

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.149(Asr)/2017
Assessment Year:2011-12

M/s. Kakkar Complex Steels Vs. Jt. CIT
Pvt. Ltd. Range-II, Jalandhar
7Km, Jalandhar Road,
Hoshiarpur

PAN:AAACK9865A

(Appellant)

(Respondent)

Appellant by: Sh. Ashwani Kalia (Ld. CA)
Respondent by: Sh. A.N. Mishra (Ld. DR)

Date of hearing: 15.05.2018
Date of pronouncement: 31.05.2018

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee/Appellant, on feeling aggrieved against the order dated 06.12.2016, impugned herein, passed by the Ld. CIT(A)-2, Jalandhar, u/s 250(6) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The assessee has raised the following grounds of appeal.

"1. That the Ld. CIT(A)-1, Jalandhar has erred in law and on facts in confirming the disallowance of Rs.14,66,640/- out of Director's Salary.

2. *That the Ld. CIT(A)-1, Jalandhar has erred in confirming the disallowance of Rs.80,130/- out of Car Repair Expenses invoking the provision of Section 40(a)(ia).*

3. *That the order of the CIT(A)-1, Jalandhar is bad in law and on facts."*

3. The brief facts are already on record, hence, the same are not repeated herein for the sake of convenience and brevity.

4. At the outset, it is observed that there is 9 days delay in filing of the appeal which has been explained by the Ld. AR by giving reasoning to the effect that all the documents including the payment of Rs.10,000/- for appeal filing fee was completed/deposited by 25th Feb. 2017, however, the appeal was supposed to be signed by the Director of the company Sri Dipan Kumar who is living in Delhi but due to his wife's ill health he could not come to Amritsar in time, as a result of which the signing of documents required for filing the appeal got delayed which resulted into 9 days delay in the filing of the appeal.

It was further submitted by the Ld. AR that there is no willful default but delay has occurred due to circumstances beyond the control of the appellant, which is evident from the fact that the appeal filing fee was deposited on 23rd January, 2017 as per the receipt challan enclosed with the appeal papers.

The Ld. DR objected to the condonation of delay.

We have considered the submissions of parties, as the reason stated above by the Ld. AR seems to be logical, genuine and reasonable, hence, we are inclined to condone the delay of 9 days which are very meager, hence, the delay is condoned.

6. Now coming to the ground No.1 of the appeal, whereby the Ld. CIT(A) confirmed the disallowance of Rs.14,66,640/- out of Director's salary, on the premises that an amount of Rs.21 lakh has only been charged out of the total Director(s) salary of Rs.84 lac, which comes to 25% of the total expenses booked on this account. It is well settled that each year assessment is distinct and separate. As against this, even if one goes by the figure of adjusted turnover given by the appellant, in the course of appellate proceedings, which are Rs.30.64 crores for the main unit and Rs.15.44 crores for the EOU. Thus, the allocation of Director(s) salary even on this account would come to about 50% i.e., Rs,42 lacs should have been allocated to the EOU. Therefore, it was held by the Ld. CIT(A) that AO has been just and fair in making a disallowance of Rs.14,66,640/- on account of Directors Salary debited to the main unit.

The Id. AR claimed that the main unit of the assessee company is more than 40 years old and the EOU was set up for the year 2005 and since then, one of the Director Sh. Gautam Kakar is the incharge of the EOU and almost exclusively looking after the working of the EOU. He was devoting some time to the working of the Main Unit in order to co-ordinate the working of the two units and during the year under consideration, the total salary of 27 lacs was paid to Sh. Gautam Kakar and out of the same, 21 lac was debited in the books of EOU and 6 lacs debited in the books of Main Unit. The salaries of other two Directors who were looking after the Main Unit were debited to the account of Main Unit as in the earlier years. The Ld. AO while

framing the assessment, has held that the salary of directors debited to EOU is not in proportion to its turnover in comparison to the Main Unit and accordingly he worked out the disallowance of Rs.14,66,640/-. It was further submitted that the assessee has already transferred a sum of Rs.18,00,000/- out of general administrative expenses from Main Unit to the EOU to cover up any such deficiency. It was further submitted that no such disallowance has ever been made, except in the assessment year 2009-10 which was also deleted by the Ld. CIT(A) vide its order dated 10.01.2014.

7. On the other hand, the Ld. DR relied upon the order passed by the authorities below.

8. We have gone through the facts and circumstances of the case and also perused the material available on record as well considered the rival submissions of the parties, as it is clearly reflects from the fact that EOU was set up in the year 2005 and since than one of the Director of the company Sh. Gautam Kakkar has been working as incharge of the EOU and exclusively looking after the working of the EOU and salary to the tune of Rs.21,00,000/- was debited in the books of EOU and rest amount of Rs.6,00,000/- debited in the books of Main Unit. Reason which has been explained by the Ld. AR for paying the salary at the highest amount from the EOU because Sh. Gautam Kakkar is mainly looking after the working of the EOU. It is also clearly reflects from the balance sheet as on 31st March, 2011,

that the provision of Rs.18,00,000/- has been clearly shown as other administrative charges under the head of administrative expenses in scheduled-D in order to cover up the deficiency, if any, as it is not a case of the Revenue that the two Directors who looking after the Main Unit also involved in EOU, hence we are unable to understand as to how the salaries of the other Directors who were working for the Main Unit has also been considered, while allocating the Director(s) salary to the tune of 50% each in the Main Unit and EOU. Even the addition under the head under consideration was never been mad, except in the Asst. Year: 2009-10 which also stands deleted by the Ld. CIT(A) vide its order dated 10.01.2014. On the aforesaid analyzation as well the reason that judicial propriety demands that consistency has to be followed, the addition under consideration cannot be made. Hence, we do not have any hesitation to delete the said disallowance as upheld by the Ld. CIT(A).

Now coming to Ground No.2, as it relates to the confirmation of the disallowance of Rs.80,130/- out of Car Expenses invoking the provisions of Sec.40(a)(ia), as it was submitted by the Id. Counsel that provision of Sec.194C are not applicable in this case as the section applies to work contract as thee is no contract in the instant case the bills are basic for purchase of spares in which VAT is duly charged by the dealers and even otherwise the labour charges was framed nominal for the fitting of the spares. Even the companies releases the vehicle only after receiving the full payment and do not allow any

deduction from these payments. There is no regular dealing with these parties. Further from the bills which duly reflects there are the big companies and they have duly accounted for the receipts in their books as income and had paid the tax thereon in accordance with provisions of law.

Considering the facts and circumstances of the case as the assessee has taken the stand that parties involved in the instant case on whose basis, the addition has been made and confirmed qua disallowances of expenses for non-deduction of TDS by invoking the provisions of Sec.40(a)(ia) of the Act must have already deposited the due tax by including the amounts involved in the instant case, in their Income Tax Return. In the said circumstances, we are inclined to set aside the addition as confirmed by the Id. CIT(A) and restore back to the file of Ld. AO to decide afresh in view of the proviso of Sec.40(a)(ia) read with Sec.201(1)(A) of the Act as well as in view of the *Hindustan Coco Cola Beverage Pvt. Ltd. vs. CIT (supra)*.

8. In the result, the appeal filed by the assessee partly allowed and rest allowed for statistical purposes.

Order pronounced in the open Court on 31 .05.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated:31.05.2018
/PK/ Ps.

Copy of the order forwarded to:

- (1) M/s. Kakkar Complex Steels Pvt. Ltd., Hoshiarpur
- (2) The Jt. CIT, Range-III, Jalandhar
- (3) The CIT(A)-2, Jalandhar
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

True copy

By order