

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

ITA No. 5378/Del/2017
(Assessment Year: 2014-15)

KL Concast Pvt. Ltd, Z-18, Naraina, Loha Mandi, New Delhi PAN: AAACK0329B (Appellant)	Vs.	ACIT, Circle-14(2), New Delhi (Respondent)
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Assessee by :	Shri Ashwani Kumar, CA
Revenue by:	Shri Umesh Takyar, Sr. DR
Date of Hearing	20/10/2021
Date of pronouncement	17/11/2021

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by KL Concast Pvt. Ltd (assessee/ appellant) against the order of the passed by the Id CIT(A)-5, Delhi dated 28/07/2017 for the Assessment Year 2014-15 raising the following grounds of appeal:-

- “1. That the order dated 28-07-2017 passed u/s 250 of the Income-Tax Act, 1961 (hereinafter called “the Act”) by the Learned Commissioner of Income-Tax (Appeals)-5, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Assistant Commissioner of Income-Tax, Circle-14(2), New Delhi in making addition of Rs. 11,04,000/- being the difference between the payment of salary and bonus paid in A.Y~20 14-15’ and A/Y 13-14 to Directors on the ground that the increase in salary and bonus is allegedly and completely to be unjustified and not allowable under the provisions of Section 37(1) of the Act*
2. *That the order dated 28-07-2017 passed u/s 250 of the Act by the Learned Commissioner of Income-Tax (Appeals)-5, New Delhi is against law and facts on the file in as much as he was not justified to uphold the action of the Learned Assistant Commissioner of Income-*

Tax, Circle-14(2), New Delhi in making the addition of Rs. 48,491/- being 10% of Telephone Expenses of Rs. 4,84,909/- and Rs. 47,177/- of Miscellaneous Expenses of Rs. 4,71,767/- on the ground that the onus cast on the Appellant Company under Section 37(1) of the Act has not been discharged.”

2. Brief facts of the case shows that assessee is a company engaged in the business of manufacturing and trading of shapes and section/H-Beam, Felt, MS/GI Pipe and Billet. It filed its return of income on 30.11.2014 declaring loss of Rs. 6,50,92,409/-. The case of the assessee was selected for scrutiny.
3. During the course of assessment proceedings the LD AO noted that the assessee has made payment as per section 40A (2) (b) of the Act as salary and bonus to its directors. The LD AO noted that there has been increase in the salary and bonus paid to the directors compared to earlier years. According to the LD AO, the assessee failed to substantiate the increase in the payment compared to immediately preceding assessment year. He noted that assessee is a loss making entity and there is a regular increase in salary and bonus, which does not seem to be justified in view of the result of the company. Therefore, he noted that, as there is a constant decrease in ratio of net profit to the turnover of the business shows that it is a case of diversion of income. He further noted that the assessee shown net loss of Rs. 6.67 lakh but has paid the salary and bonus to directors of Rs. 86.40 lakhs in earlier year compared to payment of Rs. 97.44 lakhs in this year. He further noted that in the immediately preceding year there were disallowances in this account, which was though deleted by the LD CIT (A) but is pending before the coordinate bench. Therefore, to keep the issue alive he noted that during this year the total payment of Rs. 97.44 lakhs compared to previous Assessment Year of Rs. 86.40 lakhs in Assessment Year 2013-14 and therefore disallowance was of Rs. 11,04,000/- which was in excess / increase compared to earlier year.
4. He further noted that assessee has claimed expenditure of Rs. 787909/- on account of telephone expenses. He disallowed 10% of the same because of

non-production of the bills amounting to Rs. 48491/-. He noted that assessee has debited as miscellaneous expenses of Rs. 47177/-. The assessee submitted the details to consider the nature of expenditure incurred. He disallowed 10% of that because of non-verifiable expenditure. Such disallowance was amounted to Rs. 47177/-.

5. There were certain other disallowance also, with which we are not concerned , consequently the assessment order u/s 143(2) of the Act was passed on 30.12.2016 determining total loss of the assessee at Rs. 6,37,93,875/-.
6. The assessee preferred an appeal against that order before the LD CIT (A). He also confirmed the disallowance of Rs. 1104000/- on account of remuneration paid to directors stating that appellant has not placed any factual evidence on record to show why in the face of the decline in profitability and consistent losses, the board of directors decided to hike the remuneration. Therefore, he held that revision in remuneration is completely unjustified. With respect to the disallowances of 10% of telephone and miscellaneous expenditure, he confirmed the disallowance stating that in the absence of discharge of onus cast on the appellant the reasonable quantum of disallowance of 10% deserves to be confirmed. Accordingly, he partly allowed the appeal of the assessee. Aggrieved with that assessee is in appeal before us.
7. The ground No. 1 of the appeal is with respect to disallowance in respect of salary and bonus paid to the directors of Rs 11,04,000/- .
8. The LD AR submitted that particulars of such expenses in earlier years as per page No. 33 of the paper book. He also placed on record the board resolution approving the salary of the directors at page No. 34 to 37 of the paper book. He further placed on record the income tax returns of all the directors in page No. 38 to 51 of the PB stating that all of them are liable to tax at the highest rate. So there is no profit / benefit to assessee, hence there cannot be a charge of diversion of income. He further placed on record

the orders of the LD CIT (A) starting from Assessment Year 2009-10 to 2013-14, where such addition is deleted. . He also referred to submission placed before the LD CIT (A) at page No. 25 of the paper book. His main argument was that all these directors are actively involved in working of the company; they are looking after the business as well as day-to-day affairs. He further stated that the LD CIT (A) has deleted the identical disallowance in the earlier years. He further stated that the LD AO has disallowed the payment of salary to directors without bringing any material on record to show how it is excessive or unreasonable. He submitted that low profit or declining business could not be a ground to make disallowance u/s 40 A (2) of the Act.

9. The LD DR vehemently supported the orders of the lower authorities.
10. We have carefully considered the rival contentions and perused the orders of the lower authorities. The ld AO noted that during this year the assessee has paid to the directors of Rs. 84 lakhs and bonus of Rs. 13.04 lakhs totaling to Rs. 9744000/-. In earlier Assessment Year 2013-14 assessee has paid salary to directors of the Rs. 72 lakhs and bonus of Rs. 14.40 lakhs /- amount as bonus totaling to Rs. 8640000/-. Therefore, apparently there were an increase in Rs. 12 lakhs in salary and there is decrease of 96000/- in bonus payment, therefore, there was net increase of Rs. 1104000/-. The LD AO noted that in Assessment Year 2013-14 the assessee has incurred a loss of Rs. 6.67 crores whereas the loss in Assessment Year 2014-15 is Rs. 8.18 crores. Therefore, there was no justification of increase in salary. We find that there is roughly increase of 12.5% in the total salary payment made to the directors. The remuneration paid to the directors is supported by the board resolution placed before us. The income tax returns of the directors were also placed before us, which shows that the directors are paying tax at the highest rate in their individual capacity. The LD AO invoked the provision of section 40A (2) of the Act stating that looking to the loss and decrease in business, such payment is unjustified. Therefore, he disallowed

Rs. 1104000/-. We find that if the LD AO is disallowing any sum u/s 40A (2), he has to justify that above expenditure is excessive or unreasonable having regard to the fair market value of the services. No such exercise has been undertaken by the LD AO. Further, with respect to the legitimate needs of the business, he has already allowed a sum of Rs. 8640000/- paid by the assessee that it is for the legitimate needs of the business, how a sum of Rs. 1104000/- is not justified the legitimate needs of the business has not been reasoned. Even otherwise, the financial performance of the company does not entitle LD AO to make any disallowance of fixed salary and bonus paid to the directors, particularly when it is not shown that payment to such directors and consequent remuneration payable to them is linked to the profitability of the company. It is not the case of the LD AO that those directors have not rendered any services to the company. Mere incurring of loss and downturn in business cannot be a reason to disallow the salary and bonus paid to the directors. Even otherwise, the disallowances sustained by the LD CIT (A) u/s 37(1) is also not correct because it is not case of the LD CIT (A) that these expenditure of salary and remuneration to the extent of increase are not wholly and exclusively incurred for the purpose of the business. In the result, we hold that the disallowance made by the LD AO u/s 40A (2) is unjustified. We reverse the orders of the lower authorities and direct the LD AO to delete the disallowance of Rs. 1104000/-. Accordingly, ground No. 1 is allowed.

11. Ground No. 2 with respect to disallowance of Rs. 48491 and 47177/- being 10% of telephone expenditure of Rs. 484909/- and miscellaneous expenditure of Rs. 471767/-. We have heard the rival contentions on this ground and find that these are adhoc disallowances made by the revenue authorities for looking at unverifiable nature and non-business element of expenditure. We find that if any expenditure is found to be none verified and not for the purpose of the business, the LD AO should have disallowed that exact amount of sum. On reading of the assessment order no such

expenditure were mentioned in the assessment order but ad hoc disallowance of 10% on both these expenditure is made. The ad hoc disallowance cannot be upheld. Further, the reason given by the Id CIT(A) are not sustainable for the reason that he has held that such percentage of disallowance are justified. It is undisputed that the assessee has produced the complete details of such expenditure before the lower authorities and despite that, no instances were pointed out with respect to non business nature of such expenditure as well as in absence of any evidence of incurring of such expenditure. In view of this, we allow ground No. 2 of the appeal and direct the LD AO to delete the disallowances.

12. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 17/11/2021.

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 17/11/2021
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	17.11.2021
Date on which the typed draft is placed before the dictating member	17.11.2021
Date on which the typed draft is placed before the other member	17.11.2021
Date on which the approved draft comes to the Sr. PS/ PS	17.11.2021
Date on which the fair order is placed before the dictating member for pronouncement	17.11.2021
Date on which the fair order comes back to the Sr. PS/ PS	17.11.2021
Date on which the final order is uploaded on the website of ITAT	17.11.2021
date on which the file goes to the Bench Clerk	17.11.2021
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	