

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 7507/DEL/2017 (A.Y 2013-14)

(THROUGH VIDEO CONFERENCING)

Orange Associates Pvt. Ltd. (Formerly One Source Education Pvt. Ltd.) 9, Daryaganj, Near Telephone Exchange , New Delhi AAACS21177K (APPELLANT)	Vs	DCIT Circle-19(1) C. R. Building New Delhi (RESPONDENT)
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Appellant by	Sh. Tanpreet Kohli, CA
Respondent by	Sh. Gaurav Pundir, Sr. DR

Date of Hearing	27.07.2021
Date of Pronouncement	26.08.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 12/10/2017 passed by CIT(A)-7, Delhi for assessment year 2013-14.

2. The grounds of appeal are as under:-

“1. That the Authorities below erred both in law and on the facts in invoking the provisions of Sec 40A(2)(b) ignoring the facts on record and rejecting the explanations of the assessee in the summary manner. Thus the addition of Rs. 16,20,000/- as confirmed by the CIT Appeals is liable to be deleted.

2. That the Authorities below erred both in law and on the facts in the estimations of excessive Salary Paid to the directors @ i.e. % i.e. Rs.

16,20,000.00 out of gross salary paid of Rs. 1,08,00,000.00 to the directors is excessive, wrong, baseless and is based on surmises & conjecture. Thus the disallowance of Rs. 16,20,0000.00 is liable to be deleted.

3. That the orders of the Authorities below are bad in law and on the facts of the case.

4. That the orders passed are erroneous, illegal and against the principles of natural justice and equity as well as the well settled laws.”

3. The assessee company is engaged in the business of publication of education book. The assessee company e-filed its return of income on 30/09/2014 for Ay 2013-14 declaring in income of Rs. 6,50,12,700/-. Order u/s 143(3) was passed on 8/3/2016 thereby assessing an income at Rs. 7,14,31,990/- after making disallowance of Rs. 54 lac u/s 40A (2)(b) of the Act, disallowance of Rs. 46,887/- u/s 14A read with Rule 8D of the Income Tax Rules and addition of Rs.9,72,406/- u/s 2(24) (x) read with Section 36 (1)(va) of the Act for delayed deposit of payment of employees' contribution towards ESI/PF.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. As regards to Ground No. 1 relating to disallowance Rs. 54 lac u/s 40A (2)(b) of the Act, the Ld. AR submitted that the Assessing Officer has ignored the facts on record and simply rejected the explanations of the assessee in the summary manner, without looking into the actual aspect that the Directors were paid salary for similar work, having similar qualification and experience in the earlier year and subsequent years as well. In fact, in A.Ys. 2012-13 and 2014-15, the same was restricted to 15% but in the present assessment year the CIT(A) totally ignored the principle of consistency and has not given any cogent reason for making the said disallowance. Besides this, the CIT(A) has not given any reasons as to how the disallowance has been estimated by the

Assessing Officer. Thus, the Ld. AR submitted that the addition should have been deleted. The Ld. AR submitted that the estimation of excessive salary paid to the Directors at 15% out of gross salary paid of Rs.1,08,000,00/- to the Director by the Assessing Officer and CIT(A) is wrong, baseless and is based on surmises and conjectures.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. The assessee company has paid the Directors remuneration during the previous year as well as the subsequent years, the Assessing Officer has observed that they are the Managers to Directors and control the company. The Assessing Officer has not disputed that the Board meeting has approved the increase of remuneration payable to the Directors in accordance with the provisions of the Companies Act, 1956 during the previous year 2011-12 & 2012-13. When a Company pays higher salary to the Directors of the Managers or other Officers or employees it is for the commercial expediency of internal affairs of the company, it is not for the Revenue Authorities to decide that particular salary should not have been paid to the Directors. It is the business decision and, therefore, the disallowance u/s 40A(2)(d) is wrongly invoked by the Assessing Officer and wrongly confirmed by the CIT(A) and disallowing on estimated basis to 15%. Thus, the CIT(A) was not right in confirming the disallowance. Hence, the appeal of the assessee is allowed.

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

Order pronounced in the Open Court on this 26th Day of August, 2021.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 26/08/2021

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI