

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
and
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.5874/Del./2017
(Assessment Year : 2014-15)**

M/s. Orange Associates Pvt. Ltd., vs. ACIT, Circle 22 (1),
(formerly One source Education Pvt. Ltd.) New Delhi.
9, Near Telephone Exchange, Daryaganj,
New Delhi – 110 002.

(PAN : AAACS1177K)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Taranpreet Kohli, CA
REVENUE BY : Shri Gaurav Pundir, Senior DR

Date of Hearing : 20.09.2021
Date of Order : 24.09.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Orange Associates Pvt. Ltd. (formerly known as One Source Education Pvt. Ltd.) (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 11.08.2017 passed by the Commissioner of Income - tax (Appeals)-30, New Delhi qua the assessment year 2014-15 on the grounds inter alia that:-

“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.15,00,000/- as confirmed by the CIT Appeals is liable to be deleted.

2. That the Authorities below erred both in law and on facts in the estimations of excessive Salary Paid to the directors @ 15% i.e. Rs.15,00,000/- out of gross salary paid of Rs.1,00,00,000/- to the directors is excessive, wrong, baseless and is based on surmises & conjecture. Thus the disallowance of Rs.15,00,000/- 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.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee being a private limited company is into the business of publisher of educational books. During the scrutiny proceedings, Assessing Officer (AO) noticed that the assessee company had paid remuneration of Rs.1,00,00,000/- to its Directors. Declining the contentions raised by the assessee that remuneration paid to the Directors is fully justified as they are paying the tax @ 30% on their receipts meaning thereby there is no loss of revenue to the department, the AO proceeded to disallow the remuneration paid to the Directors to the extent of 50% and thereby made an addition of Rs.50,00,000/-.

3. Assessee carried the matter before the Id. CIT (A) by way of filing appeal who has scaled down the disallowance by following

the order for AY 2012-13 from 50% to 15% i.e. from Rs.50,00,000/- to Rs.15,00,000/- by partly allowing the appeal. Feeling aggrieved, 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. Ld. AR for the assessee contended that this issue has already been decided in favour of the assessee in earlier year by the **coordinate Bench of the Tribunal in appeal bearing ITA No.2091/Del/2017 for AY 2012-13 order dated 05.01.2021**. On the other hand, ld. DR for the Revenue though relied upon the order passed by the AO/CIT(A), has failed to bring on record any material if order (supra) passed by the coordinate Bench of the Tribunal is overturned or stayed by any higher forum.

6. We have perused the order passed by the coordinate Bench of the tribunal which is on the identical issues, now raised by the assessee in the present appeal, deleting the ad hoc disallowance qua the remuneration paid to the Directors. Operative part of the order (supra) passed by the Tribunal is extracted for the sake of brevity as under :-

“5.0 We have heard the rival submissions and have also perused the material on record. Undisputedly, there has been a 775% increase in the remuneration to the Directors as compared to the earlier Assessment Years. All the same, it is settled law that although the objective of section 40A(2) is to prevent evasion of tax through excessive or unreasonable payments, but this provision should not be applied in a manner which will create hardship in bona fide cases. A perusal of the assessment order shows that the Assessing Officer has not brought any comparable cases on record to establish and buttress his allegation that the salary paid to the Directors was excessive as compared to the salary being paid to similar persons with similar qualifications and experience. The Ld. CIT (A), though has given partial relief to the assessee by limiting the disallowance to Rs.12,60,000/-, also did not consider this aspect of the case and has reduced the disallowance in an ad hoc manner. It is also undisputed that the assessee company as well as Directors both are in the same tax bracket, which is the highest in their cases and, therefore, there can be no question of any evasion of tax by paying remuneration to the Directors. The CBDT Circular No.6-P dated 6th July, 1968 clearly states that no disallowance is to be made u/s 40A (2) in respect of payments made to relatives and sister concerns where there is no attempt to evade tax. Clearly no case of evasion of tax can be made out in the present appeal. This circular is binding on the Department and since no motive to evade tax is established and further since the Assessing Officer has not pointed out any comparables to demonstrate that the salary paid to Directors was excessive, we have no option but to set aside the order of the Ld. CIT (A) and while doing so, we direct the Assessing Officer to delete the entire addition. While doing so, we place reliance on the following judicial precedents:

- (a) *CIT vs. Spank Hotels Ltd., [2014] 50 taxmann.com 452 (Delhi)*
- (b) *Amit Mehra vs. ITO, [2020] 116 taxmann.com 870 (Delhi Trib.)*
- (c) *Tally Solutions (P.) Ltd. vs. DCIT, [2011] 8 ITR (1) 434 (Bangalore)*
- (d) *ACIT vs. Doon Valley Motors, [2006] 10 SOT 525 (Delhi)*
- (e) *Divakar Solar System Ltd. vs. DCIT, [2017] 88 taxmann.com 770 (Kolkata-Trib.)*
- (f) *Sigma Research & Consulting (P.) Ltd. vs. CIT, [2019] 103 taxmann.com 397 (Delhi)*
- (g) *CIT vs. Indo Saudi Services (Travel), [2009] 310 ITR 306 (Bombay)*
- (h) *PCIT vs. Gujarat Gas Financial Services Ltd., [2015] 60 taxmann.com 483 (Gujarat)*
- (i) *CIT vs. V.S. Dempo & Co. (P.) Ltd., [2010] 8 taxmann.com 159 (Bombay)*

(j) *CIT vs. Siya Ram Garg (HUF), [2012] 20 taxmann.com 622 (Punjab & Haryana).*

6.0 In the final result, the appeal of the assessee stands allowed.”

7. Following the order passed by the **coordinate Bench of the Tribunal in AY 2012-13** (supra), we are of the considered view that disallowance to the tune of 15% of remuneration paid to the Directors of the assessee company sustained by the Id. CIT(A) on ad hoc basis is not sustainable u/s 40A (2) qua the payment made to the relatives and sister concerns where there is no attempt to evade tax. In the instant case, assessee has categorically come up with the argument that since Directors to whom the remuneration has been paid by the assessee company had already paid tax @30%, there is no tax evasion on the part of the assessee company. So, in view of the matter, disallowance made by the AO and sustained by the Id. CIT (A) is ordered to be deleted. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in open court on this 24th day of September, 2021.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

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

**Dated the 24th day of September, 2021
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-30, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.