

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'B', New Delhi**

**Before : Shri I.C. Sudhir, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 3491/Del./2014
Assessment Year: 2008-09**

M/s. C.D. Security Services Networks Ltd., 3B Masjid Moth, South Extn. New Delhi. PAN- AAACC3815G (Appellant)	vs.	Income-tax Officer, Ward 3(2), New Delhi (Respondent)
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Appellant by	Sh. Ashish Jaiswal, Advocate
Respondent by	Sh. Anshu Prakash, Sr. DR

Date of Hearing	31.08.2017
Date of Pronouncement	05.09.2017

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the order dated 31.03.2014 of Id. CIT(A)-VI, New Delhi for the assessment year 2008-09 on the following grounds :

- "1. Because Id. Commissioner of Income Tax (Appeals)-VI, New Delhi has erred in rejecting the ground of the assessee relating to non-service of notice u/s. 143(2).*
- 2. Because Id. Commissioner of Income Tax (Appeals)-VI, New Delhi has erred in confirming addition of Rs.16,43,471/- out of sundry creditors by applying provisions of section 43B.*
- 3. Because Id. Commissioner of Income Tax (Appeals)-VI, New Delhi has erred in nature of liabilities unpaid covered u/s. 43B.*

4. *Because ld. Commissioner of Income Tax (Appeals)-VI, New Delhi has failed to appreciate that copy of audit report has been filed before him, which clearly suggested that no default was there u/s. 43B.*

5. *Because ld. Commissioner of Income Tax (Appeals)-VI, New Delhi has erred in confirming disallowance out of salary of Rs.12,54,766.00.*

6. *Because on facts and in circumstances of the case, the assessment order as well as observations of Ld. AO are not correct and in fact, legally as well as factually, assessee was eligible for all claims which were disallowed by the ld. AO and no disallowance/allowance was warranted.*

7. *That the additions/disallowances made in assessment order and confirmed in 1st appeal are bad in law as well as on facts and appropriate relief deserves to be allowed."*

2. The brief facts of the case are that the assessee was engaged in the business of providing security services. The return of income was filed on 28.09.2008 declaring loss of Rs.7,79,410/-. The case was selected for scrutiny and statutory notices were issued to the assessee. The assessee did not comply fully to the notices issued by the Assessing Officer for completion of assessment and show cause notice was issued, but he did not appear. Therefore, the Assessing Officer completed assessment u/s. 144 of the IT Act by making the following disallowances :

Loss as per Return of Income		7,79,410/-
Add: Disallowances -		
- On a/c of unsecured Loans	31,16,377/-	
- On a/c of Sundry Creditors	2,30,82,752/-	
- On ac of Other Expenses	21,62,132/-	
- On a/c of salary	12,54,766/-	
- On a/c of Bonus	<u>3,95,573/-</u>	3,00,17,600/-

Total Taxable Income 2,92,38,190/-

3. Aggrieved by these additions, the assessee preferred appeal before the first appellate authority. The assessee submitted detailed written submissions along with additional evidence u/r 46A(1). Additional evidences were sent to the Assessing Officer and called for remand report which was submitted by the AO. The Id. CIT(A) after considering the written submissions, remand report and additional evidence, sustained the disallowance u/s. 43B as under :

Sl. No.	Nature of Statutory Liabilities/taxes etc.	Amount as on 31.03.2008
1.	Statutory Liabilities	Rs.10,90,192/-
2.	I.T. (Rs.2,21,600 + 2,36,610) provision	Rs. 4,58,210/-
3.	Provision for FBT	Rs. 95,069/-
	Total	Rs.16,43,471/-

Further, the Id. CIT(A) sustained the disallowance of Rs.12,54,766/- under the head salary expenses. Aggrieved by the above additions, the assessee is in appeal before the ITAT.

4. The learned AR submitted a written synopsis which is as under and he also submitted paper book containing page Nos. 1 to 39 :

“DISALLOWANCE U/S 43B of RS.16,43,471/-

4. That the Id.CIT(A) has sustained the addition on account of Statutory Liabilities/Taxes u/s 43B of the Act as being not paid by the appellant within the due date. It is humbly submitted that the above observation of the Id.CIT(A) is erroneous as the Income Tax Provision of Rs.4.58.210/-.

*first of all belongs to earlier years: secondly **Income Tax Provision of Rs.4.58.210/- and Provision for Fringe Benefit Tax of Rs.95.069/-** are not an expenditure for the purpose of earning profits. It has not been claimed in Profit & Loss Account as these are not business expenditure for the appellant company, therefore, it cannot be disallowed u/s 43B of the Act **as the same are disallowable u/s 40(a) of the IT Act, 1961.***

5. The disallowance of Statutory Liabilities of Rs.10.90.192/- u/s 43B is also erroneous as this disallowance has already been made in return of income to the extent not paid before due date amounting to Rs.9.66.271/-.

6. In any case, even though not admitted in case the disallowance has to be made in view of absence of evidence then also only disallowance of the difference of statutory liability appearing in balance sheet and return of income which comes to Rs.1,24,441/- can be made. Otherwise the disallowance would lead to double disallowance and consequently double taxation, which is not the spirit of law.

SALARY OF RS.12,54,766/-

7. That the Id.CIT(A) has erred in confirming the disallowance of Salary of Rs.12,54,766/- on the basis of comparison with preceding year Sale to current year sale, treating it excessive. It is humbly submitted that such an approach is erroneous. That the expense under salary has been paid to manpower involved in security services and does not include directors remuneration which has been booked separately. In preceding years also the sale has been increasing alongwith expenditure under the head of personnel expense [salary for security services), only slight increase is there due to increase in salary of manpower and number of manpower.

8. That during the year the sale has increased to Rs.15,98,66,598/- from Rs.15,02,76,606/- in the immediately preceding year. The appellant nature of business being of security service, the main component required in this business is of man power, therefore increase in sale would directly increase the expenditure in salary paid to increased number of security guard, also due to inflation and increment in salary from year to year in comparison with preceding year along-with other factors.

9. Furthermore, it is humbly submitted that the AO accepted the nature of expenditure required to be incurred, but at the same time his justification is confined to the extent of increase in sales, which is not warranted. It is further submitted that an employer in fixing the remuneration of his employees is entitled to consider the extent of his business, the nature of the duties to be performed and the special aptitude of the employee, future prospects of extension of the business and a host of other related circumstances. It is erroneous to think that increased remuneration can only be justified if there is corresponding increase in profits of the employer. Reliance is placed upon **CIT v. Walchand & Co. Pvt Ltd. (1967) 65 ITR 381 (SC)] and J K Wollens Manufacturer v. CIT (1969) 72 ITR 612 (SC).**

10. That the allegation of the department that assessee has not provided any evidence to support its claim is half hearted as it is a matter of fact which was also before the AO and ld.CIT[A] and also open to verification that the office of the appellant company was sealed by MCD (Municipal Corporation of Delhi) due to which all the records and documents of the appellant alongwith record of current assessment year has been misplaced during the shifting for which the FIR was lodged. The copy of MCD letter and FIR are annexed in the paperbook for your honours kind perusal.”

5. On the other hand, the ld. DR relied on the order of the lower authority and objected that the computation of total income filed at page No. 2 of the paper book was not submitted before the lower authorities. The case laws cited by the assessee are not applicable to the assessee’s case. The assessee has been assessed u/s. 144 of the Act and no books of account, bills and vouchers were produced before the Assessing Officer.

6. After hearing both the sides and perusing the material on record, we find that the assessee has filed FIR (PB-39) dated 31.08.2010 for missing of books of account, which is much after the scrutiny notice issued on 03.08.2009. Thereafter, the Assessing Officer has issued notice u/s. 142(1) to the assessee on 06.01.2010 for fixing the date on 18.01.2010 and no one attended nor any reply filed. Another notice was issued u/s. 142(1) on 26.07.2010 fixing the case on 04.08.2010. This notice also stood un-complied. The assessee has not filed any follow up action report against the FIR filed on 31.08.2010. The assessee has also filed computation of income (PB-2). During the course of hearing, the ld. DR objected that it was not filed before the lower authorities. Therefore, the matter should go back to the Assessing Officer. In the computation of income, statutory liability has been allowed of Rs.9,66,271/- whereas in the balance sheet at page No.19, the statutory liability is appearing as Rs.10,90,192/-. The ld. CIT(A) has also confirmed the addition of Rs.10,90,192/-.The assessee has shown to have disallowed the statutory liabilities of Rs.9,66,271/- in the computation of income, but no evidence, like copy of ITR-4, is produced before us in respect of this fact. Therefore, the matter is restored to the file of AO to decide the issue afresh after proper verification. The assessee shall be given reasonable opportunity of being heard.

7. Regarding the disallowance on account of salary of Rs.12,54,766/-, we find that the assessee failed to produce any books of account before the authorities below to justify the salary expenditure to the above extent. The assessment has been made u/s. 144 of the Act. Even the assessee did not produce any salary payment details to the security guards. Before the CIT(A) also, only statistical data has been submitted. As per Form No. 3CD report, part-B, Sr. No. 9(b), the books of account are reported by Tax Auditor to have been maintained on computer system. Thus, even if missing of books of account is taken for granted for a moment, the assessee could have produced the books after taking their print out from the computer, which he failed to do so. Therefore, we are of the opinion that the Id. Authorities below have rightly made adhoc disallowance of this expenditure. Accordingly, the addition made by the authorities below on this count deserves to be sustained.

8. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 05.09.2017.

Sd/-
(I.C. Sudhir)
Judicial member

Sd/-
(L.P. Sahu)
Accountant Member

Dated: 05.09.2017