

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Shri B.R. Baskaran (AM) & Shri Kuldip Singh (JM)

I.T.A. No. 5691/Mum/2019 (A.Y. 2013-14)

Radha Krishna Silk Mill Radha Krishna Compound Ground Floor, Ishwarbhau Patel Road, Goregaon East Mumbai-400 063. PAN : AAAFR4374A (Appellant)	Vs.	ITO-31(3)(1) C-13, 408A Pratyakshkar Bhavan, Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent)
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Assessee by	Ms. Shivani Chaurasia
Department by	Shri Kanhiya Lal Kanak
Date of Hearing	17.05.2022
Date of Pronouncement	21.06.2022

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 16.05.2019 passed by Learned CIT(A)-42, Mumbai and it relates to the assessment year 2013-14. The assessee is aggrieved by the decision of Learned CIT(A) in confirming following disallowances made by the AO:-

- (a) Disallowance out of salary expenses
- (b) Disallowance of professional charges paid to Mr Kishore Ramdayal Nawal
- (c) Disallowance of consulting charges paid to M/s Mino Bhesnia & Associates

The assessee has also raised certain additional grounds relating to refund of tax, interest u/s 244A recovered and interest charged u/s 234D of the Act.

2. The assessee is a partnership firm and was carrying on trading business in woven labels during the year under consideration. It is having a factory premises and has let out major portion of the same. The Profit and loss

account of the assessee included both transactions relating to trading business and rental income.

3. The first issue relates to the disallowance made out of salary expenses. As noticed earlier, the assessee had closed down its factory. In the trading activity, the purchase transaction consisted of 8 bills and sales transaction consisted of 9 bills. The sales turnover was only Rs.6,57,124/-. However, the assessee had claimed salary expenses to the tune of Rs.20,93,048/-. The AO took the view that the salary expenses claimed by the assessee is disproportionate the trading activities carried on by the assessee. Accordingly, he took the view that the assessee has mostly used the services of employees for rental activities. The assessee had allocated a sum of Rs.2,91,647/- towards earning of rental income and the same was not accepted by the AO. Accordingly, the AO analysed the nature of services rendered by the employees and apportioned the salary expenses between business income and rental income. The assessee had paid salary to 23 employees. The AO allocated salary expenses of only five employees towards business income and allocated the remaining employees to earning of rental income. The salary of remaining employees worked out to RS.15,08,585/- and after deducting the disallowance of Rs.2,91,647/- voluntarily made by the assessee, the AO disallowed the remaining amount of Rs.12,16,938/- as not relating to business activities. The Learned CIT(A) also confirmed the same.

4. The Ld A.R submitted that the permanent employees of the assessee have not been retrenched the loyal employees and their services are utilized for various business activities like accounting, taxation, record keeping, digital and physical security etc. She submitted that the salary expenses have been accepted in other years. She also submitted that the wisdom of the businessman cannot be questioned by the AO. Accordingly, she contended that the entire salary expenses should be allowed as deduction.

5. On the contrary, the Ld D.R submitted that the AO has carried out physical inspection and has given factual finding that the factory is not working for the past several years. Further, the major income earned by the assessee is the rent received on letting out of the factory premises. Accordingly, he submitted that the services of the employees have been used by assessee for earning rental income only. Accordingly he submitted that the AO has rightly allocated salary expenses between business income and rental income after analyzing the nature of services rendered by each of the employees.

6. We heard rival contentions on this issue and perused the record. We notice that the AO has given a finding that the trading activities carried on by the assessee were at very low scale, i.e., there were only 9 transactions of purchases and 8 transactions of sales. The total sales turnover was only Rs.6,57,124/-. The major income earned by the assessee consisted of rental income only. Hence it is quiet natural to believe that the services of employees have been used mainly for earning rental income. We further notice that the AO has analysed the nature of services rendered by each of the employees and accordingly allocated the employees between business activities and rental activities. In our considered view, the AO has taken a conscious exercise in this regard and hence we find no reason to interfere with his view on this matter. It is well settled proposition that the Principle of res-judicata is not applicable to income tax proceedings. Hence acceptance of salary expenses in other years will not have any impact in this year. We notice that the AO has not questioned the wisdom of incurring expenses. He has only allocated the salary expenses between two sources of income. Accordingly, we are of the view that the Learned CIT(A) has rightly confirmed the disallowance of salary expenses made by the AO as not related to the business activities carried on by the assessee. Accordingly, we confirm the order passed by Learned CIT(A) on this issue.

7. The next issue relates to the addition of Rs.17,101/- relating to professional charges paid to Shri Kishor Ramdayal Nawal for offering consultation in service tax and income tax matters. The assessee claimed a sum of Rs.1,82,022/- as payment made to the above said person. However, the above said person confirmed receipt of Rs.1,64,921/-. Hence the AO disallowed the difference of Rs.17,101/-. The Learned CIT(A) also confirmed the same.

8. The main argument of Ld A.R is that the difference might have occurred due to the difference in the method of accounting followed by the assessee and the Shri Kishor Ramdayal Nawal. The Ld A.R also submitted that the payment has been made through banking channels and the TDS has also been deducted. We find merit in the said submissions. We notice from the ledger account copy placed at page 124 of paper book, the assessee has made payments by way of cheques and further the TDS has been deducted. Hence there is no reason to believe the books of account of the assessee on the reasoning that the recipient has confirmed lesser amount. It is quite possible that the recipient might have committed error. Accordingly, we are of the view that this disallowance is not called for. Accordingly, we set aside the order passed by Learned CIT(A) on this issue and direct the AO to delete this disallowance.

9. The next issue relates to the disallowance of consultancy charges paid to M/s Minoos Bhesania & Associates, Architects and interior designers. The payment of Rs.56,180/- has been made to the above said person for consultancy services offered for factory premises. Since the major portion of factory premises have been let out, the AO disallowed the same and the Learned CIT(A) also confirmed the said disallowance.

10. We heard the parties on this issue and perused the record. It is an admitted fact that the factory is not working and major portion of factory premises have been let out. Hence it is the duty of the assessee to establish

that the above said payment has been made in connection with the business activities. The surrounding circumstances would show that this payment might have been made for consultancy services in respect of letting out of the premises. Hence, it is not related to the business/trading activities carried on by the assessee during the year under consideration. Accordingly, we confirm the order passed by Learned CIT(A) on this issue.

11. The additional grounds relate to the action of AO in recovering refund already issued, recovery of interest granted u/s 244A of the Act and charging of interest u/s 234D of the Act. It is the submission of the assessee that it has not received any refund as mentioned by the AO and hence the recovery of tax, recovery of interest alleged to have been granted u/s 244A and charging of interest u/s 234D is not correct. Since these issues require verification, we restore all these issues to the file of the AO for deciding them in accordance with law.

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

Order pronounced in the open court on 21.06.2022.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 21/06/2022

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

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