

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND SH. SANJAY GARG, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.2320/Del/2018
(Assessment Year : 2013-14)

UBS Publishers Distributors Pvt. Ltd., 5, Ansari Road, Darya Ganj New Delhi – 110 002 PAN : AAACU 0042 R	Vs.	ACIT Special Range – 27 New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Ms. Aditi Gupta, C.A.
Revenue by	Shri Jagdish Singh, Sr. D.R.

Date of hearing:	07.10.2021
Date of Pronouncement:	11.11.2021

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 04.01.2018 of the Commissioner of Income Tax (Appeals)-42, New Delhi relating to Assessment Year 2013-14.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of Trading and Publishing of books. Assessee electronically filed its return of income for A.Y. 2013-14 on 30.09.2013 declaring total income of Rs.8,99,42,280/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 17.02.2016 and the total income was determined at Rs.9,10,95,760/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 04.01.2018 in Appeal No.165/2017-18/CIT(A)-42 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now before us and has raised the following grounds:

“1. (a) *That the Ld. CIT(A) has erred on facts and in law in restricting the rent of the property situated at B-445, New Friends Colony, New Delhi, at Rs.1,30,000/- per month instead of Rs.1,65,375/- (from April 2012 to August 2012) and Rs.1,73,644/- (from September 2012 to March 2013) under section 40A(2)(b) of the Act.*

(b) That in this connection, the Learned CIT(A) has misinterpreted the provisions of the Act in as much as he has merely estimated the rental amount without there being any cogent evidence for the same and without considering the fact that the appellant had duly justified the amount of rent paid by it to its director.

2. *That the appellant craves leave to add, amend and/or alter the grounds at a later stage.”*

4. During the course of assessment proceedings, AO noticed that assessee had paid rent of Rs.1,65,375/- per month to Shri Anshul Chawla, Managing Director of the company in respect of

his residential flat situated at B-445, New Friends Colony, New Delhi. AO was of the view that the prevalent market rate of rent during the year under consideration was Rs.1,00,000/- per month. Assessee was therefore asked to justify the payment of rent. To the query of the AO, assessee furnished a letter from one M/s Narang Properties stating that the per sq. ft. rent for the premises in question was in the range of Rs.65-75 per sq. ft. as against which the rent paid by the assessee was Rs.35.86 per sq. ft. AO did not accept the contentions of the assessee as he was of the view that publically available information revealed the rent to be not more than Rs.1,00,000/- per month for a similar property located in the comparable location. He therefore considered Rs.65,375/- per month, aggregating to Rs.7,84,500/- paid to the Managing Director Shri Anshul Chawla to be unreasonably high and therefore disallowed it u/s 40A(2) of the Act. Similarly arrear of rent paid in the month of March, 2013 to the extent of Rs.57,883/- was considered to be in excess of estimated rent of Rs.1,00,000/- per month and he disallowed the same and disallowed aggregate amount of Rs.8,42,383/- u/s 40A(2) of the Act. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) after considering the submissions of the assessee and on the basis of the information about the prevalent market rent for similar flats in the locality came to the conclusion that the fair rent for similar properties in the Year 2016 to be Rs.1,50,000/-. He thereafter discounted Rs.1,50,000/- by 3% for 5 years and thereafter concluded the fair rent for the year under

consideration to be at Rs.1,30,000/- per month. He thereafter concluded rent of Rs.1,65,375/- per month from April to Aug 2012 and Rs.1,73,644/- per month from September 2012 to March 2013 paid to Mr. Anshul Chowla to be excessive as compared to the fair rental value of Rs.1,30,000/- and therefore upheld the disallowance to the extent of Rs.4,82,383/-. Aggrieved by the order of CIT(A) assessee is now before us and has raised the following grounds:

1. *“(a) That the Learned CIT(A), has erred on facts and in law in restricting the rent of the property situated at B-445, New Friends Colony, New Delhi, at Rs. 1,30,000 per month instead of Rs. 1,65,375 (from April 2012 to August 2012) & Rs. 1,73,644 (from September 2012 to March 2013) under section 40A(2)(b) of the Act.*

(b) That in this connection, the learned CIT(A) has misinterpreted the provisions of the Act inasmuch as he has merely estimated the rental amount without there being any cogent evidence for the same and without considering the fact that the appellant had duly justified the amount of rent paid by it to its director.

2. *That the appellant craves leave to add, amend and/ or alter the grounds at a later stage.”*

5. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that authorities have not conducted any enquiry to ascertain the fair market value so as to hold the payment of rent paid by the assessee to be excessive. She further submitted that the rent paid has not found to be bogus or to be not genuine and in such a situation the disallowance u/s 40A(2) of the Act is not warranted.

She further submitted rent of Rs.1,65,375/- was paid for April 2012 to Aug 2012 i.e. in F.Y. 2012-13 and rent of Rs.1,73,644/- from September 2012 to March 2013 which fall in F.Y. 2012-13 but no disallowance of the rent was made in those relevant assessment year and that the disallowance of rent being excessive has been made only in the year under consideration. She therefore submitted that when the rent payments have been accepted in F.Y. 2011-12 & 2013-14 but the same could not be denied in F.Y. 2012-13 by holding it to be excessive. She therefore submitted that the disallowance made and upheld by the CIT(A) be deleted.

6. Learned DR on the other hand supported the order of AO.

7. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to disallowance of rent paid u/s 40A(2) of the Act. Before us, it is the contention of the assessee that rent of Rs.1,65,375/- per month was paid in F.Y. 2011-12 and the increased rent of Rs.1,73,644/- was paid from September 2012 to March 2013, a part of which falls in F.Y. 2013-14 and the same rent paid to the same party has been accepted and not found to be excessive. The aforesaid contention of the assessee has not been controverted by the Revenue. In such a situation, we are of the view that when the similar rent which has been paid in part of the earlier year and in subsequent year has been accepted then

there was no justification in denying the payment of rent the same for other months on account of being excessive. We therefore directs the deletion. **Thus the ground of the assessee is allowed.**

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

Order pronounced in the open court on 11.11.2021

**Sd/-
(SANJAY GARG)
JUDICIAL MEMBER**

Date:- 11.11.2021

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Copy forwarded to:

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

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI