

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND AMARJIT SINGH, JM**

ITA No.5380/Mum/2017  
(Assessment Year: 2011-12)

Sunvin Industries Pvt.Ltd. 21, Vitthal Changers, 3 <sup>rd</sup> Floor 65, Kazi Sayyed Street Mumbai-400 003	Vs.	DCIT-4(3) Room No.649, 6 <sup>th</sup> Floor Aaykar Bhawan M.K.Road Mumbai-400 020
PAN/GIR No. AAEC3087L		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Appellant by</b>	:	None
<b>Respondent by</b>	:	Ashish Kumar

<b>Date of Hearing</b>	:	03.01.2019
<b>Date of Pronouncement</b>	:	15.03.2019

O R D E R

Per Shamim Yahya, A. M.:

This appeal by the Assessee is directed against the order of the learned Commissioner of Income Tax -9, Mumbai (1d.CIT for short) dated 14.03.2017 and pertains to the assessment year (A.Y.) 2011-12.

2. The grounds of appeal read as under:

1. *"The Honourable Commissioner of Income tax (CIT) is not justified in partially disallowing the addition of Rs.10,00,000/- of Remuneration to Directors us 40A(2) ignoring the fact that the payment made is reasonable vis-à-vis the market conditions and having regard to the qualification, experience of the Directors, the exigencies of the business and benefit accruing to the appellant.*
2. *The Appellant craves leave to make additions, deletion or alternation to the above grounds of appeal.*

3. Brief facts of the case are that the AO has disallowed excess amount of expenses on remuneration paid to the Directors u/s. 40A(2)(b) of the Act. The AO has also observed that there is no evidence to show that Directors had rendered any extra services for payment of huge remuneration. The AO has also observed that remuneration has increased from Rs.6 lacs in previous year to Rs.30 lacs this year. The AO has further observed that the turnover and the profit also did not justify the huge payment to the Directors. After considering the submission made by the appellant, the AO disallowed an amount of Rs.22 lacs under the provisions of section 40A(2)(b) of the Act. Against the above order assessee appealed before Ld. CIT(A).

4. Before the Ld. CIT(A) assessee made following submission

*\* The appellant paid remuneration to the Director as follows*

a) Remuneration to Mr. Vinod Khetrapal = Rs.18,00,000/-  
b) Remuneration to Mr. Sunil Runga = Rs. 12,00,000/-  
Rs. 30,00,000/-

- *Mr. Vindo Khertrapal and Mr. Sunil Rungta are technical directors and are highly reputed and have very fast and excellent experience.*
- *In view of their experience, qualification and knowledge the remuneration paid is extremely reasonable and is much lesser than the remuneration that person of similar skill and knowledge may charge as per the market and business exigencies.*
- *The assessing officer has disallowed the remuneration paid to director amounting to Rs.22,00,000/- merely on the ground that all remuneration paid to the directors during the year is higher as compared to the previous year without considering the fact that the payment is reasonable.*

- *The Director Mr. Vinod Khetrpal is a highly reputed technically qualified person with 30 years of experience.*
- *The Director is responsible and carry out all the function such as a Production, Planning and marketing Strategies, financial Planning and control.*
- *Having regard to the nature and the scope of work of the directors and their qualification the afore-stated remuneration is very reasonable.*
- *Reliance is place of judgment of Honourable Delhi High Court in the cae of Hive Communication (P) Ltd v/s CIT (2011) 201 Taxmann 99/12 taxmann.com 287 , wherein the court has deleted disallowances of Director Remuneration u/s 40A(2) of the judgment referred enclosed in Annexure-i.”*

5. However, Ld. CIT(A) did not consider the above convincing and held that disallowance made is on a higher side. Looking into the facts of the case, he directed the AO to restrict the disallowance to Rs.10 Lacs.

6. Against the above order assessee is in appeal before us.

7. We have heard Ld. Departmental Representative and perused the records. None appeared on behalf of the assessee despite notice.

8. Upon careful consideration we find that this disallowance has been made on conjecture. Section 40A(2)(b) provides for disallowances if the payment is excessive or unreasonable having regard to the fair market value. Hence for making any disallowance under this section, proper evaluation of fair market value is necessary. It does not provide for disallowance on surmise. No cogent basis has been brought on record for the disallowances. No comparison with any other similar payment has been brought on record. It is also not the case that director remuneration

paid is not in accordance with company's Act. Hence we set aside the order of authorities below.

9. In the result, appeal filed by the assessee is allowed.

*Order pronounced in the open court on 15<sup>th</sup> March, 2019.*

Sd/-  
(Amarjit Singh)  
Judicial Member  
Mumbai; Dated : 15.03.2019  
Thirumalesh, Sr. PS

Sd/-  
(Shamim Yahya)  
Accountant Member

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai