

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "D", MUMBAI**

**BEFORE D.T. GARASIA, JUDICIAL MEMBER AND  
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.2827/M/2015  
Assessment Year: 2011-12**

M/s. Amar Immunodiagnosics Pvt. Ltd., 116, Shree Diamond Centre, LBS Marg, Vikhroli (West), Mumbai – 400 083 <b>PAN: AAECA6561D</b>	Vs.	DCIT (OSD) 10(3) Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Jigar Mehta, A.R.  
Revenue by : Shri Purushottam Kumar, D.R.

Date of Hearing : 04.05.2017  
Date of Pronouncement : 24.07.2017

**ORDER**

**Per D.T. GARASIA, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 10.02.2015 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2011-12.

2. The assessee has taken two grounds of appeal.
3. Ground No.1 relates to disallowance of Rs.19,00,000/- under section 40A(2)(b) treating the remuneration paid to one of the directors as unreasonable and excessive.
4. Ground No.2 relates to disallowance of Rs.5,10,000/- under section 40A(2)(b).

For the sake of convenience, both the grounds are adjudicated together.

The short facts of the case are that the return of income for the year under consideration was filed on 30.09.2011 declaring total income at Rs.1,05,82,029/-. The case was selected for scrutiny and in response to notice under section 143(2) and under section 143(1) assessee attended from time to time and submitted various details as called for. Assessee is a company engaged in business of dealing in diagnostic kits and immunological reagents. Assessee is also engaged in research activity and has been duly registered with Department of Scientific and Industrial Research, Government of India (DSIR) and is eligible for claiming deduction under section 35(2AB) of Income Tax Act. During the year, the assessee has achieved gross turnover of Rs.4,05,24,877/- and earned profit of Rs.1,86,95,537/- as per computation of income filed. The profit is 46.13 % of turnover. The total tax paid is Rs.40,73,900/-. Assessee has also debited expense of Rs.81,42,008/- as R&D Expenditure. As it was duly registered with DSIR deduction a/s 35(2AB) of Income Tax Act, 1961 @ 200% of actual such expenditure was claimed. Assessee voluntarily paid additional tax and could not file the revised return as the time for revising the return had elapsed. Final Form 3CL was received in Nov 2013. As per the 3CL, the income was revised and additional tax was paid. All these facts along with revised computations and Tax challans were submitted to Assessing Officer (hereinafter referred to as the AO) during the course of Assessment proceedings. Among other things assessee has paid remuneration of Rs.24,00,000/- to Smt Priti Bhanushali and Rs.6,00,000/- was also paid to her as supervision charges. Assessee has also paid office/laboratory rent of Rs.6,00,000/- for the use of their business premises to Mr. Jayant Bhanushali. The AO observed that since the assessee company has not furnished any evidence to prove the reasonableness of the payment made to Ms. Preeti Bhanushali that these payments are comparable to the legitimate business needs of the assessee company, accordingly an amount of Rs.19,00,000/- is disallowed and added back to the total income of the

assessee. Similarly, as the assessee has not furnished any evidence to prove the comparable rates in respect of the payment to Shri Jayant Bhanushali and amount of Rs.5,10,000/- is disallowed and added back to the total income of the assessee. Thus, the total disallowance under section 40A(2)(b) is Rs.24,10,000/-. The AO further observed that the assessee company has credited an amount of Rs.38,02,375/- as FD interest as against Rs.39,85,970/- appearing in the 29AS whereas the TDS amounting to Rs.3,98,597/- has been claimed on the whole of the FD interest. However, the assessee has not furnished any explanation to the non-crediting of balance interest income amounting to Rs.1,83,595/-. Hence, the AO added Rs.1,83,595/- to the total income of the assessee. Further, since there was no evidence submitted by the assessee in respect of the computation of income, the AO disallowed Rs.14,250/-.

5. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has partly allowed the appeal of the assessee.

6. During the course of hearing before us, the Ld. A.R. has submitted that the issue in controversy is covered by the decision of the Tribunal in the own case of the assessee for A.Y. 2010-11 in ITA No.5543/M/2014 decided on 15.12.2016 and prayed that this appeal may be allowed.

7. Ld. D.R. has relied upon the orders of the Revenue authorities.

8. We have heard the rival contentions of both the parties. We find that the issue in controversy is covered by the decision of the Tribunal in the own case of the assessee for A.Y. 2010-11 in ITA No.5543/M/2014 decided on 15.12.2016. The relevant finding of the Tribunal reads as under:

“4. We have heard the rival contentions and perused the material available on record. It is observed from the documents placed before us that Smt. Priti Bhanushali was engaged with the day to day business operations of the assessee company and was handling payroll, accounts, banking, marketing and dealing with various government authorities etc. and thus comparing her multi faceted role with the

technical director was not justified. Both operated in their own unique field. Further, AO was misled by the fact that she was being paid higher remuneration of Rs.30 Lacs as against Rs.11 Lacs being paid to the highly skilled director of the company. Both directors had different functional area and could not be compared with each other. Further, AO lost sight of the fact that the technical director was paid additional sum of Rs. 15 Lacs on account of R & D consultancy which shatters the basic foundation of AO's premises. The Income Tax return of the directors reveals that both fall under the highest tax bracket and hence there was no requirement of Assessee Company to pay unreasonable or excessive amount to the director. Disallowance u/s 40A(2) could be made only in case where the payment for services vis-à-vis market prices of such services were excessive or unreasonable and not by making comparison *inter-se* in the manner as done by AO. No comparable data has been relied upon by AO to ascertain the true value of the services being rendered by the director. In such a situation, above cited CBDT circular 6-P comes into picture where *it* has been stated that no addition could be made u/s 40A(2) in case there was no attempt to evade taxes. Our view is further fortified by the cited judgment of Jurisdictional Bombay high court where the Hon'ble court has observed that where revenue was not in a position to point out how assessee evaded payment of tax by alleged payment of higher commission to its sister concern, since sister concern was also paying tax at higher rate, disallowance of alleged excess commission paid to sister concern was not justified. Hence, finding strengths in the various arguments of the Ld. A.R., we are inclined to allow both the grounds of the assessee and delete impugned additions of Rs.19 Lacs & Rs.5.10 Lacs. Both Grounds of assessee's appeal succeeds."

9. Hence, respectfully following the decision of the Tribunal, we allow the appeal of the assessee.

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

**Order pronounced in the open court on 24.07.2017.**

**Sd/-**  
**(Ramit Kochar)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(D.T. Garasia)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 24.07.2017.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai

The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.