

**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT
RAJKOT BENCH
BEFORE SHRIO. P. MEENA, ACCOUNTANT MEMBER
AND MRS. MADUMITA ROY, JUDICIAL MEMBER
I.T.A. No. 152/RJT/2014:Assessment Year: 2008-09**

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| M/s. Bhaiya Transport Pvt. Ltd. Charbhujia Marble Street, Near Octroi Naka, Gondal Road, Rajkot PAN: AACCB9950B | Vs. | ACIT Circle-5 Rajkot |
| Appellant | | Respondent |

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|------------------------------|---|
| Assessee by | Shri R. D. Manek, Advocate |
| Revenue by | Shri Praveen Kumar Verma, Sr. DR |
| Date of hearing | 11.04.2019 |
| Date of pronouncement | 12.04.2019 |

ORDER

PER O. P. MEENA, AM

- 1.** This appeal by the assesseeis directed against the order of learned Commissioner of Income tax (Appeals)-IV,Rajkot(in short “the CIT (A)”) dated 02.01.2014pertaining to Assessment Year 2008-09, which in turn has arisen from the assessment order passed under section 143 (3) dated 28.12.2010 of Income Tax Act,1961 (in short ‘the Act’) by the ACIT, Circle-5Rajkot(in short “the AO”).
- 2.** The grounds no. 1 relates to confirming the disallowance of Rs. 9,96,625 made by the AO being 30% of the salary and wages expenses out of Rs. 33,18,750/-.
- 3.** On verification of books of accounts and vouchers copies in the assessment proceeding the AO observed that the assessee has debited salaries and wages

expenses at Rs. 33,18,750/- whereas the vouchers produced are not found to be genuine as the same is pertains to same handwriting and hence 30% of the same was disallowed and added to the total income of the assessee.

4. The assessee carried the matter before the Ld. CIT(A) who confirm the addition made by the AO by observing that the vouchers maintained are defective in nature and as the same bearing signature in the same handwriting as per the vouchers in receipt salaries and wages.

5. Being aggrieved the assessee filed this appeal before the Tribunal.

6. The Ld. Counsel for the assessee contended that the assessee is a private limited company and disallowance out of salary and wages expenses are made on estimated basis without pointing out any defects of the books of accounts any rejection of the same. The Ld. Counsel refer page 2 of paper book which is the cash book, which gives the details of each payment and salary payments therefore it was contended that the disallowance made by the AO are without basis and disallowance to be deleted.

7. Per contra the Ld. Senior DR relied on the order of the lower authorities and submitted that the assessee has produced self-made vouchers and lower authorities are justified in their action.

8. We have considered the facts and rival submissions. We find that the assessee is a private limited company, and the expenses on account of salary and wages are duly debited and reflected in the cash books placed in the paper book page 2 onwards the AO has not pointed out any specific de facto defects in the books of accounts, nor has rejected books of accounts u/s. 145(3) of the Act. The AO has only due to some lacuna and clerical errors and observing that signatures are in the same handwriting has estimated the disallowance @ 30%. However, we note that this is the first year of the business of the assessee and books of accounts are duly audited. Therefore, the AO was not justified in making ad hoc disallowance out of salary and wages expenses without rejection of books of accounts as per provision of the Act. Accordingly, we deemed it fit and to delete the disallowance made by the AO. Consequently, this ground of appeal is allowed.

9. Ground No. 2 relates to confirming the disallowance made by the AO of Rs. 2,22,000/- u/s. 40A(2)(b) of the Act.

10. On verification of salary bills and vouchers, the AO noted that the assessee has debited salary paid to the relative of the directors amounting of Rs. 2,22,000/- in respect of five persons. These persons are covered u/s. 30A(2)(B) of the Act for which no explanation was submitted, hence the same were disallowed.

11. Aggrieved the assessee carried the matter before the CIT(A). However, the CIT(A) confirmed the disallowance by observing that the salaries passed to the appellant's relatives has not been substantiated of any explanation.

12. Being aggrieved the assessee has filed this appeal before the tribunal. The Ld. Counsel for the assessee submitted that the salary amounting to Rs. 2,22,000/- has been paid to the cousin son of the directors who are not covered by the provisions of 40A(2)(b) of the Act. Therefore, the disallowance made by the AO are not justified as the assessee has furnished complete bills of payments of salaries which have placed at paper book page 28. However, the salary remuneration paid to the persons are ranging between Rs. 13,400/- to 1,11,800/-. The average per person salary comes to Rs. 2,5000/- per month which not at all excessive and hence reasonable. Therefore, the lower authorities are not justified in their action in making the addition and confirming the same.

13. Per contra the Ld. Senior DR submitted that the assessee has not furnished details of the persons hence the disallowance made by the AO are justified.

14. We have heard the rival submissions are perused the material available on record. We find that the salary to 5 persons has been made paid which has been ranging Rs. 3,400/- to 1,11,800/- the average payment of salary in respect of various persons of which average comes to Rs. 2,500/- to 3,000/- per month. The

details of salary paid by the assessee is available at paper book page 28. Considering these facts, we find that there is no excessive payments made by the assessee hence the disallowance made by the AO are therefore deleted. This ground of appeal is therefore deleted.

15. In the result, appeal of the assessee is allowed.

16. The order pronounced in the open court on 12.04.2019

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

TRUE COPY

Ahmedabad: Dated: 12th April, 2019/opm

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

TANMAY

By order

Assistant Registrar, Ahmedabad