

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H": NEW DELHI**

**BEFORE SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No. 1934/Del/2020
(Assessment Year: 2011-12)**

VLCC Healthcare Lt,
64, HSIIDC, Maruti Industrial
Area, Sector-8, Gurgaon,
PAN: AAACC4808P
(Appellant)

Vs. Addl. CIT,
Range-17,
New Delhi

(Respondent)

Assessee by :

Shri Vinod Bindal, CA
Ms. Rinki Sharma, ITP

Revenue by:

Shri M. Baranwal, Sr. DR

Date of Hearing:

21/07/2022

Date of pronouncement:

28/07/2022

O R D E R

PER ANUBHAV SHARMA, J. M.:

1. The present appeal has been preferred by the Assessee against the order dated 11.08.2020 of Ld Commissioner of Income Tax (Appeals)-33, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in appeal Nos. 405/13-14/97/15-16 before it against the order dated 17.02.2014 passed u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the AO, Id. Addl. CIT, Range-17, New Delhi (hereinafter referred as the Ld. AO).

2. Facts in brief are that the Assessee filed return of income declaring income of Rs. 13,75,31,700/- on 28.09.2011 for Assessment Year 2011-12 and the case was taken up for compulsory scrutiny. The Assessee had claimed expenses of Rs. 1,04,07,297/-. The Assessee had shown a payment of salary of Rs. 2,07,200/- to Smt. Pallavi Luthra, daughter of

the directors and the Id AO had considered 35% of the same as excessive and disallowed for Assessment Year 2010-11. The Id CIT(A) had also sustained the same following findings rendered by the Id CIT(A) for Assessment Year 2010-11.

Further, the Id AO observed that the Assessee had credited its profit and loss account of Rs. 3,37,31,174/- which included Rs. 1,14,29,858/- as miscellaneous income out of which Rs. 92,91,768/- was claimed as income on account of compensation received for delay in purchase. The case of the Assessee was that when contracting parties failed to complete the construction and interior works causing delay in possession of premises, a sum of Rs. 20,000/- per day is received as penalty from the contractor by way of deduction from amount payable to the contractor on completion of contract and the same is shown as capital receipt. The Id AO however, observed that the penalty amount received is over and above the payment made to the contractor as per the agreement and the compensation paid. It was observed by the Id AO that income on account of compensation/ penalty has arisen to the Assessee out of the ordinary course of its business and is thus a revenue receipt.

3. The Id CIT(A) had also sustained the same while following appellate proceedings determination for the Assessment Year 2012-13 and 13-14.

4. Now the Assessee is in appeal raising following grounds of appeal:-

- "1. *The CIT(A) erred in law and on facts in confirming the disallowance of Rs. 72,520/- being 35% of the remuneration paid to Ms. Pallavi Luthra, daughter of the director of the assessee, u/s 40A(2)(b) of the Act merely on surmises ignoring the facts and evidences placed on record regarding her qualification and responsibilities undertaken by her in the business of the assessee. Thus the disallowance so made should be deleted.*
2. *The CIT(A) erred in law and on facts in confirming the addition of Rs. 92,91,768/- being the amount received as compensation due to delay in execution of the contracts of acquisition of fixed assets by holding the same as taxable as revenue receipt ignoring the facts, submissions and evidences*

placed on record. Thus the addition so made should be deleted."

5. Heard and perused the record.
6. The issue as raised show that the Id CIT(A) has merely followed the findings in the Assessee's own case for other assessment years.
7. **In regard to ground No. 1** it can be observed that for Assessment Year 2010-11 in ITA No. 1960/Del/2017 vide order dated 10.02.2021 the issue of disallowances of 35% of the remuneration to M/s. Pallavi Luthra has been decided in favour of the Assessee with following findings:-

"6. When we examine para 4.1 of the impugned order passed by the Id. CIT (A) which is the submissions made by the assessee highlighting qualifications and work assigned to her, it is surprising to note that the Revenue has accepted working of Ms. Pallavi Luthura as a Director and allowed 65% of the amount paid to her but it is beyond comprehension as to how they had reached the conclusion that out of the 100% of the work assigned to Ms. Pallavi Luthura by the assessee company, 35% of the same was found ingenuine. The entire disallowance is on the basis of conjectures and surmises.

7. AO also brought on record the fact that Ms. Pallavi Luthura was Director having 50% of the shareholding in another company called Cloud Cuckoo Farm during the year under assessment but assessee stated that Cloud Cuckoo Farm's profit is nil and brought on record its balance sheet in additional evidence. Again, it is surprising to disallow 35% of the remuneration, particularly when genuineness of the job profile has not been questioned, merely on the ground that Ms. Pallavi Luthura was a Director in Cloud Cuckoo Farm. It is also a matter of fact on record that Ms. Pallavi Luthura was a whole time director in the assessee company and was paid remuneration for the work assigned to her during the year under assessment. So, we are of the considered view that merely on the basis of conjectures and surmises, provisions contained u/s 40A(2)(b) cannot be allowed to be invoked particularly when genuineness of the services rendered are not in dispute. So, we are of the considered view that AO as well as Id. CIT (A) have erred in disallowing the remuneration to the tune of 35% paid to Ms. Pallavi Luthura by the assessee company, hence ordered to be deleted. Consequently, the appeal filed by the assessee is allowed."

8. Further, **in regard to ground No. 2** in ITA No. 1319, 38111/Del/2017 for Assessment Year 2012-13, 2013-14 vide order dated 25.10.2021 the issue is decided in favour fo the Assessee by following findings:-

"4. It is an admitted that that the assessee has been conducting their business at various places in India and in that process for carrying out their business they have taken premises on rent which require certain interior work for bringing the premises to use for the purpose of assessee's business; that the assessee entered into an agreement with a contractor for effecting such changes to make the premises useful to start of the business with a stipulation that irrespective of the value of contract, if any delay occurred in execution of work, the contractor must pay Rs.20,000/- per day towards liquidated damages.

5. It is also not in dispute that the assessee submitted before the authorities below that such amounts received from the contractor were debited to the account of the contractor as penalty while making the final payments and thus the payments to the contractors were made short by the amounts of liquidated damages, thereby bringing down the cost of project.

6. It is, therefore, clear that the assessee reduced the cost of project by the amount of liquidated damages received and the cost of the project remained only at balance figure. It is also clear that until and unless the contractor carried out the desired modification, the premises was not fit to commence the business of the assessee and thereby related to bringing the profit making apparatus into existence. We, therefore, are of the opinion that inasmuch as the assessee credited the amounts received to the capital asset and treated it as capital receipts, the same cannot be brought to tax. Hence, this addition is directed to be deleted."

9. The Id Sr. DR could not dispute the aforesaid factual aspects or distinguished it by any other proposition of law. Consequently, following the finding in favour of the Assessee in the other Assessment Years, the grounds raised are allowed. **The appeal of the Assessee stands allowed.**

Order pronounced in the open court on 28/07/2022.

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

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 28/07/2022
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi