

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya, Accountant Member

I.T.A. No. 4487/Mum/2019
(Assessment Year 2014-15)

Tushar Harish Mashruwala HUF 1 st Floor, Room No.8 Navinchandra Building 78, Vithal Wadi Kalbadevi Mumbai-400 002 PAN : AACHT4296B (Appellant)	Vs.	ITO-18(2)(1) Room No.304, 3 rd Floor Earnet House Nariman Point Mumbai-400 021 (Respondent)
---	-----	---

Assessee by	None
Department by	Shri T.Sankar
Date of Hearing	11.01.2022
Date of Pronouncement	17 .03.2022

ORDER

Per Shri Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-53 dated 05.04.2019 and pertains to assessment year 2014-15. The issue raised is that Id.CIT(A) erred in upholding the ad hoc disallowance made by AO of Rs. 7,71,000/- being 50% of total salary without appreciating the fact that such salary was paid by assessee by account payee cheques.

2. Brief facts on this issue are that the assessee is a HUF running two proprietorship concerns, namely, M/s. Neelkanth Textiles in Mumbai and M/s. Hariganga Textiles from Surat. M/s. Neelkanth Textiles is engaged in trading on wholesale basis. M/s. Hariganga Textiles is a manufacturing unit at Surat which manufactures art silk fabrics. The AO observed that in the case of M/s.Neelkanth Textiles, salaries of Rs. 15,42,000/- was debited

which appear to be on the higher side. Details were called for in this regard. As per the details filed, the AO observed that as many as 37 persons were listed to whom exactly Rs,42,000/- was paid. The address of the persons was incomplete and in many cases same address was shown for multiple persons to whom payments of Rs. 42,000/- each was claimed. There was no documentary proof of payment of salary and evidence of employment of these persons. The AO, therefore, disallowed 50% of the salary debited and Rs. 7,71,000/- was, therefore, disallowed.”

3. The Ld.CIT(A) upon assessee's appeal noted following submission on this issue.

“ In the appellate proceedings, it was submitted that the salaries were paid by account payee cheques. These persons were not related to the appellant. These employees were engaged for making sample cards for new fabrics. The sample fabrics must reach every customer in time quickly. If some of the employee addresses were same, it means that they were from the same family.”

4. The Ld.CIT(A) asked the assessee to file details of entire salary paid giving the name, address, amount and specifying the work carried out by each person. Ld.CIT(A) noted that further details were filed on 28.03.2019. Ld.CIT(A) did not point out in the deficiency in the documents, however basing upon surmise and conjunctures. He upheld the disallowance holding as under:-

“I have considered the facts and submissions carefully. The appellant has shown total sales of Rs 703.46 lakhs on which gross profit of Rs 33.97 lakhs (4.8%) and net profit of Rs 10.54 lakhs (1.49%) is shown in case of Neelkanth Textiles. The list of employees furnished show that there are 37 parties residing at various locations in Mumbai from Grant Road, Prathna Samaj to Kandivalli. Each person is shown to have been paid exactly Rs 42000/- This comes to Rs 3500 per month. It is inconceivable that 37 persons would work for Rs 3500 per month. The details of payments supported by bank statements are not filed. There is certainly merit in the observations of the assessing officer. It is noted that the business is of whole sale business in case of Neelkanth Textiles. Such large wage expenses are doubtful. The disallowance is upheld.”

5. Against the above order, assessee is in appeal before us.

6. I have heard the Id. DR and perused the records. I note that Id.CIT(A) has asked the details from the assessee. There is no finding that there is any shortcoming in the details. The details asked included the name of the employee, the address, amount paid, the nature of work done. No doubt was expressed on the details provided by the assessee. Hence, Ld.CIT(A) is only basing his order on surmise and conjecture. It is not the case that upon any enquiry, any of the employee has not responded. In these circumstances, in my considered opinion, the observation that business is a wholesale business and such large expense are doubtful cannot be a reason for blanket disallowances. It is settled law, the revenue authorities cannot step into the shoes of businessman and decide upon the need of making the expenditure. Hence, I set aside the orders of the authorities below and decide the issue in favour of the assessee.

7. In the result, this appeal by the assessee stands allowed.

Pronounced in the open court on 17.03.2022

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 17 .03.2022

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai