

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 1088/JP/2018
निर्धारण वर्ष / Assessment Years : 2010-11

M/s Morani Cars Pvt. Ltd., 14, Bajaj Nagar, Jaipur.	बनाम Vs.	The ACIT, Circle-6, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFCM 1226 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (C.A.)
राजस्व की ओर से / Revenue by : Shri P.P. Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 01/01/2019
उदघोषणा की तारीख / Date of Pronouncement : 09/01/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Jodhpur (camp at Jaipur) dated 14.06.2018 wherein the assessee has taken the following grounds of appeal:

"1. The Ld. CIT(A) has erred on facts and in law in confirming the disallowance of Rs. 1,80,000/- out of remuneration paid to Director.

2. The Ld. CIT(A) has erred on facts and in law in confirming the disallowance of audit fees of Rs. 64,000/- u/s 40(a)(ia) of the IT Act, 1961.

3. The Ld. CIT(A) has erred on facts and in law in confirming the addition of Rs. 17,60,000/- on account of notional interest calculated on interest free deposit given to M/s Morani Motors Pvt. Ltd. and M/s General handicrafts (Jaipur) Pvt. Ltd. he has further erred in not considering that the above deposit was given in commercial expediency and assessee also has interest free funds which exceed the interest free deposits provided by the assessee."

2. In respect of ground no. 1, briefly the facts of the case that the assessee company is an authorized dealer of Hyundai Cars. It filed its return of income on 14.10.2010 declaring total income of Rs.23,24,650/-. During the year, it paid remuneration of Rs.3,60,000/- to Mr. Jawahar Morani, Director of the company. In support of the same, assessee submitted copy of Board Resolution held on 29.09.2009 according to which remuneration @ Rs.30,000/- p.m. shall be payable retrospectively from 01.04.2009 onwards. The AO observed that remuneration paid to the Director of a company is an allowable expense within the provision of Income tax Act, however, the expenses are allowable in prospective nature. In the present case, the decision of assessee company is supported with a resolution passed at the meeting of Board of Directors held on 29.09.2009. The resolution cannot have a retrospective effect especially when it is a beneficial provision. Such resolution has effect from the date of passing the same. Accordingly, remuneration paid for the period prior to passing the resolution, being Rs.1,80,000/- (from 01.04.2009 to 29.09.2009 @ Rs.30,000/- p.m.) was disallowed.

3. On appeal, Ld. CIT(A) held that the date on which the work of Director was being performed was not backed by any authority. It is only on a later date that the resolution is passed by the assessee to regularize such an irregularity. This cannot be allowed as eligible expenditure. Accordingly, he confirmed the disallowance made by the AO.

4. During the course of hearing, the Id AR submitted that remuneration paid to Mr. Jawahar Morani, Director of the company is not in dispute. It is duly supported by resolution passed at the Board meeting held on 29.09.2009. The only dispute is whether remuneration paid for the period April, 2009 to September, 2009 is allowable or not. The AO has observed that a beneficial resolution cannot have retrospective effect whereas a beneficial resolution always has a retrospective effect. Similarly, the observation of Ld. CIT(A) that the date on which work of Director was being performed was not backed by any authority is incorrect as the same is backed by the Board Resolution and as per the master data of the company downloaded from MCA website, it can be noted that Mr. Jawahar Morani is working as a director of the company from 26.06.2007 but he was paid remuneration only from 01.04.2009.

5. It was further submitted by the Id AR that under the Income tax Act, remuneration paid to director can be disallowed u/s 40A(2) if the remuneration so paid is excessive or unreasonable having regard to the FMV of the services or facilities for which payment is made. In the

present case, it is not the case of lower authorities that remuneration paid to Mr. Jawahar Morani is excessive or unreasonable. The remuneration so paid is reasonable. Hence, the lower authorities have incorrectly disallowed the expenditure.

6. The Id. DR is heard who has relied on the findings of the lower authorities.

7. We have heard the rival contentions and perused the material available on record. The Director of the assessee company has been working since 26.06.2007 and therefore, for the period starting 1.4.2009 onwards, he was working for the company and the company in turn is benefitted by his services. The assessee company took a decision on 29.09.2009 at its Board's meeting by passing an appropriate resolution to pay remuneration to its Director w.e.f 1.4.2009 and thus the remuneration so paid is duly authorized and paid for the period he has rendered services to the assessee company. There is nothing which has been brought on record to suggest that a resolution passed at the Board meeting cannot have a retrospective effect from start of the financial year. There are decisions where are taken verbally at times and which are subsequently reduced in writing and such decisions so long as taken in the interest of the company after due application of mind and in absence of any patent illegality or malafide cannot be challenged by the Revenue. It is also not the case of the Revenue that the Director has not shown the remuneration in his return of income and has not paid taxes thereof. Therefore, we donot see any infirmity in the assessee company decision in absence of any loss to the

Revenue. In light of the same, disallowance of Director's remuneration is hereby directed to be deleted.

8. In ground no. 2, briefly the facts of the case are that during the course of assessment proceedings, the AO observed that assessee has made payment of audit fees amounting to Rs.64,000/-. However, since assessee failed to deduct TDS as required u/s 194J, he disallowed Rs.64,000/- u/s 40(a)(ia) of IT Act and which has been confirmed by the Id CIT(A).

9. At the outset, the Id AR submitted that assessee has not claimed expenditure on payment of audit fees at Rs.64,000/-. It has made provision for audit fees at Rs.55,000 + 10.3% service tax, totaling to Rs.60,665/- which is credited to audit fees payable account. Thus, the claim of audit fees is Rs.60,665/- and not Rs.64,000/-. Therefore, disallowance of Rs.64,000/- is incorrect and the same be restricted to Rs.55,000/-.

10. It was further submitted by the Id AR that the audit was carried out in subsequent period by M/s Khilnani & Associate. The audit report was signed on 25.08.2010. The actual payment was made on 10.11.2011 when it was actually paid the audit fees for FY 2009-10 & 2010-11 at Rs.1 lacs on which tax was deducted at source of Rs.10,000/-. Thus, when services was provided in FY 2010-11 and tax is also deducted at source subsequently, disallowance u/s 40(a)(ia) is not justified. In case it is held disallowable, then AO be directed to allow the same in AY 2012-13 when actual payment is made.

11. We have heard the rival contentions and perused the material available on record. We don't see any infirmity in the action of the lower authorities in disallowing the audit fee in terms of section 40(a)(ia), at the same time, the AO is directed to allow the same in the year of actual payment subject to verification. In the result, the ground is disposed off.

12. In respect of ground no. 3, briefly the fact of the case are that during the course of assessment proceedings, the AO observed that assessee has made payment of rent amounting to Rs.18,81,000/- to the following parties:-

S. No.	Name of party	Address of leased premises	Total rent paid	Security deposit
1.	M/s Chiman Enterprises	S-137, RIICO Industrial Area, Sitapura	Rs.2,52,000/-	Rs.60,000/-
2.	Smt. Vimla Barwa	S-137, RIICO Industrial Area, Sitapura	Rs.1,89,000/-	Rs.45,000/-
3.	M/s Morani Motors (P) Ltd.	Sitabari, Tonk Road, Jaipur	Rs.12,00,000/-	Rs.1 crore

The interest free security deposit in respect of properties mentioned at S.No.1 & 2 is in agreement with lease deed and is nearly equal to an amount of rent for three months which is general market trend. However, security deposit in respect of property mentioned at S.No.3 is not in agreement with relevant lease agreement. No such condition has been laid down in the lease agreement. The amount of security deposit

is at higher side with reference to the market trend. The rent paid by the assessee in respect of property is quite reasonable and cannot be said to be at lower side. The owner of the property, i.e. M/s Morani Motors (P) Ltd. is a sister concern of the assessee company. Further, the assessee has taken premises on rent for construction of workshop from M/s General Handicrafts (Jaipur) Pvt. Ltd. at Sitapura Industrial Area, Jaipur and has deposited interest free security deposit of Rs.74 lacs. However, no supporting evidence in this regard has been furnished. The locality of premises under reference is exactly same as of the premises mentioned at S.No.1 & 2 above. The assessee has allowed unreasonable interest free deposit with M/s General Handicrafts (Jaipur) Pvt. Ltd. Moreover, M/s General Handicrafts (Jaipur) Pvt. Ltd. is a sister concern of the assessee company. The own funds available with the assessee were not sufficient to meet the business requirements. Hence, the assessee has raised interest bearing loans from various banks & private parties and has allowed undue profit to its related parties in the shape of interest free security deposits within the meaning of provisions of section 40A(2)(b) of the IT Act. Accordingly, interest @12% (as assessee company has raised interest bearing loans on identical rates), i.e. Rs.17,60,000/- (as per the working given at Pg 8 of the AO's order) was disallowed.

13. On appeal, the Ld. CIT(A) confirmed the disallowance by holding that in view of the provisions of section 40A(2)(b) of the Act, any undue benefit to specified persons as covered by these provisions is required to be disallowed to the extent provided and thus, AO has rightly made the addition of Rs.17,20,000/- u/s 40A(2)(b) of the Act.

14. During the course of hearing, the Id. AR submitted that assessee has given Rs.1 crore to M/s Morani Motors Pvt. Ltd. in earlier years and Rs.74 lacs to M/s General Handicrafts (Jaipur) Pvt. Ltd. during the year. From both the parties, the assessee has taken the premises on rent. From M/s Morani Motors Pvt. Ltd., a showroom measuring 4752 sq. ft. at Main Tonk Road is taken on rent in the year under consideration for which rent of Rs.1 lacs per month is paid. Thus, there is a commercial expediency in providing interest free deposit of Rs.1 crore to M/s Morani Motors Pvt. Ltd. Similarly, interest free deposit of Rs.74 lacs was provided to M/s General Handicrafts (Jaipur) Pvt. Ltd. from whom property situated at G-227, Sitapura Industrial Area, Jaipur having area of 2041 sqm. is taken on rent from 01.04.2010 at Rs.50,000/- p.m. Thus, the interest free deposit is provided in commercial expediency. The **Hon'ble Supreme Court in case of CIT Vs. S.A. Builders 288 ITR 1** has held that interest on monies borrowed from bank and lent to sister concern without charging interest is admissible if made as a measure of commercial expediency. Therefore, disallowance of interest by calculating notional interest on such amount @ 12% p.a. is unjustified.

15. The Id. AR further submitted that that assessee has interest free funds by way of share capital, share application money and reserve & surplus to the extent of Rs.2,29,86,932/-. This is more than the interest free security deposit of Rs.1.74 crores. Thus, when interest free funds are more than the interest free security deposit, no disallowance out of

interest can be made. In support, reliance was placed on the following decisions:-

- Hero Cycles Pvt. Ltd. Vs. CIT (2016) 379 ITR 347/ 236 Taxman 447 (SC)
- CIT Vs. Ram Kishan Verma (2016) 132 DTR 107 (Raj)
- CIT Vs. Vijay Solvex Ltd. (2015) 113 DTR 382 (Raj)
- CIT Vs. Reliance Utilities & Power Ltd. 313 ITR 340 (Bom)

16. The Id. DR is heard who has relied on the findings of the lower authorities.

17. We have heard the rival contentions and perused the material available on record. The assessee has explained the business necessity of taking the premises on rent and placing the security deposit. Further, the AO has not established the nexus between the interest bearing borrowed funds and amount placed as security deposit. Therefore, where the interest free funds are sufficient towards placing the security deposit and the commercial expediency of taking the premises on rent having been established and the rent payment has been allowed, there is no basis for notional disallowance of interest expenses. In the result, the addition so made by the AO is hereby set-aside. In the result, the ground of appeal is allowed.

In the result, the appeal of the assessee is allowed in light of above directions.

Order pronounced in the open Court on 09/01/2019.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 09/01/2019.

***Santosh**

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

1. अपीलार्थी / The Appellant- M/s Morani Cars Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ACIT, Circle-6, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 1088/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar