

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.Nos.2850 & 2851/Chny/2018

(निर्धारणवर्ष / Assessment Years: (2014-15 & 2015-16)

M/s. Buzzworks Business Services (P) Ltd. 104, Kaveri Complex Door No.303, Nungambakkam High Road, Chennai-600 034. PAN: AACCB 8364P (अपीलार्थी/Appellant)	Vs	The Income Tax Officer, Corporate Ward-1(2), Chennai. (प्रत्यर्थी/Respondent)
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अपीलार्थीकीओरसे/ Appellant by	:	Mr.S.Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. G.Johnson, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	09.11.2021
घोषणाकीतारीख /Date of Pronouncement	:	26.11.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

These two appeals filed by the assessee are directed against common order passed by the learned CIT(A)-1, Chennai, dated 22.08.2018 and pertain to assessment years 2014-15 & 2015-16. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off, by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for both assessment years, therefore, for the sake of

brevity, grounds of appeal filed for the assessment year 2014-15 are reproduced as under:-

“1. 1. The common order of The Commissioner of Income Tax (Appeals) 1, Chennai — 600 034 dated 22.08.2018 in I.T.A.Nos.565, 299 & 33/CIT(A)- 1/2016-17 & 2017-18 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in partly sustaining the disallowance the claim of the computer systems hire charges from the related party on the application of section 40A(2)(b) of the Act and consequently erred in sustaining the addition of such sum in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the provisions of section 40A(2)(b) of the Act were wrongly applied to the facts of the case and ought to have appreciated that with a view to estimate the disallowance of excess payments to the related party, there should be comparative analysis of the market trend/rent for hiring computer systems while in the absence of such comparative analysis would vitiate the application of the said provisions of the Act in mechanical fashion.

4. The CIT (Appeals) failed to appreciate that two reasonings given in para12 of the impugned order were wholly unjustified and not logical also and ought to have appreciated that the comparative rates provided was wrongly rejected, thereby vitiating the related findings.

5. The CIT (Appeals) failed to appreciate that there should not be any comparison between the written down value/book value of the computer systems and the market of value of rent for hiring such systems and ought to have appreciated that the sustenance of such illogical approach would vitiate the related findings.

6. The CIT (Appeals) failed to appreciate that the partial relief granted in any event leading to partial sustenance of the addition had no factual backing, thereby vitiating the related findings.

7. The CIT (Appeals) erred in sustaining the disallowance of hire charges of other items (other than desktops and

laptops) on the application of section 40A(2)(b) of the Act and consequently erred in sustaining the addition of such sum in the computation of taxable total income without assigning proper reasons and justification.

8. The CIT (Appeals) went wrong in recording the findings in this regard in para 15 of the impugned order without assigning proper reasons and justification.

9. The CIT (Appeals) erred in partly sustaining the disallowance of the consultancy charges paid on the application of section 40A(2)(b) of the Act and consequently erred in sustaining the addition of such sum in the computation of taxable total income without assigning proper reasons and justification.

10. The CIT (Appeals) failed to appreciate that the reasons for making the payment of consultancy charges to the related party and justification shown for making such payment were completely overlooked while not making proper study of the said issue within the scope of section 40A(2)(b) of the Act thereby vitiating the findings from para 18 to para 21 of the impugned order.

11. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law."

4. Brief facts of the case are that assessee is engaged in the business of providing Information Technology Solutions and Services filed its return of income for assessment year 2014-15 on 28.11.2014 declaring total income of Rs.19,26,640/-. The assessee had also filed return of income for assessment year 2015-16 on 28.09.2015 declaring Nil total income. The assessment for impugned assessment years have been completed u/s.143(3) of the Income Tax Act, 1961, after making

additions towards disallowance of computer and other equipments hire charges u/s.40A(2)(b) of the Income Tax Act, 1961, on the ground that hire charges paid by the assessee is unreasonable and excessive , when compared to market rates. The Assessing Officer had also disallowed consultancy charges paid to Director of the assessee company u/s.40A(2)(b) of the Act, on the ground that no evidence has been filed to justify payment of consultancy charges to related party. The assessee carried the matter in appeal before first appellate authority. The learned CIT(A) vide her order dated 22.08.2018 had allowed partial relief in respect of disallowance of computer and other equipments hire charges by restricting disallowance to 40% in respect of desktop computers as against 50% disallowances made by the Assessing Officer and further, in respect of Laptops, directed the Assessing Officer to restrict disallowance to 30% of the claim. As regards other equipments, additions made by the Assessing Officer is upheld. Similarly, the learned CIT(A) has allowed partial relief in respect of consultancy charges paid to Mr. V.C.Kartik and directed the Assessing Officer to restrict disallowance to 50%

of the total claim for both assessment years. Aggrieved by the order passed by the learned CIT(A), the assessee is in appeal before us.

5. The first issue that came up for our consideration from ground no.2 to 7 of assessee appeal is disallowance of computer and other equipments hire charges u/s.40A(2)(b) of the Act. The Assessing Officer on perusal of details filed by the assessee noticed that computer hire charges paid by the assessee is excessive and unreasonable, when compared to market rate of hire charges for similar nature of assets. The Assessing Officer had also noted that the assessee has paid huge amount of hire charges, which is more than amount of cost of asset owned by the lessor and therefore, opined that no prudent person would give hire charges over and above value of assets which are put on hire and thus, opined that hire charges paid by assessee to computer and other equipments is excessive and unreasonable and accordingly, disallowed 50% of total amount paid for hire charges at Rs.20,28,814/- u/s.40A(2)(b) of the Income Tax Act, 1961. On appeal, the learned CIT(A) has allowed partial relief to the assessee, where

she has directed the Assessing Officer to restrict disallowances to 40% of total hire charges paid for desktop computer and 30% of claim towards laptops, however, sustained disallowances made by the Assessing Officer for other equipments.

6. The learned A.R for the assessee submitted that the learned CIT(A) has erred in directing the Assessing Officer to make ad-hoc disallowances without appreciating fact that the assessee has filed comparable cases of similar nature for hiring desktop, laptop and other equipments, as per which third party service provider are charging more than the amount of hire charges paid by the assessee. Therefore, in absence of any comparison with third party service provider, making ad-hoc disallowance u/s.40A(2)(b) of the Act on the ground that it is unreasonable and excessive is incorrect.

7. The learned DR, on the other hand, strongly supporting order of the learned CIT(A) submitted that although the assessee has paid less charges when compared with other service providers, but when compared to number of units given by third party to number of units provided by the assessee,

number provided by third party is very less and thus, same cannot be compared with the assessee. The learned CIT(A) after apprising necessary facts has rightly allowed partial relief to the assessee and hence, findings of the learned CIT(A) should be upheld.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. In order to invoke provisions of section 40A(2)(b) of the Act, the Assessing Officer has to bring on record some comparable cases of similar nature to allege that hire charges paid by the assessee is unreasonable and excessive, when compared to market rates. In this case, on perusal of details filed by the assessee, third party service providers rate is more than rate charged by service provider to the assessee. Further, cost incurred by the lessor of the asset does not relevant to decide whether hire charges fixed for said equipment is excessive or unreasonable. The only way to compare rate paid by the assessee is with reference to third party service providers. In this case, rate charged by third party service providers is more than rate paid by the assessee and thus, we

are of the considered view that the Assessing Officer as well as learned CIT(A) were erred in disallowing computer and other equipments hire charges u/s.40A(2)(b) of the Income Tax Act, 1961. Hence, we direct the Assessing Officer to delete additions made towards disallowance of system hire charges u/s.40A(2)(b) of the Income Tax Act, 1961.

9. The next issue that came up for our consideration from ground no.8 &9 of assessee appeal is ad-hoc disallowance of consultancy charges paid to Mr. V.C.Kartik, Director of the assessee company u/s.40A(2)(b) of the Income Tax Act, 1961. The Assessing Officer has disallowed consultancy charges paid to Mr .V.C.Kartik on the ground that except board resolution specifying nature of work to be provided by Mr. V.C.Kartik, no other evidence has been filed to justify payment of huge consultancy charges to Mr. V.C. Kartik. It was claim of the assessee before the Assessing Officer that Mr.V.C. Kartik was an active angel investor and has interest in multiple businesses. He had offered various services on part time basis to the assessee in matters relating to corporate strategy and acquisitions. Therefore, it is incorrect on the part of the

Assessing Officer to allege that no evidence has been filed to justify payment of consultancy charges to Mr. V.C.Kartik.

10. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, except board resolution passed by the company authorizing its Board of Directors to pay consultancy charges to Mr. V.C.Kartik, no other credible evidence has been placed on record before the Assessing Officer or learned CIT(A), including before us to justify payment of consultancy charges to Mr.V.C.Kartik. The board resolution copy filed by the assessee may be an evidence which suggest availing need based services from consultant. But what is required to support case of the assessee is evidences which suggest actual rendering of services. In this case, the assessee has neither furnished necessary evidence to prove rendering of services by service provider nor placed on record any evidence to prove kind of service obtained from Mr. V.C.Kartik. The learned CIT(A) after considering relevant facts and has also taken note of association of Mr. V.C.Kartik with the assessee company has allowed 50% relief and directed the Assessing Officer to restrict

disallowance of consultancy charges to 50% of total claim. The assessee has failed to controvert findings of fact recorded by the learned CIT(A) with any evidence, hence, we are inclined to uphold findings of the learned CIT(A) and reject grounds taken by the assessee.

11. In the result, appeal filed by the assessee for assessment year 2014-15 is partly allowed.

ITA No.2851/Chny/2018 (A.Y 2015-16):

12. The first issue that came up for our consideration from ground No.2 to 6 of the assessee appeal is disallowance of system hire charges u/s.40A(2)(b) of the Income Tax Act, 1961. A similar issue has been considered by us in preceding paragraph in ITA No.2850/Chny/2018 for assessment year 2014-15 . The reasons given by us in preceding paragraph shall *mutatis mutandis* apply to this appeal, as well. Therefore, for similar reasons, we direct the Assessing Officer to delete additions made towards system hire charges u/s.40A(2)(b) of the Act.

13. The next issue that came up for our consideration from ground no. 7 & 8 of the assessee appeal is disallowance of

consultancy charges paid to Mr. V.C.Kartik u/s.40A(2)(b) of the Act. An identical issue has been considered by us in preceding paragraph in ITA No.2850/Chny/2018 for assessment year 2014-15 . The reasons given by us in preceding paragraph shall *mutatis mutandis* apply to this appeal as well. Therefore, for similar reasons, we are inclined to uphold findings of the learned CIT(A) and reject grounds taken by the assessee.

14. In the result, appeal filed by the assessee for assessment year 2015-16 is partly allowed.

15. As a result, appeals filed by the assessee for both assessment years 2014-15 & 2015-16 are partly allowed.

Order pronounced in the open court on 26th November, 2021

Sd/-
(धुव्वुरु आर.एल रेड्डी)
(Duvvuru RL Reddy)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 26th November, 2021

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.