

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.1960/Del./2017
(ASSESSMENT YEAR : 2010-11)**

M/s. VLCC Health Care (P) Ltd., vs. Addl.CIT, Range 17,
M – 14, Commercial Complex, New Delhi.
Greater Kailash Part – II,
New Delhi – 110 048.

(PAN : AAACC4808P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri V.K. Bindal, CA
Ms. Sweety Kothari, CA
Ms. Rinky Sharma, CA

REVENUE BY : Shri Prakash Dubey, Senior DR

Date of Hearing : 03.02.2021

Date of Order : 10.02.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. VLCC Health Care (P) Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 25.01.2017 passed by the Commissioner of Income-tax (Appeals)-9, New Delhi qua the assessment year 2010-11 on the ground that :-

“ The CIT (A) erred in law and on facts in confirming the disallowance of an amount of Rs.6,73,933/- being 35% of the remuneration paid to Ms. Pallavi Luthra, daughter of the director of the assessee, u/s 40A(2)(b) of the Act merely on surmises ignoring the facts and evidences placed on record regarding her qualification and responsibilities undertaken by her in the business of the assessee. Thus the disallowance so made should be deleted.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : The assessee has challenged the confirmation of disallowance of an amount of Rs.6,73,933/- being 35% of the remuneration paid to Ms. Pallavi Luthra, one of the director of the assessee, under section 40A(2)(b) of the Income-tax Act, 1961 (for short ‘the Act’) on the ground that Assessing Officer (AO) has ignored the facts and evidences brought on record by the assessee qua qualification and responsibility undertaken by Ms. Pallavi Luthra in the business of the assessee.

3. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has confirmed the addition made by the AO by partly allowing the appeal. Feeling aggrieved by the order passed by the Id. CIT (A), the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, AO/CIT(A) while disallowing the amount of Rs.6,73,933/- being 35% of the remuneration paid to Ms. Pallavi

Luthura have not disputed qualifications and duties/responsibilities assigned to Ms. Pallavi Luthura by the assessee company. It is also not in dispute that no comparable case vis-à-vis assessee has been taken to examine the functional profile of Ms. Pallavi Luthura while disallowing 35% of the remuneration paid to her.

6. When we examine para 4.1 of the impugned order passed by the Id. CIT (A) which is the submissions made by the assessee highlighting qualifications and work assigned to her, it is surprising to note that the Revenue has accepted working of Ms. Pallavi Luthura as a Director and allowed 65% of the amount paid to her but it is beyond comprehension as to how they had reached the conclusion that out of the 100% of the work assigned to Ms. Pallavi Luthura by the assessee company, 35% of the same was found ingenuine. The entire disallowance is on the basis of conjectures and surmises.

7. AO also brought on record the fact that Ms. Pallavi Luthura was Director having 50% of the shareholding in another company called Cloud Cuckoo Farm during the year under assessment but assessee stated that Cloud Cuckoo Farm's profit is nil and brought on record its balance sheet in additional evidence. Again, it is surprising to disallow 35% of the remuneration, particularly when genuineness of the job profile has not been questioned, merely on the ground that Ms. Pallavi Luthura was a Director in Cloud Cuckoo Farm. It is also a matter of fact on record that Ms. Pallavi Luthura was a whole time director in the

assessee company and was paid remuneration for the work assigned to her during the year under assessment. So, we are of the considered view that merely on the basis of conjectures and surmises, provisions contained u/s 40A(2)(b) cannot be allowed to be invoked particularly when genuineness of the services rendered are not in dispute. So, we are of the considered view that AO as well as ld. CIT (A) have erred in disallowing the remuneration to the tune of 35% paid to Ms. Pallavi Luthura by the assessee company, hence ordered to be deleted. Consequently, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 10th day of February, 2021.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 10th day of February, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-9, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**