

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "E" BENCH: NEW DELHI**

**BEFORE SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER &
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.7576/Del/2019
[Assessment Year : 2014-15]**

Luthra & Luthra LLP, Chartered Accountants, A-16/9, Vasant Vihar, New Delhi-110057. PAN-AAFL1231A	vs	ACIT (OSD), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Atul Ninawat, CA	
Respondent by	Shri Jeetender Chand, Sr.DR	
Date of Hearing	08.09.2022	
Date of Pronouncement	20.10.2022	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2014-15 is directed against the order of Ld. CIT(A)-36, New Delhi dated 26.07.2019.

2. The assessee has raised following grounds of appeal:-

1. *"The Learned Commissioner of Income Tax (Appeals) [Ld. CIT(A)] has grossly erred in law as well as facts of the case in confirming various disallowances made by the Learned Assessing Officer (Ld. AO).*
2. *Ld. CIT(A) has erred in law by passing the order in violation of the principle of natural justice.*
3. *The contentions of Ld. CIT(A) that the appellant has not attended the scheduled hearings are factually incorrect.*
4. *Ld. CIT(A) has erred in law and facts by confirming the disallowance made by Ld. AO, amounting to INR 4,17,312/- in respect of statutory dues outstanding as on the last date of the relevant financial year on the contention that the appellant is following cash basis of accounting.*

- 4.1. *The Ld. CIT(A) has erred in law and on the facts of the case by confirming the disallowance made by Ld. AO in respect of statutory dues outstanding as on the last date of the relevant financial year, the allowance of which is governed by Section 43B of the Income Tax Act, 1961 of the Act”), on the ground that the appellant is following cash basis of accounting.*
5. *Ld. CIT (A) has erred in law and facts by confirming the disallowance made by the Ld. AO, amounting to INR 15,47,500/- in respect of amount of bonus paid under the partnership deed to its partner's u/s 40(b) of the Act.*
6. *Ld. CIT (A) has erred in law and facts by confirming the disallowances made by the Ld. AO, amounting to INR 5,62,766/, by way of ad-hoc disallowance @10% of expenses claimed by the appellant.*
- 6.1. *Ld. CIT(A) has erred in law and facts in upholding the incongruous and vague order made by Ld. AO without specifying any basis on which this conclusion was drawn that expenses were incurred for personal purposes.*
- 6.2. *The Ld. CIT(A) has erred in law and facts by sustaining the disallowance made by the Ld. AO without heeding to the fact that Ld. AO had not pin-pointed any specific bills / vouchers which were not proper in his opinion & had not pin-pointed any specific expenditure which in his opinion is of personal nature.*
7. *The appellant craves leave to add to, amend, alter, vary, omit or substitute the above statement of facts at any time before or during the course of the appellate proceedings.”*

BRIEF FACTS OF THE CASE

3. Brief facts of the case are that in this case, the assessee filed its return of income on 30.09.2014 at Rs.91,47,650/-. The return of income was taken up for scrutiny assessment u/s 143(3) of the Income Tax Act, 1961 (“the Act”) and the assessment was framed vide order dated 02.12.2016. The Assessing

Officer (“AO”) while framing the assessment, made addition on account of disallowance of employee’s contribution in EPF and non-deduction of tax amounting to Rs.4,17,312/-. The AO also made disallowance out of salary to partners u/s 40(b) of the Act in respect of bonus paid to the partners amounting to Rs.15,47,500/-. Further, the AO made adhoc disallowance out of various expenses @ 10% of the total expenses amounting to Rs.5,62,766/-. Hence, the AO assessed the income at Rs.1,16,75,228/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions and material available on record, dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee is in appeal before this Tribunal.

6. At the outset, Ld. Counsel for the assessee submitted that all the issues are covered in favour of the assessee by the decision of the Tribunal in assessee’s own case for AY 2013-14. Ld. Counsel for the assessee submitted that in respect of disallowance of statutory liabilities of Rs.3,84,363/- on account of TDS, Rs.31,974/- on account of EPF-employee contribution and Rs.975/- on account of Profession was disallowed. Ld.CIT(A) did not give adequate opportunity to the assessee and passed an *ex-parte* order. He submitted that in the Assessment Year 2013-14 also, TDS & EPF was disallowed by the AO. The Tribunal held that expenses is allowed in the year of actual payment after due verification.

7. Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Under the identical facts in the assessee's own case for AY 2013-14, the Tribunal had restored the issue of allowability of the expenses related to TDS, employees provident contribution and professional tax. The relevant direction of the Tribunal is reproduced as under:-

7. *“We find force in the contention of the counsel. The AO is directed to allow the payment in the year in which the payments have actual been made after due verification. The assessee is directed to furnish necessary evidences in support of its claim.”*

For the same reasoning, the issue is restored to the file of the AO to allow deduction of payment after verifying the same. Thus, Ground No.4 raised by the assessee is allowed for statistical purposes.

9. Ground No.5 is related to disallowance of the common bonus paid to the partners amounting to Rs.15,47,500/-.

10. Ld. Counsel for the assessee submitted that this issue is also covered by the Co-ordinate Bench of this Tribunal in assessee's own case for AY 2013-14. He submitted that the Tribunal had directed the AO to allow bonus to partners subject to verification that overall remuneration including bonus falls within the permissible limits as per section 40(b) of the Act. He contended that the bonus paid to the partners is within the limits specified u/s 40(b)(v) of the Act. For this, he drew our attention to Page No.79 of the Paper Book. He further contended that the bonus paid to the partners has been allowed in the past by the AO.

11. Ld. Sr. DR opposed the submissions and supported the orders of the authorities below.

12. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that Co-ordinate Bench of the Tribunal in assessee's own case for AY 2013-14 has decided the issue by observing as under:-

14. *“We have carefully considered the orders of the authorities below. There is no dispute that there is a specific provision in the partnership deed in respect of payment of remuneration to partners. It is also not in dispute that bonus paid to partners is part of the remuneration. This means that the total allowance of the remuneration to partners has to be judged in the light of the provisions contained section 40(b) of the Act. The AO is directed to verify whether the overall remuneration including bonus is within the permissible limit of the relevant provisions of section 40 (b) of the Act and if found so the same should be allowed.”*

13. Facts are identical as there is no change into facts and circumstances of the case. Taking the consistent view and for the same reasoning, Ground No.5 raised by the assessee is allowed and the addition of Rs.15,47,500/- made on account bonus paid to its partners.

14. Ground Nos. 6 to 6.2 raised by the assessee are against the adhoc disallowance of Rs.5,62,766/-.

15. Ld. Counsel for the assessee submitted that the similar disallowances were made purely on the basis of adhoc disallowances. He contended that the Ld.CIT(A) did not give any finding on merit and passed an *ex-parte* order. He further submitted that under identical facts, the AO had made 10% adhoc

disallowance in the AY 2013-14. Ld.CIT(A) reduced the disallowance from 10% to 5% or NIL for certain expenses. He drew our attention to Page 218 of the Paper Book and the same was upheld by the Tribunal in assessee's own case for AY 2013-14.

16. On the other hand, Ld.Sr.DR opposed the submissions and supported the orders of the authorities below.

17. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. We find that there is no dispute with regard to the fact that the disallowance has been made purely on adhoc basis. The assessee has filed a chart in this regard. For the sake of clarity, the same is reproduced as under:-

1. Issue is covered by ITAT order for AY 2013-14

- In AY 2013-14 also the Ld. AO made 10% ad hoc disallowance for the same expenses
- In AY 2013-14 Ld. CIT(A) reduced the disallowance from 10% to 5% or NIL for certain expenses as mentioned below (Pls refer Pg. 218 of paperbook), and the same was upheld by ITAT (Pls refer Para 19 on Pg 225 of Paperbook):

Expense	Disallowed by AO @ 10% (INR)	Relief by CIT(A) in AY 2013-14	Issue covered by ITAT in AY 2013-14	ITAT finding in AY 2013-14
Vehicle Expenses (INR 15,12,171)	1,51,217	5%	Yes	<u>CIT(A) finding upheld</u>
Depreciation on Car (INR 7,61,576)	76,157	5%	Yes	<u>CIT(A) finding upheld</u>
Telephone Expenses (Total - INR 3,79,132)				<u>CIT(A) finding upheld for both telephone expenses</u>
i. For Partners - INR 1,13,533)	11,353	NIL	Yes	
ii. Remaining telephone expenses - INR 2,65,569	26,556	Full relief	Yes	
Depreciation on telephone (INR 40,582)	4,068	Not discussed	No	<u>Not discussed</u>
Entertainment expense (INR 90,913)	9,091	Not discussed	No	<u>Not discussed</u>
Travelling Expenses (INR 39,66,348)	3,96,634	Full relief	Yes	<u>CIT(A) finding upheld</u>
Conveyance expense (INR 4,68,583)	46,858	Full relief	Yes	<u>CIT(A) finding upheld</u>
Diwali Expenses (INR 4,34,055)	43,405	Not discussed	No	<u>Not discussed</u>

18. The Revenue has not brought any material before us as to insist us from taking a different view as was taken in AY 2013-14. Therefore, for the same reasoning and taking a consistent view, we confirmed the finding of Ld.CIT(A) in respect of vehicle expenses, depreciation on car, telephone expenses, depreciation on telephone, entertainment expense, travelling expenses, conveyance expense, diwali expenses, however rest of the disallowances of expenses is hereby deleted being adhoc. Thus, Ground Nos. 6 to 6.2 raised by the assessee are partly allowed for statistical purposes.

19. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 20th October, 2022.

Sd/-

(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI