

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE MS.SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRIB.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No.162/Ind/2021
Assessment Year: 2015-16

Namtel Technologies (P) Ltd., Bhopal	<u>बनाम/</u> Vs.	DCIT-3(1), Bhopal
(Appellant / Assessee)		(Respondent / Revenue)
PAN: AACCN6502F		
Assessee by	Shri S.S.Solanki, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.08.2022	
Date of Pronouncement	16.11.2022	

आदेश/ O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 15.07.2021 passed by Ld. Commissioner of Income-Tax(Appeal), NFAC, Delhi [in short "Ld. CIT(A)"] which in turn arises out of assessment-order dated 27.11.2017 passed by Ld. DCIT-3(1), Bhopal [in short "Ld. AO"] u/s 143(3) of Income-tax Act, 1961 [in short "the Act"] for assessment-year [in short "AY"] 2015-16, the assessee has preferred this appeal on following grounds:

"1. That in the facts and circumstances of the case the Ld. CIT(A) faceless has upheld the order of assessing officer and made addition of Rs.12,00,000/- on account of disallowance u/s 40A(2)(b) of the Income Tax Act, 1961 which is unjustified and bad in law.

2. That in the facts and circumstances of the case the Ld. CIT(A) faceless has upheld Assessing Officer's disallowance of Rs.1,50,000/- and Rs.50,000/- without appreciating the fact that the said disallowance was ad hoc and the expenditure incurred was genuine in assessee's case.

3. That in the facts and circumstances of the case disallowance of interest payment of indirect taxes amounting to Rs.70,637/- and interest on TDS of Rs.722/- out of which interest on TDS was already disallowed in return of income of the assessee. Thus, addition on account of interest on payment of indirect expense is not penal in nature and is an allowable expenditure under section 37(1) of the Income Tax Act, 1961. Also the Ld. CIT(A) Faceless has not addressed the ground raised by assessee on account of disallowance of loss on sale of car of Rs.24250/- which is erroneous in nature."

2. Brief facts are such that the assessee-company filed return of income of relevant AY 2015-16 on 11.10.2015 declaring a total income of Rs. 40,01,230/-. The case was selected under scrutiny and the Ld. AO completed assessment at a total income of Rs.54,96,840/- after making certain disallowance/additions. Being aggrieved, the assessee filed an appeal to Ld. CIT(A) but did not get any success. Now the assessee has filed next appeal to us challenging the order of Ld. CIT(A).

Ground No. 1:

3. In this ground the issue involved is the disallowance of Rs.12,00,000/- made by Ld. AO u/s 40A(2) of the Act, out of remuneration paid by assessee to its director Shri Asad Mahboob.

4. During assessment-proceeding, Ld. AO observed that the assessee has paid a remuneration of Rs.24,00,000/- to its director Mr. Asad Mahboob. When the Ld. AO confronted the assessee in this regard, the assessee submitted that the payee was a qualified Mechanical Engineer and the impugned remuneration was paid towards services rendered by payee to the assessee. The assessee also submitted that in the immediate preceding AY 2014-15, there were two directors, i.e.(i) Shri Asad Mahboob, and (ii) Mrs. Naila Asad and the remuneration of Rs. 12,00,000/- was paid to each one of them and, therefore, the total remuneration paid to directors was

Rs.24,00,000/- and the same was allowed as deduction. The assessee further explained that during current year, Mrs. Naila Asad had shifted to Dubai and the whole burden of responsibilities i.e. the burden of Mr. Asad Mahboob as well as Mrs. Naila Asad, shifted upon Mr. Asad Mahboob and due to this reason the entire remuneration of Rs.24,00,000/- was paid to Mr. Asad Mahboob. The assessee further submitted that the remuneration was also permitted under the provisions of Companies Act, 2013 which is a governing statute for the assessee-company. However, Ld. AO did not accept these submissions for the reasons that (i) the increase in remuneration of Asad Mahboob is 100% from Rs.12,00,000/- to Rs.24,00,000/- which is quite abnormal; (ii) the assessee-company has appointed another skilled person named Shri Pramod Bansal and paid a salary of Rs.9,80,500/-, which indicates that no extra-work burden has fallen upon Mr. Asad Mahboob; (iii) the claim of assessee that the burden of Mrs. Naila Asad has shifted upon Mr. Asad Mahboob is not tenable as it is beyond human capacity to undertake the work of two humans; (iv) Mr. Asad Mahboob has not acquired any extra qualification/technical expertise during the year. With such observations, Ld. AO concluded that the remuneration paid by assessee to Mr. Asad Mahboob is unreasonable or excessive to the extent of Rs. 12,00,000/- attracting the provisions of section 40A(2) and accordingly made a disallowance.

5. During first-appeal proceeding, Ld. CIT(A) confirmed the disallowance relying upon the observations of Ld. AO.

6. Before us, Ld. AR made a lengthy submission on factual aspects as well legal provision of section 40A(2). Regarding factual aspects, Ld. AR submitted that Mr. Asad Mahboob is a Qualified Mechanical Engineer from reputed Jamia Milia Islamia, New Delhi and possessing high level experience in computer-software, marketing and managerial services. He further submitted that due to absence of Mrs. Naila Asad, the assessee had to discharge not only his own responsibilities but also the responsibilities of Mrs. Naila Asad, which is not only a fact but also a consistent submission of

assessee before lower authorities and the lower authorities have not found any thing to controvert thisfactual submission of assessee, they have simply negated the assessee's submission on presumption basis. Ld. AR also mentioned that the appointment of Mr. Pramod Bansal, new employee, as stated by Ld. AO is due to the increased necessity of business and not a substitution of Mrs. Naila Asad. Ld. AR further submitted that the lower authorities have simply raised eyebrow due to 100% increase in remuneration but without looking into the claim of assessee that the services rendered by payee have also doubled and hence the increase in remuneration is commensurate with the increase in services. Ld. AR also pointed out that the turnover of assessee-company had increased from Rs. 5.22 crore to Rs. 6.39 crore during current year which is also due to efforts of payee as director of assessee. Ld. AR also drew our attention to Page No. 30 of the Paper-Book to show that during AY 2013-14, the assessee had paid a sum of Rs. 18,00,000/- as remuneration to the same payee. Taking into account that aspect too, the remuneration of Rs. 24,00,000/- in AY 2015-16 should not be viewed as 100% increase. Additionally, Ld. AR further mentioned that the assessee-company is running in 30%tax-bracket and the payee is also running in 30% tax-bracket and looking from that angle, there is no intention to reduce the tax liability.

7. Turning to legal side, Ld. AR referred to the verdict of section 40A(2) and argued that the section empowers the assessing authority to make disallowance only if the remuneration is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which payment is made or the legitimate needs of the business of assessee or the benefit derived by or accruing to the assessee, But in the present case the Ld. AO has not carried out any such exercise as required by the section, despite the fact that the assessee had been repeatedly claiming that the responsibilities of Mrs. Naila Asad had also fallen upon the head of the payee.Ld. AR also argued that the Ld. AO has not carried out any cogent exercise to establish that the remunerationpaymentwas excessive or

unreasonable having regard to the fair market value of the services rendered, he is mainly driven by the comparison of present-year salary with that of last year. Therefore, making disallowance under the ambit of section 40(A)(2) of the Act without first taking into account the requirement of section 40(A)(2), is in itself bad.

8. Then, Ld. AR also relied upon the following verdict made by Hon'ble ITAT, Delhi in **DCIT Vs. Expo Mechanique P. Ltd. ITA No. 243 & 3376/Del/2010**, which is directly applicable to the present case:

“16. We also found force in the contention of ld. AR that the onus is on the department to prove that what was paid by the assessee was excessive in case he wants to make disallowance u/s 40A(2)(b). In this regard reliance has been placed on the decision of Nagpur ITAT in the case of Jagdamba Roller Floor Mills Ltd. Vs. ACIT (supra), wherein it was observed that the expenditure on account of remuneration paid to the employees is governed by the provisions of sec. 37 of the Act. A part of such expenditure can disallowed if it is shown (i) that the payment was made to the persons specified in clause (b) of sec. 40A(2) and (ii) if it is found that expenditure is excessive or unreasonable, having regard to the market value goods, services or facilities for which the payment is made. The AO is duty bound required to make enquiry whether such expenditure is excessive or unreasonable having regard to the fair market value of the services rendered. The AO cannot simply compare salary of the present year with the salary of the last year. The scope of enquiry u/s 40A(2)(b) is with reference to the fair market value of the services rendered and in absence of such enquiry no disallowance could have been made or sustained. The onus is on the AO to bring material on record to prove that the payment made by the assessee was excessive or unreasonable having regard to the fair market value of the services rendered and the burden would shift only in the circumstances if some material or evidence is brought on record to indicate that payment appeared to be excessive or unreasonable. Similarly it was held in the case of S.K. Engineering Vs. JCIT (supra) that onus is on the AO to prove that the payment is excessive and unreasonable.”

9. With aforesaid submissions, Ld. AR argued strongly that the disallowance made by Ld. AR cannot withstand on facts as well as legal provision of section 40A(2) and must be deleted.

10. Per contra, Ld. DR vehemently supported the orders of lower authorities and argued that the lower authorities have rightly made/confirmed disallowance in terms of section 40A(2). Ld. DR, therefore, prayed to uphold the disallowance.

11. We have considered rival submissions of both sides and perused the material held on record. We observe that the assessee has paid impugned remuneration to a director, who is holding a qualification of Mechanical Engineer from reputed Jamia Milia Islamia, New Delhi and also possessing experience in computer-software, marketing and managerial services. These facts are not disputed by revenue. We also observe that in the preceding assessment-year the remuneration was paid to two directors for the services rendered by them i.e. (i) Mrs. Naila Asad – Rs. 12,00,000/-, and (ii) Mr. Asad Mahboob – Rs. 12,00,000/-, but during the current year, Mrs. Naila Asad had left the service of company and therefore no remuneration was paid to her. This fact is also not disputed by revenue. Then we note the claim of assessee that consequent upon cessation of services of Mrs. Naila Asad, entire responsibilities have come upon Mr. Asad Mahboob and that is why the remuneration of Rs. 24,00,000/- has been paid to Mr. Asad Mahboob alone. We observe that the assessee has made this claim before AO as well as CIT(A) but the lower authorities have not been able to bring any cogent evidence to discern fallacy in the claim of assessee, they have simply proceeded on certain presumptions like (i) 100% increase in remuneration is abnormal, or (ii) one human cannot carry out functions of two humans. Further, the observation of lower authorities that Mr. Asad Mahboob has not acquired any extra qualification/technical expertise, is also not sound because the claim of assessee is *qua* increase in responsibilities and not *qua* increase in qualification/expertise. We also find sufficient weightage in the claim of assessee that the Ld. AO has not carried out any exercise as required u/s 40A(2) to establish that the remuneration payment was excessive or unreasonable having regard to the fair market value of the services rendered, he is mainly driven by the comparison of present-year

salary with that of last year. We observe that the present case of assessee is fully covered by the decision of Hon'ble ITAT, Delhi Bench in **DCIT Vs. Expo Mechanique P. Ltd. (supra)** wherein the Hon'ble Bench has categorically held that no disallowance can be made on the basis of comparison of past-year salary with current-year salary. For these reasons, we are not inclined to accept the disallowance made by lower authorities, hence the same is hereby deleted. Thus, the assessee succeeds in Ground No. 1.

Ground No. 2:

12. In this ground the issue involved is the adhoc disallowance of Rs. 1,50,000/- and Rs. 50,000/- made by Ld. AO.

13. Ld. AO has made these additions by observing as under:

"5. On verification of Profit & Loss account of the assessee it is seen that the assessee has claimed office expenses of Rs.5,19,837/-, Travelling expenses of Rs.6,05,336/- and telephone expenses of Rs.4,78,925/- aggregating amount to Rs.16,04,098/- of above expenses. The assessee was asked to produce all bills and vouchers of said expenditure. The AR of the assessee produced the asked bills/vouchers for verification. On perusal of bills and vouchers of expenses, it was observed that some of the vouchers were missing and the bills and vouchers were not maintained properly. Some of them were self-made. Therefore the expenses debited under the above head were not fully verifiable. Personal use of telephone and travelling expenses by the director cannot be ruled out. Further travelling expenses were on higher side. The AR of the assessee confronted with the discrepancy found. The AR of the assessee agreed that lumpsum addition of Rs.1,50,000/- may be made on account of discrepancy found and is hereby disallowed and added back to the total income of the assessee.

6. On perusal of audited Profit and Loss account, it was found that the assessee has debited a sum of Rs.4,02,000/- towards Fooding & Lodging. The assessee was asked to produce all bills and vouchers of said expenditure. The AR of the assessee produced the asked bills/vouchers for verification. On perusal of bill and vouchers of above expenses, it was observed that some of vouchers were missing and the bills and vouchers were not maintained properly. Some of them were self-made. Therefore the expenses debited under the above head were not fully verifiable. Vide order sheet entry dated 24.11.2017, the AR of the assessee was confronted with the discrepancy found and he was

show caused as to why Rs.50,000/- should not be disallowed and added back to the total income of the assessee on account of discrepancies found. The AR of the assessee agreed for the said addition. Therefore, considering the volume of missing/selfmade vouchers, an amount of Rs.50,000/- is hereby disallowed out of Fooding & Lodging expenses claimed in P & L account and added back to the total income of the assessee.”

14. Ld. CIT(A) has upheld the disallowance by relying upon the observations of Ld. AO.

15. Before us, Ld. AR made a detailed submission. Initially, on the point of agreed addition, Ld. AR has made following submission in Written-Synopsis and also emphasized during the course of hearing which could not be rebutted by Ld. DR appearing on behalf of revenue:

“2.2 Not only this for making addition the AO mentioned that the AR of the assessee agreed that a lump sum addition may be made. That with due respect to the AO, as communicated to us the AR of the assessee never agreed for these additions.”

Thereafter, on the validity of adhoc allowance, Ld. AR has relied upon the following decisions to demonstrate that there is no scope to make adhoc disallowance in the eyes of law:

(i) Tuv India P. Ltd vs. DCIT (IT AT Mumbai) ITANo.6628/Mum/2017.

(ii) Smt Gurpreet Kaur Bhatia vs. ACIT (IT AT Indore Bench)

(iii) Brilliant Estate P. Ltd vs. DCIT (IT A T Indore Bench)

(iv) ACIT vs. Modi Rubber Ltd (ITAT Delhi ITA No)952/De112014

(v) Friends Clearing Agency P. Ltd vs. CIT (Delhi High Court) 9 Taxman.com 238

(vi) Som Distilleries & Breweries Ltd (ITAT Indore' Bench) ITANo. 495 / IND/2018 & ITA No.516/IND/2018.

(vii) Goodyear India Ltd vs. Neac (ITAT Delhi ITA No.467/ Del/2021).

(viii) DCIT-1(1), Indore Vs. Brilliant Estate Pvt. Ltd. (ITAT, Indore in ITA No. 349/Ind/2017 dated 13.12.2018)

16. Taking the lead case of ITAT, Indore Bench in ITA No. 349/Ind/2017 dated 13.12.2018, out of above list of various decisions relied upon by Ld. AR, we observe that the Hon'ble Co-ordinate Bench has held thus:

“24. We find that the assessee is a limited company and has maintained regular books of account and financial statement are duly audited and books results have not been rejected by the Brilliant Estate Pvt. Ltd. No major discrepancies have been noticed. Disallowance of Rs.2,00,000/- has been merely made on the observation that some of the expenditure are incurred in cash and some vouchers are self-made and surprisingly there is no specific observation by the Ld. AO which could prove that the assessee has claimed the expenses with amotive to evade the tax nor any observation has been made by the Ld. AO for challenging the genuineness of the particular expenditure. In these given facts and circumstances merely making a ad-hoc disallowance of Rs.2,00,000/- and completely disregarding the audited financial statements was certainly not justified on the part of the Ld. AO. Therefore we find no infirmity in the finding of Ld. CIT(A) deleting the disallowance of Rs.2,00,000/- placing reliance of various judgments. In the result ground no.2 raised by the revenue stands dismissed.”

17. Thus, firstly we observe that the Ld. AR has demonstrated that there was no consent given by the AR of assessee during assessment-proceeding on the adhoc additions. Secondly, we observe that the case of assessee is squarely covered by the aforesaid decision of ITAT, Indore according to which adhoc addition as made by Ld. AO is not sustainable. Resultantly, we do not find any justification in the adhoc disallowance of Rs. 1,50,000/- and Rs. 50,000/- made by Ld. AO. We, therefore, delete the same and allow Ground No. 2 raised by assessee.

Ground No. 3:

18. In this Ground, the assessee has raised three grievances (i) the disallowance of Rs. 70,637/- on account of interest on indirect-taxes is wrong; (ii) the disallowance of Rs. 722/- on account of interest on TDS had voluntarily been made by assessee himself at the time of filing of return of income, hence the disallowance made by Ld. AO results in double

disallowance; and (iii) Ld. CIT(A) has not addressed the ground raised by assessee on account of disallowance of loss on sale of car of Rs. 24,250/-.

19. Regarding interest of Rs. 70,637/- on account of indirect taxes, Ld. AR submitted that the said interest consists of Rs. 36,158/- for late payment of service-tax (+) Rs. 34,479/- for late payment of VAT. Thereafter, Ld. AR submitted that the said interest is paid for late payment of indirect taxes which is not penal in nature, the same is clearly held to be allowable u/s 37(1) in following decisions:

- (i) ITAT, Delhi in DCIT Vs. Planman Hr (P) Ltd. ITA No. 5152/Del/2017 order dated 15.07.2021
- (ii) ITAT, Kolkata in Emdee Digitronics (P) Ltd. Vs. PCIT, ITA No. 361/Kol/2019 Order dated 28.06.2019

We have perused these decisions and observe that it has been held that interest paid on late payment of indirect taxes is not penal in nature and hence allowable as deduction. Ld. DR could not dispute the applicability of these decisions. Hence, we are satisfied with the claim of assessee. Accordingly, we delete the addition made by lower authorities.

20. Regarding interest of Rs. 722/- on account of late payment of TDS, Ld. AR carried us to the copy of the working of Total Income shown in the return of income, placed at Page No. 2/6 of the Paper-Book to demonstrate that at the time of filing of return, the assessee has already made disallowance. Ld. DR fairly agreed to the submissions of Ld. AR. Since the factum of voluntary disallowance having been made by assessee is agreed by both sides, the disallowance made by Ld. AO in assessment-order has resulted in double disallowance. Being so, we are inclined to delete the addition made by lower authorities.

21. Regarding loss on sale of car of Rs. 24,250/-, although we observe substance in the claim of assessee that the Ld. CIT(A) has not adjudicated the grievance of assessee, but at the time same time we also find that during

hearing before us, Ld. AR did not want to press this grievance. Accordingly, this grievance is treated as dismissed, being not pressed.

22. Thus, Ground No. 3 is partly allowed.

23. **In the result, this appeal of Assessee is partly allowed.**

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963 on 16.11.2022.

Sd/-

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated :16.11.2022

Patel/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore*

1.	Date of taking dictation	12.10.22
2.	Date of typing & draft order placed before the Dictating Member	12.10.22
3.	Date on which the approved draft comes to the Sr. P.S./P.S.	
4.	Date on which the fair order is placed before the Dictating Member for pronouncement	
5.	Date on which the file goes to the Bench Clerk	

6.	Date on which the file goes to the Head Clerk	
7.	Date on which the file goes to the Assistant Registrar for signature on the order	
8.	Date of dispatch of the Order	