

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR – VIRTUAL COURT

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.34/NAG/2018

निर्धारण वर्ष / Assessment Year: 2012-13

Pankaj Uttamchand Kataria, Kataria Agencies, Nawathe Plot, Danwantri, Amravati. PAN : AIBPK3441Q	Vs.	ITO, Ward-3, Amravati.
Appellant		Respondent

Assessee by : None
Revenue by : Shri G. J. Ninawe

Date of hearing : 26.09.2022
Date of pronouncement : 07.11.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)-1, Nagpur [‘the CIT(A)’] dated 21.12.2016 for the assessment year 2012-13.

2. At the outset, there is a delay in filing the present appeal of 317 days. The appellant filed a condonation petition stating that the delay in filing the present appeal had occurred on account of the appellant pursuing the alternative remedy by filing the petition u/s 154 and the order u/s 154 from the Commissioner of Income Tax (Appeals) was received on 02.09.2017. Thereafter, the counsel of the appellant was busy in attending his father, who is aged about 83

years old, who met the accident and thereafter undergone the leg surgery followed by severe heart attack.

3. On the other hand, Id. Sr. DR opposed the condonation of delay.

4. Considering the above submissions of the Id. AR, I find that it is a fit case for condoning the delay of 317 days. Hence, I condone the delay and admit the appeal for adjudication.

5. Briefly, the facts of the case are that the appellant is an individual engaged in the business of wholesale trading of batteries under the name and style "M/s. Katariya Agency". The return of income for the assessment year 2012-13 was filed on 20.09.2012 disclosing total income of Rs.14,33,239/-. While computing the taxable income under the head of "business income" the appellant had claimed deduction of salary paid to one Mr. Rajesh Kataria of Rs.7,20,000/-. During the course of assessment proceedings, the Assessing Officer was of the opinion that the salary paid to Shri Rajesh Kataria was increased by 171% as against increased in the business turnover by 134%. Therefore, Assessing Officer was of the opinion that the appellant had paid excessive salary to the said person and disallowed a sum of Rs.1,57,200/- invoking the provisions of section 40A(2)(b) of the Income Tax Act, 1961 ('the Act') made the disallowance of Rs.1,57,200/-.

6. Being aggrieved by the above disallowance, an appeal was filed before the ld. CIT(A) who vide impugned order confirmed the action of the Assessing Officer.

7. Being aggrieved, the appellant is in appeal before me in the present appeal.

8. When the appeal was called on, none appeared on behalf of the appellant-assessee despite due service of notice of hearing.

9. On the other hand, ld. Sr. DR placing reliance on the orders of the lower authorities submits that no interference is required.

10. I heard the ld. Sr. DR and perused the material on record. Admittedly, the impugned addition was made invoking the provisions of section 40A(2)(b) of the Act. I have carefully gone through the assessment order as well as the order of the ld. CIT(A). On perusal of the assessment order, it would be clear that the Assessing Officer had not brought any material on record to show what is the reasonable expenditure of salary or the fair market value of the services rendered by said Shri Rajesh Kataria. The Hon'ble Supreme Court in the case of Upper India Publishing House P. Ltd. vs. CIT, 117 ITR 569 (SC) had clearly held that no addition u/s 40A(2)(b) can be made by the Assessing Officer without bringing material on record as to fair market value of the services and this position was accepted by the CBDT vide Circular No.6-P dated 06.07.1968. Therefore, the action of the Assessing Officer in

making the addition cannot be accepted. Hence, the ground of appeal raised by the assessee stands allowed.

11. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 07th day of November, 2022.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 07th November, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Nagpur.
4. The Pr. CIT-1, Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर /
DR, ITAT, Nagpur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.