

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.3957/Del/2017
Asstt. Year: 2014-15

ACIT, CC-13, New Delhi.	Vs.	Anu Industries Ltd. Plot No. 102-103, Udyog Vihar, Phase-IV, Gurgaon. PAN AAACA1140L
(Appellant)		(Respondent)

Department by:	Shri Satpal Gulati, CIT(DR)
Assessee by :	Shri Alok Mittal, CA
Date of Hearing	13/07/2021
Date of pronouncement	08/10/2021

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the revenue against impugned order dated 31.5. 2017 passed by Ld. CIT(Appeals)-XXVI, New Delhi for the quantum of assessment passed u/s 143(3) of the Act for the assessment year 2014-15. In the grounds of appeal the revenue has raised following grounds:-

1. *"The Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs. 2,40,00,000/- made on account of none genuine*

claim of reimbursement of expenditure to employees by the assessee company.

II. The Ld. CIT(A) has erred on facts and in law in deleting the addition made on account of excess availability of cash over and above its cash balance as per books of account amounting to Rs.6,00,000/- as the assessee failed to explain the same satisfactorily during the course of assessment as well as during the course of search & seizure in the premise of the assessee.

III. The appellant craves leave to add, amend any/ all the grounds of appeal before or during the course of hearing of the appeal.”

2. The facts, in brief, qua the assessee involved are that the search and seizure operation u/s 132(1) was carried out in J P Minda group on 20.9.2013 wherein the assessee has also covered in the said search. In so far as addition pertaining to the amount paid to the employees treated as unexplained expenses outside books of account for which addition of Rs. 2,46,00,000/- has been made by the AO, it is seen from the perusal of the assessment order that AO has referred and relied upon statement of Shri Deepak Pandey, wherein he had admitted practice being followed by the company whereby part of the salary paid to the employees was in the form of conveyance / travelling vouchers reimbursement. The said travelling / conveyance vouchers were not representative of any actual travelling or conveyance but part of an agreed amount to be paid to an employee, and on that part of salary no TDS was deducted. The AO has highlighted the statement of Shri Deepak Pandey in his assessment order, specifically question No. 13 to question No. 17. Accordingly, AO held that Rs. 20 lacs of such expenses per month is to be treated as part of the salary which is to be added and he made addition of Rs. 2.4 crores.

3. Before the Ld. CIT (A) it was clarified that statement of Shri Deepak Pandey cannot be relied upon, because he was a cashier of another company Jay Ushin Ltd. and no other information or document has been found during the course of search from the premises of the assessee in respect of expenses which have been disallowed. Nowhere in the statement, has it been mentioned that any unaccounted expenses have been incurred. The AO has merely made the disallowance on the ground that TDS has not been deducted on the payment and same should have been under the head "salary and books of accounts". Ld. CIT(A) has deleted the said addition after observing as under :-

"6. I have considered the facts of the case, the basis of addition made by the AO and the arguments of the appellant during assessment as well as appellate proceedings. It is seen that the entire addition has been made on the basis of statement of one Shri Deepak Pandey whose statement had been recorded during the course of search operation. The perusal of the statement of Sh. Deepak Pandey reproduced by the appellant in its written submissions shows that he clearly specified in the answer to question number 1 that he was working as an accounts officer/cashier in M/s Jay Ushin Ltd for last 13 to 14 years and he was getting salary to the tune of RS. 47,500/- from M/s Jay Ushin Ltd. The perusal of the rest of the statement also shows that each and every question posed to him has been replied with reference to his job as accounts officer/cashier of M/s Jay Ushin Ltd. Therefore there is no reason for the AO to extrapolate the said reply and the consequential inference to the case of the appellant company. This company being separate legal entity cannot be said to be following the same practice as in the case of the M/s Jay Ushin Ltd. and no reason has been specified by the AO in the

assessment order to extend the presumption to the appellant company as well. It is therefore clear that the basic presumption made by the AO that the appellant company had been paying certain part of the salary to its employees in the form of conveyance and travelling voucher reimbursement without deducting tax at source is fallacious. There is no evidence either in the form of seized record or in the form of any direct statement by any responsible employee or other person to come to such conclusion.

7. The second aspect of the whole issue is that even if the said practice could be said to be followed in the case of appellant company as well, the basic resultant is that certain amount of salary is being paid in the form of reimbursement of conveyance/travelling voucher and not as salary itself. It clearly implies that as far as the appellant company is concerned the total expenditure debited in the P/L account on account of manpower does not get inflated but gets debited under two heads, (i) under the head salary and to some extent under the head travelling and conveyance. Therefore there is no question of any inflation of expenditure as such and there is no statement even of Sh. Deepak Pandey to show that any payment of cash salary unrecorded in the books of account has been made. The only flaw or legal infringement done by the assessee could be in the form of non deduction of tax at source in respect of the amount which was actually representative of salary but paid in the form of reimbursement of travelling/conveyance expenses. It is also relevant fact that total expenses debited under the head travelling expenses in the case of the appellant company is Rs. 1.32 crores and certain part of it could only be termed as representative of salary and not the entire amount. Further the total salary

expenses debited in the P/L account are also to the tune of Rs. 1.70 crores which is substantially less than the figure of Rs. 2.9 crores arrived at by AO. These facts clearly go on to show that there is no relevance of the statement of Sh. Deepak Pandey to the affairs of appellant company and the said submission had been made in the context of the practice being followed in the case of M/s Jay Ushin Ltd. which has huge salary expenditure and travelling/conveyance expenses. In view of the above detailed facts and circumstances of the case the addition made by the ACHo the tune of Rs. 2.4 crores does not survive. The same is directed to be deleted.”

4. After hearing both the parties and on perusal of the impugned order as well as the material before us, we find that the whole genesis of the addition made by the AO is based on following statement of Shri Deepak Pandey, Cashier :-

"Q.1 Please introduced yourself?

Ans. I am Deepak Pandey S/o K.N. Pandey Age- 41, R/o C-107 Bhrighu Appt. Sector - 9, Dwarka. I am working as an account officer / cashier in M/s Jay Ushin Ltd. for last 13-14 years.

Q.4) Please give details of your source of income?

Ans. My Source of Income is only my salary from M/s lay Ushin Ltd. I get Rs.47,500/- as monthly salary.

Q.10) Please give details of your work profile in the company?

Ans. I deal with cash for company I maintain imprest account of different person. Receive cash voucher and make appropriate entries. I also withdraw cash from bank for company. I also pay conveyance bills to employees after approval, overtime payments.

Q.13) Please state whether any part of salary is paid in cash to the employees of the company.

Ans. Part of the salary is paid in cash which is booked in the head of conveyance / travelling expenses. This cash is paid to 25 - 30 employees. Total monthly 18 - 20 lacs rupees.

Q.14) Please state whether any TDS is deducted from this payment.

Ans. No TDS deduction is made on this payment.

Q.15] Please state whether travelling bills and expenses incurred are reimbursed to these employees.

Ans. Actual expenses incurred by all the employees are reimbursed. This reimbursement includes these employees also.

Q.16) Please state whether actual conveyance incurred is also paid to these employees

Ans. Yes that is also paid.

Q.17) Please state then why the cash paid on the name of travelling expenses should not be considered as part of salary.

Ans. Yes, this payment is part of salary only. However it is booked under head of travelling expenses."

5. It is also a matter of fact brought on record that, Shri Deepak Pandey was working in another company Jay Ushin Ltd. and he had nothing to do with the assessee company. Nowhere in the statement has he mentioned the name of the assessee company. Thus, there was no reason for the AO to explicit the said statement to draw any adverse inference in the case of the assessee company also. Hence the observation and finding of the Ld. CIT (A) as given above is confirmed.

Apart from that, it has been brought on record before us that the total expenditure debited in the profit and loss account on account of salary and other expenditure has been reconciled and nothing is outside the books of account. There is no material found during the course of search to indicate that there was inflation of any expenditure or there is any payment of cash salary unrecorded in the books of accounts. The total expenses debited under the head "travelling expenses" in the case of the assessee company is Rs. 1.32 crores and only some portion of the said component if at all can be termed as representing salary and not the entire amount. The assessee has debited salary expenses to the tune of Rs. 1.70 crores. This figure is definitely much less than figure of 2.9 crores arrived at by the AO. Thus there is an inherent discrepancy while making the said addition by the AO and there is no reason to differ with the view of the Ld. CIT(A) Hence ground No. 2 is dismissed.

6. In so far as second issue relating to an amount of Rs. 6,00,000/- representing cash seized during the course of search, the AO has observed that amount of Rs. 9,46,870/- has been found from the house cum factory of the appellant out of which sum of Rs. 8,00,000/- was seized. After considering the entire explanation of the issue as incorporated in the assessment order, he held that assessee could only reconcile sum of Rs. 3,41,755/- which was verified from the books of accounts shown as cash in hand and remaining sum of Rs. 6,00,000/- was unexplained. Before the Ld. CIT(A), the assessee submitted that Rs. 56 lacs was appearing as balance of 'imprest account' in the hands of JP Minda group. Ld. CIT (A) has accepted the said contention after observing as under :-

"I have considered the facts of the case, the basis of addition made by the AO and the arguments of the appellant during assessment as well as appellate proceedings. The facts of the

case as highlighted by the AO and adduced from the reply of the appellant made during the course of assessment as well as appellate proceedings show that a total amount of Rs. 9,46,870/- had been found from the assessee's premises out of which Rs. 3,41,755/- has been accepted by the AO to be the cash in hand as per books of accounts on the date of search. It is further seen that an amount of Rs. 6,05,000/- has been the balance of imprest account which Sh. J P Minda as per the books of account of the appellant company which has been clearly highlighted in the reply submitted and reproduced by the AO in the assessment-order. The AO has not brought out any reason to ignore the impugned imprest as cash available with Sh. J P Minda for which no separate credit has been taken while deciding the amount of unaccounted assets to be made part of disclosure u/s 132(4). The facts show that the entire cash found during the course of search operation from the appellant as represented by either cash in hand to the tune of Rs. 3,41,755/- or by the imprest account to the tune of Rs. 6,05,520/-. Therefore the conclusion of the AO that amount of Rs. 6,00,000/- represented unaccounted income of the appellant is not logical. The addition made is therefore directed to be deleted.”

7. We find that this explanation was not given before the AO. The assessee's explanation was that Shri J P, Minda was the head of the J.P. Minda Group and entire cash was handled by him. Therefore he was having cash of various entities of J P Minda Group including the assessee company which was as under:-

<i>Name of the assessee</i>	<i>Amount (Rs.)</i>
Vandana Minda	1,08,601
Ashwani Minda	99,042
JPM Automobile Ltd.	8,38,190
Jay Ace Technologies	28,02,303
Anu Industries	605,000
Shri J.P. Minda	98,000
Shri Anil Minda	2,39,053
Adesh Minda	2,89,600
Kalpana Minda	86,835
	51,66,624

If this amount was in the imprest account with JP Minda then there should have been reference in the books of accounts or disclosed in the cash book. Accordingly we direct the AO to verify as to whether in the imprest account of Shri J P Minda there was any amount of Rs. 6,05,000/- pertaining to the assessee company which is verifiable from the books of accounts of the assessee including the cash book. The assessee is directed to substantiate this issue before the AO. With these directions the matter is remanded back to the file of the AO.

8. In the result the appeal of revenue is partly allowed for statistical purposes.

Order pronounced in the Open Court on 8th October, 2021.

sd/-

sd/-

(B.R.R. KUMAR)
ACCOUNTANT MEMBER

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 08 /10/2021

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi