

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C'अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
&SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 3420/Ahd/2015

(निर्धारण वर्ष / Assessment Year:2012-13)

M/s. Hironisha Systems Pvt. Ltd. Plot No. 2109, Phase-III, GIDC, Vatva, Ahmedabad- 382445	बनाम/ Vs.	DCIT Circle-4, Ahmedabad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAB CH8 269 E		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Ankit Talsania, AR
प्रत्यर्थीकीओरसे / Respondentby:	Shri L. P. Jain,SR. DR

सुनवाईकीतारीख/Date ofHearing	09/07/2019
घोषणाकीतारीख /Date of Pronouncement	15/07/2019

आदेश/ORDER

PER AMARJIT SINGH - AM:

The appeal filed by the Assessee for A.Y. 2012-13, arise from order of the CIT(A)-2, Ahmedabad dated 19.01.2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short "the Act".

2. The assessee has filed this appeal against the order of Ld.CIT(A) in confirming the disallowance mainly on the following three issues:-

- "i) Rs. 3,31,285/- out of claim of commission exps. by wrongly invoking provision of section 40A(2)(b)
- ii) Rs. 1,87,315/- out of Foreign Travelling Exps. by treating as personal in expenditure.
- iii) Rs. 4,61,560/- disallowed out of the claim of interest by invoking proviso of u/s. 36(1)(iii) & it should be restricted to 59,139/-"

3. The fact in brief that assessee has filed return of income declaring income of Rs. 42,49,260/- on 21.09.2012. The case was selected under scrutiny by issuing of notice u/s. 143(2) of the Act on 06.08.2013. The remaining fact of the case are discussed while adjudicating the ground of appeal filed by the assessee as under:-

“1. The order of the learned CIT.(APPEALS) 2, A'bad is bad in law and on facts so far following claim of exps. of the appellant not allowed by the CIT (A)-2, by upholding the order of Dy.CIT.Cir-4, Ahmedabad.

i) Rs . 3,31,285/- out of claim of Commission exps. by wrongly invoking provision of section 40A(2)(b)

ii) Rs. 1,87,31s/- out of Foreign Travelling Exps. by treating as personal in expenditure.

iii) Rs. 4,61,560/- disallowed out of the claim of interest by invoking proviso of u/s. 36(1)(iii)& it should be restricted to 59139/-.

2. The learned CIT. (Appeals) 2, ought to have considered the written submissions made by the appellant before Dy.CIT.Cir-4, by calling records as well as ought to have considered the submission made before him during hearing of appeal by the A.R. of the appellant and ought not to have uphold the order of the Dy. CIT - Cir.4, A'bad and ought to have all owe d the claim of exps. made by the appellant.

3. The learned CIT (Appeals) 2, ought to have considered the written submissions made by the appellant before Dy.CIT.Cir-4, and before him by the appellant from time to time.

4. Your appellant respectfully submits that the disallowances made by the Dy. CIT. Cir.4, as stated in cl. 1(i) to (iii) hereinabove be all owe d in full while computing the total income of the appellant u/s.143 (3) . Your appellant craves for leave to add and or alter all or any.”

Ground No. 1:-

Disallowance of commission u/s. 40(A)(2)(b):-

4. During the course of assessment proceedings the AO noticed that assessee has paid commission to the director of the company. The commission was paid @ 2.5% of the sale to the total amount of Rs. 41,10,818/-. The assessee company has paid commission @ 2.5% on the sale. The AO has noticed that director of the company have passed resolution in the board meeting of the company to provide the commission on sale @ 2.5%. However, the AO has also noticed that assessee company has made excessive and unreasonable commission payment to the

director of the company by including the amount of excise duty in the sales. Therefore, the AO has considered the amount of commission to the amount of Rs. 3,31,285/- paid to the directors on the excise duty as unreasonable and same was disallowed u/s. 40A(2)(b) of the Act.

5. Aggrieved, assessee has filed appeal before the Ld. CIT(A). Ld. CIT(A) has dismissed the appeal of the assessee.

6. We have heard the rival contention and perused the material on record. With the assistance of the Ld. Representative we have gone through the material on record and noticed that assessee has paid commission to the directors of the company by including the component of excise duty in the total sale value. The AO has restricted the commission to the extent of sale value after excluding the amount of excise duty. After perusal of the finding of the Ld. CIT(A) we are of the view that it does not justify to make any commission payment on the excise duty for which no credit is given to any person as it is the tax to be collected on behalf of the Government. Therefore, we consider that giving commission on the excise duty is unreasonable and not justified. The assessee could not justify the reasonableness of payment of commission to its own directors on the amount of excise duty paid which is not the earning of income of the assessee. In the light of the above facts and circumstances we do not find any infirmity in the decision of the Ld. CIT(A). Accordingly, appeal of the assessee is dismissed.

Ground No. 2:-

Disallowance of foreign travel expenses:-

7. During the course of assessment the AO has disallowed 20% of the foreign travelling expenses to the amount of Rs. 1,87,315/- on the ground that assessee could not substantiate that it had incurred the foreign travel expenses wholly and exclusively for the purpose of business. The Ld. CIT(A) has sustained the disallowance made by the AO.

8. We have heard the rival contentions and perused the material on record. During the course of assessment the assessee was asked to furnish the relevant bill and voucher pertaining to foreign travel expenses to prove that the expenses were incurred for the purpose of business. However, the assessee has failed to furnish the documentary evidences to substantiate its claim that foreign travelling expenses were exclusively incurred for the purpose of business. Therefore, we justify the action of lower authority of making disallowance of 20% such expenses to the amount of Rs. 18,75,315/-. Therefore, we do not find any merit in the appeal of the assessee. The same stand dismissed.

Ground No. 3:-

Disallowance of interest u/s. 36(1)(iii):-

9. The Ld. Counsel has not pressed this ground of appeal. Therefore, the same stand dismissed.

10. In the result, the appeal of the assessee is dismissed.

This Order pronounced in Open Court on 15/07/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad: Dated 15/07/2019

TANMAY

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आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।