

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

**ITA No.7053/M/2017
Assessment Year: 2012-13**

M/s. Sapna Rajkumar Jethra, Office No.19, Shrikant Industrial Estate, Adivasipada, Road No21, Mandal Compound, Wagle Industrial Estate, Thane- 400 604 PAN: ADHPJ9443J	Vs.	Income Tax Officer, Ward 1(1), Room No.23, B-Wing, Ashar IT Park, Ambika Nagar, Wagle Industrial Estate, Thane – 400 604
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Mayur Kisnadwala, A.R.
Revenue by : Shri Chaudhary Arunkumar Singh, D.R.

Date of Hearing : 02.05.2019
Date of Pronouncement : 16.05.2019

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 24.10.2017 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2012-13.

2. The only issue raised in the various grounds of appeal is against the confirmation of disallowance of salary expenses to the tune of Rs.2,83,500/- by the assessee.

3. The facts in brief are that the assessee filed the return of income on 30.09.2012 declaring the income at nil. The case of

the assessee was selected for scrutiny. During the course of assessment proceedings the AO observed that the gross receipt of the assessee was Rs.2.50 crore and after debiting all expenses there was a net loss of Rs.8,38,717/-. The AO observed from the details furnished by the assessee that assessee has claimed Rs.28,35,000/- on account of salary which appears to be very excessive and amount for 11% of the total turnover and issued show cause notice to produce the bills, vouchers and other supporting documents to justify the salary claim which was replied by the assessee vide letter dated 24.02.2015. The AO found that most of the vouchers and bills were in cash and came to the conclusion that those were not satisfactory. The AO also noted that the assessee has not submitted bank statement nor any cash book to justify the cash payments and finally disallowed the salary to the tune of 10% of the total salary which comes to Rs.2,83,500/- and added the same to the loss returned by the assessee thereby assessing the net loss at Rs.5,55,217/- vide order dated 03.03.2015.

4. In the appellate proceedings also the Ld. CIT(A) dismissed the appeal of the assessee by observing and holding as under:

"I have carefully considered the facts of the case, findings of the AO in the assessment order and arguments of the Ld. AR of the appellant. During the course of appellate proceedings the Ld. AR had furnished some of the vouchers reflecting the payments or salary/wages in cash in round figures, without much of details. It is further noticed that on the vouchers only name of the employees was mentioned, without giving the qualification, nature of job executed and their addresses. In view of these facts the genuineness and reasonableness of the salary/wages paid to the employees/labourers could not be ascertained. Considering the above facts the disallowance to the extent of 10%, i.e. 2,83,500/-, out of total wages of Rs 28,35,000/-, appears to be reasonable. It is pertinent to mentioned here that even after disallowance of above amount the resultant loss has been determined at Rs 5,55,217/-, against the total turnover of Rs 2.50 Crores, harvested from the trading of industrial gases. In compliance the Ld. A.R. could not offer any valid reason for incurring huge losses. Considering the facts in entirety, in my view, the disallowance

of Rs 2,83,500/-, out of total salary of Rs. 28,35,007-, is quite reasonable therefore, sustained and all the grounds of appeal, raised as above, are dismissed.”

5. After hearing both the parties and perusing the material on record and taking into account the evidences as placed before the Bench during the course of hearing, we observe that the sales of the assessee during the year have gone up by 42%. The sales during A.Y. 2011-12 were Rs.1,76,14,092/- whereas sales during the year under consideration were Rs.2,50,30,781/-. Further, we notice from the copy of profit & loss account for both the years, that the depreciation on fixed assets was Rs.34,96,138/- in A.Y. 2011-12 whereas in the current year the depreciation was Rs.56,57,148/-. After perusing the facts on record, we observe that the disallowance has been merely made because during the year the assessee has incurred loss and without assigning any reason further ,disallowance the salary was made equal to 10% of the total claim of the assessee on just adhoc basis. The Ld. CIT(A) sustained the disallowance without any reason and justification by just observing that on a turnover of Rs.2.50 crores, the assessee has incurred a loss of Rs.5,55,217/- after giving effect to the above disallowance of salary of Rs.2,83,500/- without pinpointing any specific defect in the books of accounts of the assessee. The mere fact that assessee has paid salary by cash would not automatically mean that the salary paid is not genuine. Moreover, from the profit & loss account filed by the assessee in the current year vis-à-vis preceding year, we observe that there has been drastic increase in the sales by whopping percentage of 42% but the depreciation has also increased enormously. Under these circumstances, we are not in agreement with the conclusion

drawn by the Ld. CIT(A) that assessee has incurred loss despite the sales of the assessee being Rs. 2.50 Cr and accordingly order of Ld. CIT(A) is set aside and addition of Rs. 2,83,500/- is deleted.

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

Order pronounced in the open court on 16.05.2019.

**Sd/-
(Ram Lal Negi)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 16.05.2019.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.