

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “D” BENCH**

**(BEFORE SHRI P. K. KEDIA, ACCOUNTANT MEMBER  
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 520/AHD/2017  
(Assessment Year: 2012-13)**

<b>The Deputy Commissioner of Income-tax, Anand Circle, Anand</b>	<b>V/S</b>	<b>M/s. PWS Engineering Pvt. Ltd., Post Box No. 62, Anand Sojitra Road, Anand-388001</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: AABCP6507D**

**Appellant by : Shri Mahesh G. Jiwade, Sr. D.R.  
Respondent by : Ms. Arti N. Shah, A.R.**

**(आदेश)/ORDER**

Date of hearing : 31 -05-2018

Date of Pronouncement : 31 -05-2018

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. This appeal by the Revenue is directed against the order of the Id. CIT(A)-4, Vadodara dated 13.10.2016 pertaining to A.Y. 2012-13 and following grounds have been taken:

1. *On the facts and circumstances of the case and in law, the Ld. C.I.T. (A) erred in deleting the disallowance made on account of remuneration and incentive to directors without appreciating that the disallowance made by the A.O. was in accordance with the provision of section 40A(2) of the Act and that nowhere in section 40A(2) of the Act it is mentioned that if the directors have paid tax on excess remuneration, disallowance u/s. 40A(2) of the Act will not be attracted in the hands of assessee company.*
2. *On the facts and circumstances of the case and in law, the Ld. C.I.T. (A) erred in holding that "Assessing Officer has not established that the payments to the directors are excessive or unreasonable" ignoring the factual finding recorded by the A.O in the assessment order and ignoring the assessee's failure to furnish evidence to justify that the increase in sale for the year under consideration as attributable to the efforts of the Directors only and that except the directors, no other staff members contributed in increasing sales.*
3. *The appellant craves leave to add, to amend or alter the above grounds as may be deemed necessary.*

2. The facts of the case are on perusal of Tax Audit Report for the year under consideration and copy of accounts of Directors', it has been found that the assessee company paid remuneration and incentives to Directors. Such expenditure has increased from Rs 32,40,000/- in Asstt. Year 2011-12 to Rs 1,49,10,000/- in Asstt. Year 2012-13. Therefore, the assessee was asked to explain the reasons and justification of huge hike in Directors' remuneration expenses vide order sheet entry dated 29/09/2014. In response, the assessee vide its submission dated 07/01/2015 has furnished the explanation as under (only relevant portion reproduced):

"The salary to directors is as under :

<i>Particular</i>	<i>31/03/2012</i>	<i>31/03/2011</i>
<i>(i) Total sales</i>	<i>Rs 5, 90,85, 932/-</i>	<i>Rs 3, 50,94,491 /-</i>
<i>(ii) Total salary (a) Annual salary (b) Commission on sales (23.71% of sales</i>	<i>Rs 9,00,000/- Rs 1,40,10,000/-</i>	<i>Rs 9,00,000/- Rs 84,00,000/-</i>
<i>Total</i>	<i>Rs 1,49,10,000/-</i>	<i>Rs 93,00,000/-</i>

*The salary is paid on base of as stated above. Total sales has gone up by Rs 2,39,91,435/-. Accordingly the salary expenses is 'increased during the year. "*

3. I have carefully considered the above submission of the assessee company. The only contention for rise in Directors' remuneration is that the sales during the year has gone up by Rs. 2,39,91,435/- From the copy of accounts it is noticed that the assessee company has paid remuneration to the Directors as under :

Sr. No.	Name of Director	Total salary & incentive (Rs)
1	Shri Dineshbhai S. Panchal	24,85,000/-
2	Shri Nishit D. Panchal	24,85,000/-
3	Shri Yogeshbhai S. Panchal	49,70,000/-
4	Shri Robhitbhai S. Panchal	49,70,000/-
	Total	1,49,10,000/-

4. It is pertinent to mention here that similar issued was also in the assessment year 2010-11 wherein it was noticed that the expenditure on account of Directors' remuneration increased from Rs 9 lakhs in Asstt. Year 2009-10 to Rs

80,30,1787- in Asstt. Year 2010-11 and after considering submission of the assessee in this regard and over all facts of the case such increase of sales by about 3.6 times than preceding year, the disallowance of Rs 71,30,1787-was made and accordingly the addition was made to the total income of the assessee company. Against the said addition, the assessee had preferred an appeal before the learned Commissioner of Income-tax (Appeal), Baroda. The action of the Assessing Officer in this regard was confirmed in appeal (vide order dated 19/09/2013). The assessee had preferred second appeal before the Hon'ble Income-tax Appellate Tribunal, Ahmedabad. The Hon'ble ITAT held that the inference .of the lower authorities cannot be sustained, especially when it is observed that the assessee company's turnover has increased to 3.6 times i.e. from Rs 99,88,414/- to Rs 3,61,38,065/- and in the background of such increase in turnover , the contention of the assessee that the same was the result of hard work put in by the Directors cannot be ruled out. Therefore, some increase in remuneration to Directors for their hard work is certainly justified and reasonable. However, the increase in Directors' remuneration to about 9 times cannot be justified on the basis of above increase in the turnover. Therefore, the Hon'ble Tribunal allowed the Directors' remuneration of 3.6 times of the immediately preceding year which worked out to Rs 32,40,000/- and confirmed the balance disallowance of Directors' remuneration of Rs 47,90,178/-.

5. For the year under consideration, it is true that the sales have increased from Rs 3,20,77,040/- in the A.Y 2011-12 to Rs 5,74,12,614/- in the current assessment year. However, the huge hike in Directors' remuneration is unreasonable and unjustified. The assessee's contention is that the hike in remuneration is given because of rise in sales. But no any evidences are

furnished as to substantiate and justify that the raise in sale is attributable to the efforts of the Directors only. The much lesser remuneration paid to the directors in the earlier years was not considered as inadequate by the assessee company. Therefore, giving huge rise in the Directors' remuneration only because of increase in sales cannot be held to be justified and reasonable. The assessee's claim is not supported by any material evidence to substantiate that only the Directors were contributors in increasing sales and not other staff and employees. Further, it is also not proved by the assessee that such incentives were given to staff also. Therefore, it is held that the Directors' remuneration is excessive, unreasonable and unjustified because the huge rise in Directors' remuneration was not found to be wholly and exclusively for/ the purpose of the assessee's business and that too only because of Directors' efforts or contributions in increasing sales.

6. In views of above discussion and also consideration over all facts and circumstances of the case, I hold that the Directors' remuneration paid in excess of Rs 55.08.000/- (considering rise in sales and keeping in mind the decision of Hon'ble IT AT in the case of assessee for Asstt. Year 2010-11) is excessive, unreasonable and unjustified and accordingly disallowance of Rs 94,02,000/- out of Directors' remuneration is made and the same is added to the total income of the assessee.
7. Against the said addition, assessee preferred first statutory appeal before the Id. CIT(A) who allowed the claim of the assessee.
8. Now Department has come in appeal before us.

9. We have gone through the relevant record in the impugned order. The ld. A.R. contention was that company and the Directors of the firm who are beneficiaries are paying Income Tax at the same rate at which company is paying tax and this contention was also upheld by the Jurisdictional High Court in assessee's own case for assessment year 2010-11 in Tax Appeal No. 209 of 2015 and following question of law was framed by the Hon'ble High Court which is reproduced as under and Hon'ble High Court affirmatively decided the matter in favour of assessee which is reproduced as under:-

*6. We have heard learned counsel for the parties. The question of applicability of Section 40A(2) of the Act to the restricted disallowance of Rs. 47,90,178/- is already concluded by this Court by the said order dated 31.3.2015. We may therefore, proceed on that basis. Despite this, the question that still survives is whether the Revenue can tax the same income in the hands of the company on which the Directors had already paid the tax at the same rate at which the company would have been liable to be assessed. In this context, we may recall that consistently before Assessing Officer, CIT(Appeals) and Tribunal, the assessee had canvassed that all the four Directors who had received such remuneration, were taxed in the highest bracket of 30%; at the same rate at which the assessee company at the relevant time was assessed. In fact, the assessee had demonstrated before CIT(Appeals) that the tax liability of the company on such disputed remuneration amount was exactly the same as the tax the four Directors had paid to the Revenue. To these factual aspects, even the Revenue has, at no stage raised any dispute. We may therefore, proceed on the basis that the element of excessive remuneration represents that income of the company which was eventually taxed in the hands of the Directors at the same rate at which; had it not been so distributed; would have been taxed in the hands of the company. In that view of the matter, the question of revenue neutrality would immediately arise. A certain income has already been taxed in the hands of the Directors. Permitting the Revenue to tax the same income again at the*

*same rate in the hands of the principal payer would amount to double taxation. Only on this count, we answer question in favour of the appellant-assessee and against Revenue, allow the Appeal and set aside the order of the Tribunal. The Tax Appeal is disposed of accordingly.*

10. In support of its contention, ld. A.R. also filed individual Tax return of all the Directors which also substantiate claim of the assessee. In view of the foregoing discussion and respectfully following the decision of the Jurisdictional High Court, we dismiss the appeal of the Revenue.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in Open Court on 31 - 05- 2018

Sd/-

**(P. K. KEDIA)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 31 /05/2018

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad