

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER

ITA No.421/Del/2019

Assessment Year: 2014-15

M/s. City Wines D-112, Vivek Vihar, New Delhi-110095 PAN No. AAHFC9504A (APPELLANT)	Vs	ACIT Circle – 55 (1) New Delhi (RESPONDENT)
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Appellant by	Sh. Rakesh Dubey, Advocate
Respondent by	Shri S. L. Anuragi, Sr. DR

Date of hearing:	02/07/2019
Date of Pronouncement:	09/07/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 14.09.2018 of the CIT(A)-19, New Delhi relating to A. Y. 2015-16.

2. The assessee in its various ground of appeal has challenged the exparte order of the CIT(A) in confirming the disallowance of Rs.6 lacs made by the Assessing officer u/s. 40 A(3) of the Act on account of salary paid to the partners in cash.

3. Facts of the case, in brief, are that the assessee is a

partnership firm and filed its return of income on 29.09.2015 declaring total income of Rs.21,14,141/-. The Assessing Officer completed the assessment u/s.143 (3) wherein he made addition of Rs.6 lacs by observing that the salary paid to the partners in cash are in contravention of provision of section 40A (3) of the IT Act. Since none appeared before the CIT(A), the Ld. CIT(A) in the exparte order passed by him, dismissed the appeal filed by the assessee and thereby sustained the addition.

4. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

5. The Ld. Counsel for the assessee, at the outset, submitted that although this is an exparte order by the CIT(A), however, the issue need not go back to him for fresh adjudication since the issue is very small. He submitted that provision of section 40A (3) should not be applicable to payment of cash to partners towards their salary in view of the decision of Hon'ble Supreme Court in the case of CIT Vs. Chidambaram Pillai reported in 106 ITR 292 wherein the Hon'ble Supreme Court has held that payment of salary to a partner represents a special share of the profits and salary paid to a partner retains the same character of the income. Similar view has been taken by the Hon'ble Madras High Court in the case of CIT Vs. Shiv Kumar vide ITA No.279 of 2010 order dated 11.02.2013.

6. The Ld. DR on the other hand strongly supported the order

of the Assessing Officer. He submitted that due to non appearance before the CIT(A) he has passed the exparte order and there is no adjudication by the CIT(A) on this issue. Therefore, this matter may be set aside to the file of the CIT(A).

7. I have considered the rival arguments made by both the sides and perused the material available on record. It is an admitted fact that the Assessing Officer invoking the provisions of section 40A(3) made addition of Rs. 6 lacs being the salary paid to partners in cash in violation of provisions of section 40A(3). I find due to non appearance despite repeated opportunities, the Ld. CIT(A) dismissed the appeal for want of prosecution and thereby confirmed the addition made by the Assessing Officer. It is the submission of the Ld. Counsel for the assessee that disallowance u/s. 40 A (3) cannot be made for payments in cash exceeding of Rs.20,000/- at a time to the partners towards his/her salary / remuneration. However, I find due to non appearance before the CIT(A) despite repeated opportunities he has dismissed the appeal and has not adjudicated the issue on merit.

8. Considering the totality of the facts of the case and in the interest of justice I deem it proper to restore this issue to the file of the CIT(A) with a direction to give one final opportunity to the assessee to explain his case and decide the issue as per fact and law. The assessee is also hereby directed to appear before the CIT(A) and explain its case failing which the Ld. CIT(A) is at

liberty to pass appropriate order as per law. I hold and direct accordingly. The grounds raised by the assessee are accordingly allowed for statistical purpose.

9. In the result, the appeal filed by the assessee is accordingly allowed for statistical purpose.

Order pronounced in the open court on 09.07.2019.

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 09.07.2019

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	01.07.2019
Date on which the typed draft is placed before the dictating Member	02.07.2019
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	09.07.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	