

INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "SMC": NEW DELHI]
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA. No. 3001/Del/2019
(Assessment Year: 2015-16)

M/s. Shalini Securities Pvt. Ltd. G-12A, Ground Floor, Pearl Business Park, Netaji Subhash palace, New Delhi - 110 012. PAN: AABCS2564B	Vs.	Income Tax Officer, Ward : 23 (1) New Delhi.
(Appellant)		(Respondent)

Assessee by :	N o n e;
Revenue by:	Shri R. K. Gupta, Sr. D. R.;
Date of Hearing :	12/08/2021
Date of pronouncement :	12/08/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order passed by Id CIT(A)-XXV, New Delhi dated 30.01.2019 for assessment year 2015-16 wherein, the addition made by the Id AO u/s 40A(ii)(b) of the Act of Rs. 5,04,000/- is confirmed.
2. The assessee raised the following grounds of appeal:-
 - “1. That the honorable CIT (A)-XXV has erred in law and on facts in sustaining the addition of Rs.5,04,000.00 on illegal and untenable grounds and hence, the addition, as such, may be deleted.
 2. That the honorable CIT (A)-XXV has erred in law and on facts in sustaining the addition of Rs.5,04,000.00 ignoring the fact that this is beyond the scope of ground of limited scrutiny. Hence, the addition, as such, may be deleted.
 3. That the honorable CIT (A)-XXV has erred in law and on facts in sustaining the addition of Rs.5,04,000.00 made by AO by invoking section 40A(2)(b) on illegal and untenable ground. Hence, the addition, as such, may be deleted.
 4. That the appellant craves leave to add, substitute, modify or delete any grounds of appeal on or before the date of hearing and all the above grounds of appeal are independent and without prejudice to each other.”
3. This is the solitary issue in this appeal.

4. Notice was sent to the assessee, however, none appeared. Similar is the case when earlier also on four occasions despite notice sent to the assessee none appeared and therefore, the issue is decided on the merits of the case as per information available on record.
5. We have heard the ld DR who relied on the orders of lower authorities.
6. Brief facts of the case shows that the assessee is engaged in the business of trading of wine and liquor. It filed its return of income on 01.10.2015 for Rs. 9,15,350/-. It was revised on 31.10.2015 at Rs. 8,65,150/-. The case of the assessee was selected for scrutiny through CASS for limited scrutiny.
7. During the course of assessment proceedings the ld AO noted that the assessee has paid salary of Rs. 1,26,000/- each to four lady employees as it is aid to related parties u/s 40A(2)(b) of the Act. The ld AO noted that salary has been paid on a fixed rate of Rs. 1,26,000/- p.a. to each to all the four ladies which lacks business expediency, reasonable and justification. He noted that no salary was paid to these persons in last year. The assessee was asked to file the justification, however, same was not filed consequently, the assessment order was passed u/s 143(3) of the Act, wherein, the above addition/ disallowance was made.
8. The assessee preferred appeal before the ld CIT(A) who confirmed the disallowances holding that the assessee has failed to establish the credential and qualification of persons. Therefore, the assessee is in appeal before us.
9. On careful consideration of the orders of the lower authorities as well as submission made by the assessee before the ld CIT(A) we find that the assessee has paid salary of Rs. 1,26,000/- each per annum to four lady employyes of the company who are related to directors of the company. Ld AO disallowed the above sum. It is not the case of the ld AO that there is no service provided by these four alleged employees of the assessee to assessee company. Further, for invoking section 40A(2)(b) the ld AO is duty bound to form an opinion that expenditure is excessive or unreasonable having regard to the fair market value of the goods/ services or the legitimate need of the business. Thereafter, he has to disallow only such excess amount. In the present case provision of service to the assessee is not challenged by the ld AO, therefore, it is apparent that the ld AO has accepted that these four

alleged employees have provided service to the assessee. Now the amount of salary paid to each of these alleged employee is approximately 10,000/- per month. There is also no finding by the ld AO that there were no legitimate business need of the assessee. It is not necessary that if the expenditures are incurred for the first time during the year, it should be disallowed, though it becomes the matter of examination, but it cannot be the sole reason for making disallowance. Once it is not disputed by the ld AO that services have been rendered to the assessee, the only option left with ld AO to determine the reasonable sum which should have been paid by the assessee to them looking to nature of services and if there is any excess , it is certainly disallowable. There is no such exercise carried on by the ld AO or by the ld CIT (A). Thus looking to the small amount of salary paid of approximately Rs 10,000/- per month to them, and when rendering of services is not disputed , we do not find any reason to sustain the disallowance. In view of this, we allow the appeal of the assessee directing the ld AO to delete the disallowance of Rs. 5,04,000/- made u/s 40A(2)(b) of the Act.

10. Appeal of the assessee is allowed.

Order pronounced in the open court on 12/08/2021.

-Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:12/08/2021.

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Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi