

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

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.2767/Del/2019  
(Assessment Year : 2015-16)

Balani Infotech P. Ltd. 119, Vinobapuri Lajpat Nagar-II, New Delhi-24  PAN No. AADCB 1970 E <b>(APPELLANT)</b>	Vs.	ACIT Circle – 4(1) New Delhi  <b>(RESPONDENT)</b>
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Assessee by	Shri K. R. Manjani, Adv. Shri Tarun Aswani, Adv.
Revenue by	Shri Rajinder Jha, Sr. D.R.

Date of hearing:	28.04.2022
Date of Pronouncement:	31.05.2022

**ORDER**

**PER ANIL CHATURVEDI, AM :**

This appeal filed by the assessee is directed against the order dated 24.01.2019 passed by the Commissioner of Income Tax (Appeals) – 12, New Delhi relating to Assessment Year 2015-16.

2. Brief facts of the case as culled out from the material on record are as under:-

3. Assessee is a company stated to be engaged in the business of dealing in sale and purchase of e-journals. Assessee filed its return of income for A.Y. 2015-16 on 29.09.2015 declaring total income at Rs.3,82,51,540/-. The case was taken up for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 30.12.2017 and the total income was determined at Rs.4,08,93,800/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 24.01.2019 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

1. *“Learned CIT(A) has erred on facts as well as in law in sustaining the addition of 9,00,000/- + 10,11,240/- by ignoring the fact that the Directors did not draw increment for 3 years and has worked for progress of the business and the fact that this year though turnover has increased by 29% but net income has increased at more than 2<sup>1/2</sup> times which is inspite of and after allowing increase in salary of the Directors.*
2. *Similarly disallowance of salary of Smt. Megha Balani is merely on surmises by wrongly stating that there is no need for person having qualification which smt. Megha Balani possesses. Consultant’s services were necessary for dealing with the employees numbering more than 25 getting proper work from them and also dealing with clients for convincing that company offers the best services.*

*It is prayed that disallowance sustained may kindly be deleted made u/s 40A(2)(b).”*

4. Before us, at the outset, Learned AR submitted that though the assessee has raised various grounds but the sole controversy is with respect to the disallowance of excess salary made by the AO and upheld by the CIT(A).

5. During the course of assessment proceedings, AO noticed that assessee had made following salary payments to the Directors:

<b>Name of the Related person</b>	<b>Salary (Rs.)</b>
Bina Balani (Director)	13,20,000
Kailash Balani (Director)	27,00,000
Megha Balani (Daughter in Law of Director)	9,00,000

6. The assessee was asked to justify the payment of salary u/s 40(A)(2)(b) of the Act to which assessee made the submissions which was not found acceptable to AO. AO noted that in the case of Bina Balani and Kailash Balani there was hike in salary of more than 125% and 50% respectively whereas the increase in turnover of the assessee was only to the extent of 30% and therefore the increase in salary was not justifiable. He thus held the increase in salary of the Directors aggregating to Rs.16,20,000/- cannot be allowed and accordingly made its disallowance.

7. Assessee was also asked to justify the payment of consultancy fees to 'Megha Balani', the Daughter in Law of the Director. It was submitted that in earlier years she was paid amount of Rs.26,31,240/- as consultancy charges and during the year she has been paid salary which is less than the consultancy charges which is Rs. 9 lac + service tax @12.36%. The submissions of the assessee was not found acceptable to AO. AO was of the view that the nature of the business of the assessee

was of trading in nature and did not require any consultancy services. He accordingly held the amount of consultancy charges of Rs.9,00,000/- including service tax aggregating to Rs.10,11,240/- to be not justifiable. He accordingly disallowed the aggregate of Rs.26,31,240/- (Rs.16,20,000 + Rs.10,11,240).

8. Aggrieved by the order of AO, assessee carried the matter before CIT(A). CIT(A) vide order dated 24.01.2019 in Appeal No.91/18-19 upheld the order of AO. Aggrieved by the order of CIT(A), assessee is now before us.

9. Before us, Learned AR reiterated the submissions made before the lower authorities and further submitted that first of all Megha Balani cannot be considered a relative as understood u/s 2(41) of the Act. He submitted that as per Section 2(41) of the Act, "Relative", in relation to an individual, means the husband, wife, brother or sister, or any lineal ascendant or descendant of the individual. He submitted that the Daughter in Law cannot be considered to be a relative of an individual. He submitted that Megha Balani is daughter in law one of the Director and is therefore not covered within the definition of relative u/s 2(41) of the Act. Learned AR thereafter pointed to the chart of salary which is placed at Page 4 of the paper book and from there he submitted that there was no increase in salary from A.Y. 2012-13 to 2014-15 in case of salary of both the Directors and only in the

year under consideration, the salary has been increased. He further pointed to the table of turnover of different years which is tabulated at page 4 of the paper book and from there he pointed that the turnover has increased from Rs.14.27 crores in A.Y. 2012-13 to Rs.35.80 crores and correspondingly the taxable income has increased from Rs.10.85 lacs in A.Y. 2012-13 to Rs.3.82 crores in A.Y. 2015-16. He therefore submitted that the observation of AO that there is no corresponding increase in sales as compared to increase in salary is misplaced. He thereafter submitted that it is a settled law that the businessman is a right person to take decision about the expenses which he has to incur for the purpose of business and the AO cannot sit in the chair of the assessee to determine the reasonableness of an expenditure. He submitted that the reasonableness of the expenditure has to be considered from view of the businessman and not of the Assessing Officer. He further submitted that the amount of salary received by the individual Directors have been offered by the respective assessee's in their return of income and they are also taxed at the maximum taxable rate and thus it cannot be said that the increased salary has been paid to reduce the tax liability. He therefore submitted that no addition is called for in the present case.

10. Learned DR on the other hand supported the order of lower authorities.

11. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance made u/s 40(A)(2)(b) of the Act. Section 40A(2) of the Act, puts a curb on expenditure in respect of which payment has been made to close associates having substantial interest in the company for goods, services and facilities. Under this section, the AO can disallow only that portion of the total expenditure, which in his opinion, is excessive or unreasonable. The onus is on the AO to form an opinion that the expenditure claimed as excessive/unreasonable having regard to the fair market value for which the payment is made. This opinion of the AO cannot be arbitrary but must be on the basis of determining the fair market value for which payment is made. The AO must establish that the payment is excessive or unreasonable which should be on the basis of material on record and cannot be based on merely surmises and conjectures. The reasonableness of the expenditure is to be seen from the view point of the businessmen and not from the view of Revenue authorities. The expediency, legitimacy and the business needs will have to be examined from the assessee's point of view and not from the department's view as held by Hon'ble Gujarat High Court in the case of **Voltamp Transformers Pvt. Ltd. vs. CIT 129 ITR 105 (Guj)**. We further find that Hon'ble Rajasthan High Court in the case of **CIT vs. Consulting Engineering Group Ltd. reported in 223 Taxman 440** has held that it is for an assessee as a businessman to come to a conclusion as to what

remuneration of the salary is to be paid to the employees and the reasonableness of the expenses is to be judged from the angle of a businessman rather than from angle of an Assessing Officer.

12. Before us, Learned AR has also submitted that the respective persons, to whom the payments have been made, have offered the receipts as their respective income and those individuals are assessed to tax at maximum tax rates. The aforesaid contention of the Learned AR is not controverted by Learned DR. We find that in the present case the AO has only compared the salary payment made by the assessee in the year under considered with that of earlier year to come the conclusion of excessive salary payment. The aforesaid conclusion is not based on any material on record as contemplated u/s 40(A)(2)(b) of the Act. Considering the totality of the aforesaid facts, we are of the view that the AO was not justified in disallowing the expenditure by invoking the provisions of Section 40(A)(2)(b) of the Act. We accordingly set aside the addition made by AO and CIT(A). **Thus the ground of assessee is allowed.**

**13. In the result, appeal of the assessee is allowed.**

**Order pronounced in the open court on 31.05.2022**

**Sd/-  
(ASTHA CHANDRA)  
JUDICIAL MEMBER**

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

Date:- 31.05.2022

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**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI