

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA Nos. 1215/Ahd/2013 & 2961/Ahd/2014
Assessment Year 2009-10**

Mohmedrasheed Moosa Kaipally, Prop. Of Technomech Engineers, Ahmedabad PAN: AFIPK0527R (Appellant)	Vs	The ITO, Ward-9(2), Ahmedabad-380015 (Respondent)
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**Assessee by: Shri Vipul Khandhar, A.R.
Revenue by: Shri Rakesh Jha, Sr. D.R.**

Date of hearing : 08-12-2022
Date of pronouncement : 12-12-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

These two appeals are filed by the assessee against the order of Ld. CIT(A) in quantum proceedings and penalty proceedings u/s 271(1)(c) of the Act. Since both the proceedings are related, the same are being heard together.

ITA Number: 1215/A/2013

2. The assessee has taken the following grounds of appeal:

“1. The learned CIT(A) erred in Disallowance of outstanding salary payable & Income addition Amt to Rs. 1216000/- has to be set aside., which is requested to be deleted.

2. The learned CIT(A) erred Disallowance of amt un proved creditor genuineness & Income addition Amt to Rs. 1193216/- has to be set aside., which is requested to be deleted.

3. The learned CIT(A) erred in Disallowance of amount u/s. 40(a)(ia) & Income addition Amt to Rs. 149300/- has to be set aside., which is requested to be deleted.

4. The learned CIT(A) erred Consequently set aside demand for the tax amt to Rs.1241996/ & the interest u/s. 234A & 234D amt to Rs.50347/-, which is requested to be deleted.

5. The learned CIT(A) erred Demand u/s 156 amt to 1091540/- to be set aside which is requested to be deleted.

your appellant prays for leave to add, to alter and/ or to amend the above ground before the final hearing of the appeal.”

3. There are primarily two grounds of appeal for consideration before us in quantum proceedings. The rest of grounds are not pressed/consequential in nature, and hence the same are not be adjudicated upon.

4. The first ground of appeal relates to addition amounting to ₹ 12,16,000/- relating to outstanding salary in respect of certain employees of the assessee. The contention of the assessee is that the AO disallowed salary with respect to 7 employees out of a total of 27 employees and this salary

pertains to the month of March 2009. The counsel for the assessee submitted that this is the consistent practice of the assessee from year to year and hence there is no reason to disallow the salary paid to its employees. The AO has not doubted the salary payment in the earlier months paid to these employees and it is only the salary pertaining to the month of March, 2009 that the salary has been disallowed by the AO. The counsel for the assessee submitted that the AO has erred in facts and in law in holding that the salary payment is non-genuine since the assessee has not been able to prove the identity of the employees and the nature of services rendered by them. The counsel for the assessee has placed before us KYC relating to all seven employees in respect of whom the salary has been disallowed giving details of their Aadhar number and details of the addresses to prove the genuineness of the employees. Further, the counsel for the assessee has also produced for our perusal Wage Sheet, details of PF and ESI return abstract in respect of these employees. The counsel for the assessee submitted that these employees have been in the employment of the assessee for many past years and accordingly, their genuineness is not in doubt at all. All these employees (7 in number) in respect of whom the disallowance has been made are registered under the PF/ESI laws and hence their genuineness cannot be doubted. However, the counsel for the assessee submitted that the above details could not be filed before Revenue Authorities and requested that in the interests of justice, the matter may be restored to the file of AO so that the above details can be filed by the assessee before the Revenue Authorities in order to establish the genuineness of payments in the instant set of facts.

5. In response, the Ld. Departmental Representative placed reliance on the observations made by the Ld. CIT(A) and AO in their respective orders.

6. We have heard the rival contentions and perused the material on record. The case of the assessee is that these employees with respect to whom salary disallowance has been made, have been in the employment of the assessee for many years and further it has been a consistent practice that the employees have been paid salary in cash in the subsequent months, the KYC details furnished *prima facie* establishes the genuineness of the parties involved and further the counsel for the assessee has also produced documents to substantiate that all these employees with respect of whom salary disallowance has been made are duly registered under the relevant PF/ESI laws. However, it has brought to notice that these details could not be submitted before the Revenue Authorities at early stage of the proceedings. Accordingly, in the interests of justice, in the light of the instant facts, we are hereby restoring the matter to the file of AO to enable the assessee to produce the relevant details before him for necessary verification. The learned DR has also not objected to the matter being omitted to the file of AO for carrying out the necessary verification.

7. In the result, ground number 1 of the assessee's appeal is allowed for statistical purposes.

8. Ground number 2 of the assessee's appeal relates to additions made on account of unproved creditors, in respect of three parties, amounting to ₹ 11,93,216/-.

9. Before us, the counsel for the assessee drew our attention to letter dated 4th of June 2012, submitted before Ld. CIT(A) and stated that the assessee has duly filed confirmations in respect of all creditors before Revenue Authorities. The Ld. Counsel for the assessee submitted that if given an opportunity, he is in a position to file all necessary details before the Revenue Authorities to establish the genuineness of above creditors.

10. In the instant facts, the interest of justice, we are hereby restoring the file to the AO for carrying out the necessary verification after giving due opportunity of hearing to the assessee. The learned DR has also not objected to the matter being remitted to the file of AO for carrying out the necessary verification.

11. Accordingly, ground number 2 of the assessee's appeal is allowed for statistical purposes.

12. With respect to the balance grounds, the counsel for the assessee submitted that ground number 3 of the assessee's appeal is not being pressed, and hence the same is accordingly dismissed as being not pressed. Further, the balance grounds of appeal are consequential in nature and hence the same are not being adjudicated upon separately.

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

ITA Number: 2961/ Ahmedabad/ 2014

14. The assessee has raised the following grounds of appeal:-

“1. The learned CIT(A) erred in confirming the penalty of Rs. 8,36,120/- u/s. 271(1)(c) of the I.T. Act, 1961, which is required to be deleted.

Your appellant prays for leave to add, to alter and/or to amend the above ground before the final hearing of the appeal.”

15. The appeal of the assessee is against the penalty u/s 271(1)(c) of the Act imposed of the assessee in respect of the aforesaid additions.

16. Since the matter has been remitted to the file of AO for carrying out the necessary verification in quantum proceedings, accordingly, this appeal of the assessee relating to penalty u/s 271(1)(c) of the Act is also remitted to the file of the AO.

17. In the result, the matter is being restored to the file of AO and appeal of the assessee is allowed for statistical purposes.

18. In the combined result, both the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 12-12-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 12/12/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद