before the authorities below. The details of payments alongwith TDS were also filed. The company was a profit making company, the Directors have declared the amount in their respective return of income. Such remuneration payments made in the subsequent years stand accepted by the revenue authorities, therefore, in our considered view, there was no justification in disallowance and further enhancing such disallowance by the Assessing Officer and the Id. CIT(A) respectively. Therefore, we direct to delete the same.

8. Ground No. 8 of the appeal is against sustaining the disallowance of expenses of Rs. 9,88,940/- with regard to repair and maintenance, travelling and misc. expenses.. The Assessing Officer made ad hoc disallowance of Rs. 19,77,880/- being 10% of the expenses incurred on repair and maintenance expenses, travelling and misc. expenses. The Id. CIT(A) has reduced this ad hoc disallowances to 5% of the total expenses.

9. Before us, it was pleaded that these allowances were made completely on ad hoc basis, no specific defects were pointed out in the books of account. He further submitted that the assessee company is engaged in the business of manufacturing and selling of explosives and these expenses have been incurred on repair and maintenance for its plant and machinery, building and factory, electrical, travelling and conveyance

expenses of the staffs, fuels for vehicles and hiring of the vehicles were also made for the business requirement of the assessee company. The misc. expenses debited were also included audit fee, consultancy charges, legal charges, professional fee, business promotion expenses etc. therefore, all the expenses debited in the books of account were totally and exclusively for the purpose of business of the assessee company.

10. After hearing both the sides, we find that this disallowance has been made completely on ad hoc basis and purely on guess work. No specific defects were pointed out in the expenses claimed under this head and nor it was established that part of the expenses debited were not for the purpose of business of the assessee. Therefore, in absence of any defects and finding that expenses were not incurred for the business purposes, such ad hoc disallowance is not disallowed. Accordingly, this ground of the assessee's appeal is allowed.

11. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 18/04/2017.

Sd/-
(कुल भारत)
(Kul Bharat)

न्यायिक सदस्य / Judicial Member
जयपुर / Jaipur
दिनांक / Dated:- 18th April, 2017
*Ranjan

Sd/-
(भागचंद)
(BHAGCHAND)

लेखा सदस्य / Accountant Member

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:

1. अपीलार्थी/The Appellant- M/s Rajasthan Explosives & Chemicals Ltd.,
New Delhi.
2. प्रत्यर्थी/ The Respondent- The JCIT, Range- Bharatpur, Bharatpur.
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त(अपील)/The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 554/JP/2014)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar