

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI GAGAN GOYAL, AM

आयकर अपील सं/ I.T.A. No.6195/Mum/2019

(निर्धारण वर्ष / Assessment Years: 2016-17)

Hitech Corporation Ltd Unit No.201-203, Welspun House, Kamala Mills, Senapati Bapat Marg, Lower Parel, Mumbai- 400013.	बनाम/ Vs.	ACIT, Cir, 15(2)(1) Aayakar Bhavan, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACH5161N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Dalpat Shah
Revenue by:	Shri Prasoon Kabra (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 19/05/2022

घोषणा की तारीख /Date of Pronouncement: 31/05/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)-24, Mumbai dated 14.06.2019 for the assessment year 2016-17.

2. At the outset, the Ld. AR of the assessee drew our attention to the fact that the issue involved in this case is only with regard to the disallowance of rent of Rs.24 lakhs u/s 40A(2)(a) of the Income Tax Act 1961 (herein after, the Act) and the interest charged u/s 234C & 234D of the Act.

3. According to the Ld. AR, in respect of the issue regarding the disallowance of rent of Rs.24 lakhs u/s 40A(2)(a) of the Act which assessee had paid to M/s. Coating Specialties (India) Ltd (hereinafter "M/s. CSIL") on the grounds that the assessee failed to justify use of the additional units [*for which the rented premises was taken by the*



*ITA No.6195/Mum/2019
A.Y. 2016-17
Hitech Corporation Ltd.*

assessee without showing that it was for the purpose of the business], the Ld. AR submitted that the lower authorities ignored the fact that the assessee had proved before the AO that the leased office/premises has been exclusively used for its business purpose only and the rent was paid at arm's length. Moreover, according to the Ld. AR, the issue involved is permeating from earlier years i.e. from A.Y.2010-11 onwards, wherein similar additions/disallowance made by the AO/Ld CIT(A) which was in turn challenged by the assessee before this Tribunal (ITA. No.6770/Mum/2017 & ITA. No.7342/Mum/2017) (A.Y. 2010-11) wherein the Tribunal was pleased to give relief to the assessee vide order dated 10.05.2022 wherein the Tribunal held as under: -

“2. The ground No.1 raised by the assessee is challenging the confirmation of disallowance of rent paid to Coating Specialities (India) Ltd., of Rs.23,15,000/- u/s. 40A(2)(a) of the Act.

2.1. We have heard rival submissions and perused the materials available on record. We find that assessee company is engaged in the business of manufacturing of plastic containers, bottles, caps, jars and cans for packaging needs. Majority of the customers of the assessee are in painting industry. The assessee paid rent of Rs.23,15,000/- to Coating Specialities (India) Ltd., The ld. AO observed that the said concern is a sister concern of the assessee and accordingly, the payment of rent made by the assessee was sought to be examined from the purview of Section 40A(2) of the Act. The ld. AO observed that assessee had paid rent for the first time during the year under consideration to Coating Specialities (India) Ltd., The copy of rent agreements were furnished by the assessee before the ld. AO which are



*ITA No.6195/Mum/2019
A.Y. 2016-17
Hitech Corporation Ltd.*

enclosed in pages 2-16 of the paper book. The details of the same are as under:-

Unit No.	Area in Sq. ft	Rent per month	Period for which rent is paid	Rent amount in AY.2010-11
Unit No. 30(C wing)	445	22000	12 months	Rs.2,64,000/-
Unit No.130-135 (C Wing)	3110	155500	12 months	Rs.18,66,000/-
Unit no. 311-312 (C Wing)	1910	37000	5 months	Rs.1,85,000/-
Total				Rs.23,15,000/-

2.2. The assessee submitted before the Id. AO that some amount of rent of Rs.2,64,000/- was paid in immediately preceding assessment year also for Unit No.30 (C Wing). The assessee also submitted that Coating Specialties (India) Ltd., is not sister concern of the assessee and hence, the provisions of Section 40A(2) of the Act would not come into operation at all. The assessee further submitted that Unit Nos. 130-135 and 311- 312 were taken on rent only during the year and hence, rent was paid only for the year under consideration. The assessee also submitted that increase in turn over led to increase in staff strength which consequently warranted higher usage space of the premises which triggered the assessee to go for higher rental space during the year under consideration. The Id. AO did not heed to the contentions of the assessee and proceeded to disallow the rent payment of Rs.23,15,000/- by invoking the provisions of Section 40A(2)(a) of the Act on the ground that it is excessive. While doing so, the Id. AO did not bring in any comparable instances for invoking the provisions of Section 40A(2) of the Act. The Id. AO did not bring on record the comparable cases of fair market value of rent paid in similar circumstances by similarly placed assesseees.



*ITA No.6195/Mum/2019
A.Y. 2016-17
Hitech Corporation Ltd.*

2.3. From the aforesaid narration of facts, it could be safely concluded that the contentions of the Id. AO that assessee had not paid any rent to Coating Specialities (India) Ltd., in earlier years is not appreciated. The reasons for assessee not paying the rent in earlier years are duly explained hereinabove. We find that assessee had even pleaded before the Id. CIT(A) that it had paid rent at Rs.39.23 per sq.ft per month to Coating Specialities (India) Ltd., and the comparable instance for similarly placed property was Rs.41.57 sq.ft per month which was charged by Mrs. Vandana G. Pahilwani and Mr. Ghanshyam L. Pahilwani. The Id. CIT(A) had not addressed this fact at all. We find that even assuming that Coating Specialities (India) Ltd., is a related party of the assessee, still the rent paid by the assessee @Rs.39.23 per sq.ft per month is lesser than rent paid to an unrelated party i.e. Mrs. Vandana G. Pahilwani and Mr. Ghanshyam L. Pahilwani. On this count itself, the rent paid by the assessee cannot be treated as excessive to invoke the provisions of Section 40A(2) of the Act. As stated supra, in any case, the Id. AO had not brought any evidence on record by way of comparable instances of fair market value of rent to drive home the point that rent paid by the assessee is excessive or unreasonable. Hence, we have no hesitation in directing the Id. AO to delete the disallowance made u/s.40A(2)(a) of the Act in the sum of Rs.23,15,000/- towards rent. Accordingly, the ground No.1 raised by the assessee is allowed.”

4. The Ld. DR could not point out any change in facts or law in the present case, warranting intervention in this decision of this Tribunal in assessee’s own case for the issue in hand. Therefore, respectfully following the Tribunal’s order in the assessee’s own case on the issue involved (supra), we direct the AO to delete the disallowance made u/s 40A(2)(a) of the Act. Ground no.1 raised by the assessee is allowed.



ITA No.6195/Mum/2019
A.Y. 2016-17
Hitech Corporation Ltd.

5. Coming to the ground no. 2 which is in respect of interest charged u/s 234C & 234D of the Act is concerned, needless to say it is consequential and does not require any adjudication from our side, so it has become infructuous, so dismissed.

6. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this 31/05/2022.

Sd/-

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/05/2022.
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai