

**IN THE INCOME TAX APPELLATE TRIBUNAL,
SURAT BENCH, SURAT
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND SHRI O. P. MEENA, ACCOUNTANT MEMBER**

I.T.A. No's. 323 & 600/AHD/2017: Assessment Year: 2012-13

<p>1.Mrs. Kiran Chaudhary, Prop. Kiran Trade Link, D-4451, Raghukul Textile Market, Ring Road, Surat – 395002. [PAN: AJCPC 5316 J]</p> <p>2.Deputy Commissioner of Income-Tax, Circle –1(2), Surat.</p>	Vs.	<p>1.Deputy Commissioner of Income- Tax, Circle –1(2), Surat.</p> <p>2.Mrs. Kiran Chaudhary, Prop. Kiran Trade Link, D-4451, Raghukul Textile Market, Ring Road, Surat – 395002. [PAN: AJCPC 5316 J]</p>
Appellant		Respondent

Assessee by	Shri Mukul Jalan, CA
Revenue by	Ms. Anupama Singla, Sr. D.R.
Date of hearing	29.04.2019
Date of pronouncement	30.04.2019

ORDER

PER O. P. MEENA, AM

1. These are cross appeals by the Assessee and Revenue which are directed against the order of learned Commissioner of Income tax (Appeals)-2, Surat (in short “the CIT (A)”) dated 13.12.2016 pertaining to Assessment Year 2012-13 which in turn have arisen from the order under section 143 (3) dated 30.03.2015 of Income Tax Act,1961 (of the Act) passed by Deputy Commissioner of Income-Tax, Circle – 1(2) Surat (in short “the AO”).

2. First, we will take up the appeal of the assessee in I.T.A.No. 323/AHD/2017/by the assessee.

3. Ground no. 1 relates to confirming the action of the AO in making addition of Rs.8,50,000 on account of disallowance of 100% of Commission expenditure.

4. Facts apropos of this ground are that the AO found that the assessee has paid an amount of Rs.8,50,000/- to Smt. Khusboo Chowdhury towards commission payments. The AO issued summons under section 131 of the Act to Khusboo Choudhury to verify the claim of expenses, but no compliance was made. It was submitted that Smt. Khusboo Chowdhury was paid brokerage for service as also sales agent and confirmation and contra confirmation was filed. However, the AO noticed that no specific details with reference to service rendered were furnished. Further what is the qualification of Mrs.Chowdhury to discharged her responsibility as commission agent and how long she has been rendering services were not filed. In view of these facts and circumstances, the commission payment was disallowed.

5. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). The CIT (A) observed that the AO found that during the year the only sale by the appellant has been made to Kaveri Silk Mills Pvt. Ltd., which is a sister concern of the appellant. The summons issued to Mrs. Kiran Chowdhury were not comply with, nor were any specific details provided for which commission was paid to her, except copy of confirmation and income tax return. The contention of the appellant that sales agent was required to promote sales

to appellant's own sister concern is a ridiculous and unbelievable proposition. The Id. CIT (A) further observed that return filed by the Mrs. Khusboo Chowdhury also shows that she is receiving a rental income for her house property occupied by the M/s. Kaveri Silk Mills Pvt. Ltd. to whom she claims also selling cloths of the appellant. It is a clear cut case of booking bogus expenses among own relatives / friends through payment of commission expenses etc.. Since the assessee has failed to produce any supporting evidence in support of her claim and service rendered. The Id.CIT(A) has confirmed the action of the AO.

6. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the assessee has paid commission to Mrs. Khusboo Chowdhury for her services as commission agent for the assessee and has filed copy of confirmation and her income-tax return. Hence, CIT (A) was not justified in confirming the action of the AO.

7. *Per contra*, the Id. Sr. D.R. submitted that the assessee has failed to produce Mrs. Khusboo Chowdhury for examination and details of her qualification and service rendered. Therefore, lower authorities were justified in their action.

8. We have heard the rival submissions and perused the relevant material on record. We find that in order to verify the genuineness of commission payments, the AO had issue a summons under section 131 of the Act to Mrs. Khusboo Chowdhury. However, she failed to appear before the AO. It is further seen that the only sales effected by the assessee

was to M/s. Kaveri Silk Mills Pvt. Ltd. , which is a sister concern of the assessee to whom goods of the assessee has been claimed to have made through Mrs. Khusboo Chowdhury, which the Ld.CIT(A) has held to be ridiculous and unbelievable proposition. We find that the income-tax return of Mrs. Khusboo Chowdhury also showed rental income from her property occupied by M/s. Kaveri Silk Mills Pvt. Ltd. to whom she claimed to have sold goods of the assessee. Thus, the payments of commission to relatives and friends have been made to reduce tax liability. Nor the assessee has been able to substantiate the claim by filing necessary details of her qualification and job experience. On a query raised by the Bench, the learned counsel for the assessee has expressed his inability to produce Mrs. Khusboo Chowdhury for examination before the AO. In view of this, we do not find any infirmity in the order of CIT (A), accordingly, same is upheld. This grounds of appeal of the assessee is therefore, dismissed.

9. Ground No. 2 relates to confirming the disallowance of Rs. 22,91,216 on account of disallowance of 25% of job charges paid to three parties.

10. Briefly, stated the facts of the case are that the AO found that the assessee has paid Rs.33,27,020/- to Bholaram Agarwal, HUF, who is not individual and cannot render any service. Similarly no evidence has been produced for work done for the payments made of Rs.29,92,635 /- to Manju Agarwal and Rs.28,45,189/- to Neha Agarwal. The AO had issued summons under section 131 to these persons but none of them appeared before the AO. The AO observed that the assessee has only relied on the contention that

payments have been made by cheques on which TDS has been deducted and return of income has been filed by them. In view of these facts and circumstances, the AO made disallowance @25% of total expenses of Rs.91,64,864/- which worked out at Rs.22,91,216/-.

11. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). The Id. CIT (A) has confirmed the disallowance made by the AO by observing that the appellant has not been produce the evidence regarding educational background, vocational experience, acquired skills, hence, genuineness of expenses was not established. Therefore, it was held that the AO has rightly disallowed 25% of expenses.

12. Being, aggrieved the assessee filed this appeal before the Tribunal. The learned counsel for the assessee submitted that the assessee has paid job work charges by cheques on which TDS was also deducted. The recipient of job work has shown the receipt in their income-tax return of which evidence was also filed before the AO. It was submitted that Manju Agarwal and Bholaram Agarwal are the parents of Neha Agarwal. They could not be produced before the AO as they were residing at Raipur and were unable to attend due to pregnancy of their daughter.

13. *Au contraire*, the Id. Sr. D.R. relied on the order of Ld. CIT (A).

14. We have heard the rival submissions and perused the relevant material on record. We find that the assessee is in the business of making value addition of job work on cloth

and he had given and work of job work to various parties including Ms. Manju Agarwal and Ms. Neha Agarwal and Mr. Bholaram Agarwal. The copy of confirmation and the bills raised had been provided before the AO. We find that that the payments have been made by account payee cheques on which TDS has been deducted and these persons have filed return of income showing the income from the assessee. Just because, these persons could not attend before the AO as they are residing at Raipur and were unable to attend before the AO due to pregnancy of their daughter. The 25% of payments were treated as non-genuine. Considering the facts that these persons have made value addition in the job work of clothes, the disallowance @25% made due to non furnishing educational background, the personal experience and acquired a skill is appears to be on higher side. Therefore, considering the totality of facts, we are of the considered opinion that it would be meet the end of Justice, if the disallowances are restricted to 15% of the total expenses of Rs. 91,64,864 claimed by the assessee. Accordingly, the disallowance are restricted to 15% of the total expenses of Rs. 91,64,864. The AO is therefore, directed to recompute the disallowance accordingly. This ground of appeal is therefore partly allowed.

Now we will take up the Revenue appeal in I.T.A.No. 600/Ahd/2017 for A.Y.2012-13 :

15. The sole grounds of appeal by the Revenue relates to deleting disallowance of Rs.74,40,000/- without appreciating that the AO has come to conclusion that no service been rendered by the persons who have received so called salary.

16. The AO noticed that the assessee has paid salary of Rs.93,00,000/- to three person namely Mr. Krishnakant Agarwal, as Production Manager, Mr. Rajiv Chowdhury as Sales Manager and Mr. Ranjit Chowdhury as General Manager, who are relatives of the assessee. Therefore, a show-cause notice was issued as to why same should not be disallowed. It was explained that all person have offered their salary payments in their income-tax and none of them are covered under section 40A(2)(b) of the Act. Shri Rajiv Chowdhury is very experienced person in textile industry and he is not director in Kaveri Silk Mills Pvt. Ltd. rather used to draw salary from Kaveri Silk Mills Pvt. Ltd. However, the AO was not satisfied with explanation and observed that the assessee is not able to justify why huge salary was paid to these persons. Therefore, the AO has considered the salary payment as excessive hence, the AO disallowed the payments of Rs.74,40,000/- being 80% of salary payment of Rs.93,00,000/-.

17. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). Before whom it was submitted that the AO has not raised any question about the salaries paid to Mr. Karishankant Agarwal and Mr. Ranjit Chowdhury and only raised issue of higher salary paid to Mr. Rajiv Chowdhury. The AO has not given any reason that why the salary is being considered excessive except for observation that salary to executive like manager is much less than except the amount so paid. The appellant submitted that each of the persons in the role of production manager, sales manager and general manager have been handling affairs of the firm in the operational aspects. The CIT (A) observed that the no reason has

been given for disallowance. The observations regarding the appellant and Mr. Rajiv Chaudhary being director in M/s. Kaveri Silk Mills Pvt. Ltd. is also factually incorrect. The salary paid to these three persons have been duly reflected in their returns of income. The AO has made no attempt to examine these persons for determining their educational qualifications, skills, experience and the nature of the services rendered before rejecting the salary being excessive. In absence of any such finding, the action of the AO is arbitrary. It is settled principle that the businessman is free to carry out his business in the manner he deems fit. The AO can only disallow any expenses, if it is found to be unreasonable in the given circumstances or not verifiable. No such finding has been given by the AO. Hence, the addition made by the AO of Rs.74,40,000/- was deleted.

18. The Id. Sr. D.R. vehemently supported the order of the AO. It was submitted that the assessee as well as the recipient both failed to furnish any evidence to support that so-called salaries were paid against actual services rendered. Therefore, the CIT (A) has overlooked this aspect, and that the relief given to the assessee is not justified.

19. On the other hand, the learned counsel for the assessee submitted the Id. CIT (A) has rightly observed that the AO has disallowed the salary expenses on the finding that the payment of Salary is excessive in nature. The AO has failed to make any attempt to examine these persons and their educational qualifications, skills and experience and the nature of services rendered before rejecting the salary being excessive. The businessman

is free to carry out its business in the manner he deems fit. Therefore, the Counsel supported the order of the learned Commissioner of Income-tax (Appeals).

20. We have heard the rival submissions and perused the relevant material on record. We find that the AO has disallowed the salary on the basis that salary paid in excessive. It act in the nature of excessive. We find that the Mr. Rajiv Chaudhary has been in the textile business for the last 20 years and he was managing the sales related activities and was being paid the salary as per the experience and expertise. The observation of the AO that the assessee's manager in the M/s. Kaveri Silk Mills Pvt. Ltd. was found to be factually wrong. It is also noticed that the salary paid to these three persons have been duly reflected in their returns of income. The AO has made no attempt to examine these persons for determining their educational qualifications, skills, experience and the nature of the services rendered before rejecting the salary being excessive. In absence of any such finding, the action of the AO is arbitrary. It is settled principle that the businessman is free to carry out his business in the manner he deems fit. The AO can only disallow any expenses, if it is found to be unreasonable in the given circumstances or not found verifiable. Having considered these facts, we do not find any reason to differ with the findings recorded by the Ld. CIT (A). In view of these facts and circumstances, the findings of Ld. CIT (A) are upheld. Ex-consequenti, this sole grounds of appeal of the Revenue is accordingly, dismissed.

21. In the result, the appeal of the assessee is partly allowed and appeal of the Revenue is dismissed.

22. The order pronounced in the open Court on 30.04.2019.

Sd/-
(H. S. SIDHU)
JUDICIAL MEMBER

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

Surat: Dated: 30th April, 2019/opm

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

By order

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Assistant Registrar, Surat