

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH , COCHIN**

Before Shri George George K, Judicial Member

ITA No.273/Coch/2018 : Asst.Year 2006-2007

M/s.S.B.Publications Private Limited C/o.M/s.T.M.Sreedharan & Associates, Advocates, IInd Floor, Kalyan Chambers Chittoor Road, Near South Junction, Cochin – 16. PAN : AAICS3649E.	Vs.	The Income Tax Officer Ward 1(1) Thiruvananthapuram.
(Appellant)		(Respondent)

Appellant by : Sri. T.M.Sreedharan
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 30.01.2019	Date of Pronouncement : 31.01.2019
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ORDER

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 08.05.2018. The relevant assessment year is 2006-2007.

2. Three issues are raised in this appeal –

(a) Disallowance of Rs.16,974 by invoking the provisions of section 40A(3) of the I.T.Act.

(b) Peak credit in the name of Directors amounting to Rs.85,900.

(c) Lumpsum disallowance of expenditure of Rs.66,712.

We shall take up for adjudicate the issues as under.

(a) **Disallowance of Rs.16,974 by invoking the provisions of section 40A(3) of the I.T.Act:**

3. During the course of assessment proceedings it was noticed that the assessee had paid in cash a sum of Rs.84,872 to M/s.Ravi Enterprises on 07.06.2005. Since the payment was made by cash and not by way of account payee cheque or account payee bank draft, 20% of the said expenses amounting to Rs.16,974 was disallowed by the Assessing Officer in the assessment concluded u/s 143(3) of the I.T.Act (order dated 24.12.2008).

3.1 Aggrieved, the assessee has filed appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer. The relevant finding of the CIT(A) reads as follow:-

"On verification of the books of account, the Assessing Officer found that an amount of Rs.84,872/- was paid by cash to M/s.Ravi Enterprises on 07.06.2005. In the absence of satisfactory explanation, 20% of the said amount paid otherwise than by an account payee cheque or account payee bank draft was disallowed by the Assessing Officer. Nothing much in this regard except stating that the assessing authority has erred in disallowing 20% of the cash payments made, at any point of given time, I have no other option but to agree with the Assessing Officer for the disallowance made and accordingly, the same is confirmed. Appeal on this ground therefore, dismissed."

3.2 Aggrieved by the order of the CIT(A), the assessee has raised this issue before the Tribunal. The learned AR

reiterated the submissions made before the Income Tax Authorities. The learned Departmental Representative strongly supported the assessment order and the order of the CIT(A).

3.3 I have heard the rival submissions and perused the material on record. The assessee has not adduced any reasons to justify that the cash payment comes within the exempted clause under Rule 6DD. Hence, the disallowance of 20% of cash payment of expenditure of Rs.84,872 is justified and I confirm the same. It is ordered accordingly.

(b) Peak Credit in the name of Directors amounting to Rs.85,900

4. The assessee is a private limited company. Its Managing Director Sri. K.M.Varghese and Director Smt.Lilly Kutty Varghese, during the year under consideration had introduced an amount of Rs.1,99,000 and Rs.36,000, respectively. The assessee had filed confirmation letters from Sri.K.M.Varthese, Managing Director and Smt.Lilly Kutty Varghese, Director. However, according to the Assessing Officer, the assessee has failed to furnish the source of the amount credited during the year and hence the source of this amount was not explained. The A.O. further noticed that peak credit during the year in the account of Sri.K.M.Varghese was Rs.49,900 and Smt.Lilly Kutty Varghese was Rs.36,000. The peak credits in these accounts were added to the total income amounting to Rs.85,900 (49,900 and Rs.36,000). The CIT(A) confirmed the view taken by the Assessing Officer.

4.1 Aggrieved by the order of the CIT(A) the assessee has raised this issue before the Tribunal. The learned AR had filed the confirmation letter in the paper book submitted by him. The learned AR has also filed the ledger account of the Managing Director Sri.K.M.Varghese.

4.2 The learned Departmental Representative was duly heard.

4.3 I have heard the rival submissions and perused the material on record. Sri.K.M.Varghese, the Managing Director, is a retired college professor, who is a pensioner and getting his pension on monthly basis. It cannot be stated that the Managing Director Sri.K.M.Varghese is not having creditworthiness for introduction of Rs.1,99,000. Similarly, I noticed that Smt.Lilly Kutty Varghese has also withdrawn sufficient amount from the assessee-company for her introduction of Rs.36,000. Hence, the addition of peak credit doubting the creditworthiness of the Managing Director and Director is unwarranted. Accordingly, I delete the addition of Rs.85,900. It is ordered accordingly.

(c) Lumpsum disallowance of expenditure of Rs.66,712

5. The Assessing Officer had disallowed on an adhoc basis, 20% of the expenses incurred under the head selling, distribution and administrative expenses. The amount

disallowed at the rate of 20% was Rs.66,712. The CIT(A) confirmed the disallowance of Rs.66,712.

5.1 Aggrieved by the order of the CIT(A), the assessee has raised this issue before the Tribunal. The learned Counsel for the assessee has produced the schedule of expenses incurred under the head selling, distribution and administrative expenses for the year ending 31.03.2006. The learned AR submitted that most of the expenses under this head are direct expenses for which no adhoc disallowance was called for. It was further submitted that the A.O. had also disallowed certain portion of the expenditure by invoking the provisions of section 40A(3) of the I.T.Act, which will tantamount to duplication of disallowance of expenses. Therefore, it was submitted that the disallowance of expenses on adhoc basis may be deleted.

5.2 The learned Departmental Representative strongly supported the orders of the Income Tax Authorities.

5.3 I have heard the rival submissions and perused the material on record. On perusal of the schedule enumerating the expenses incurred under the head selling, distribution and administrative expenses, I noticed that many of the expenses are direct expenditure such as rent paid, telephone charges, electricity charges etc. Therefore, the adhoc disallowance of expenses on an estimate basis at the rate of 20% of the total expenses is uncalled for and I delete the same. It is ordered accordingly.

6. In the result, the appeal filed by the assessee is partly allowed, as indicated above.

Order pronounced on this 31st day of January, 2019.

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 31st January, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT (A), Thiruvananthapuram.
4. The CIT, Thiruvananthapuram.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin