

आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं

डॉ. मनीष बोराड, लेखा सदस्य
के समक्ष

**Before
SRI SANJAY GARG, JUDICIAL MEMBER
&
DR. MANISH BORAD, ACCOUNTANT MEMBER**

**I.T.A. No.: 10/KOL/2023
Assessment Year: 2013-14**

***Mridul Kotriwala.....Appellant
[PAN: AGDPK 0126 G]***

Vs.

ITO, Ward-29(1), Kolkata.....Respondent

Appearances by:

Sh. Manoj Kataruka, Adv., appeared on behalf of the Assessee.

Smt. Ranu Biswas, Addl. CIT, Sr. D/R, appeared on behalf of the Revenue.

Date of concluding the hearing : February 21st, 2023

Date of pronouncing the order : May 12th, 2023

ORDER

Per Manish Borad, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short "AY") 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the "Act") by Id. Commissioner of Income-tax (Appeals)-NFAC, Delhi [in

short ld. "CIT(A)"] dated 16.12.2022 arising out of the assessment order framed u/s 143(3) of the Act dated 10.03.2016.

2. The assessee is in appeal before the Tribunal raising the following grounds:

"1. That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to confirm the additions of Rs.30,150/- made by the AO u/s 40A(2)(b) is contrary to the material evidences on record and the additions are arbitrary, excessive and illegal.

2. That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to confirm the estimated disallowances made by the AO of aggregate of Rs.24,632/- being 10% of the telephone expenses, 10% of motorcar expenses and 10% of motorcycle expenses is contrary to the evidences on record and the addition is arbitrary, excessive and illegal.

3. That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to confirm the estimated disallowances made by the AO of Rs. 12,699/- on account of 10% on depreciation of motorcar is contrary to the evidences on record and the addition is arbitrary, excessive and illegal.

4. That on the facts and in the circumstances of the case the action of the Ld. CIT(A) to confirm the estimated disallowances made by the AO of aggregate of Rs.2,66,948/- being 5% of the freight and transport expenditure, 5% of staff welfare expenses, 5% of general expenses, 5% of salary, wages and bonus expenses and 5% of travelling expenses is contrary to the evidences on record and the addition is arbitrary, excessive and illegal.

5. That the order of the Ld. CIT(A) partly confirming the addition made by the A.O. is arbitrary, excessive and illegal.

6. That the above grounds of appeal will be argued in details at the time of hearing and the appellant craves leaves to submit additional grounds of appeal if any and or alter, vary, modify or rectify the statement of facts and grounds of appeal at or before the time of hearing."

3. At the outset, ld. Counsel for the assessee submitted that most of the disallowances made by ld. AO are *ad-hoc* in nature and the same deserves to be deleted. Further, as regards the addition made u/s 40A(2)(b) of the Act at Rs. 30,150/- it was submitted that the interest rates are not excessive and they are as per prevailing market rate, thus, no addition is called for.

4. On the other hand, ld. D/R vehemently argued supporting the orders of both the lower authorities.

5. We have heard rival contentions and perused the records placed before us.

6. Ground no. 1 relates to the disallowance u/s 40A(2)(b) of the Act at Rs. 30,150/-. We observe that the assessee has taken loan from the relatives on which interest has been paid. Ld. AO noticed that the market rate is at 13% whereas the assessee is paying the interest rate at 14% as well as 15%. Ld. AO adopting the rate of 13% computed disallowance u/s 40A(2)(b) of the Act for excess interest paid to relatives at Rs. 30,150/-. The assessee could not get any relief by ld. CIT(A).

7. We, however, notice that determination of market rate and reasonableness of the rate is a subjective issue and ld. AO failed to provide any comparable instance before adopting the standard rate of 13% and therefore, in absence of any material to show that the appellant has paid excess interest, we fail to find any merit in the addition made by ld. AO. We, thus, reverse the finding of ld. CIT(A) and delete the disallowance of Rs. 30,150/- and allow ground no. 1 raised by the assessee.

8. Ground nos. 2 & 3 relate to addition made for disallowing various expenses at Rs. 24,632/- on account of 10% of telephone expense, motorcar expense and motorcycle expense and Rs. 12,699/- on account of 10% on depreciation on motorcar used for personal expenses. We observe that ld. CIT(A) has already scaled down 50% of the disallowance made by ld. AO though are *ad-hoc* in nature but made for want of necessary documentary evidence from the assessee. We, however, considering the facts of the case, restrict the disallowance to 5% as against 10% made by ld. CIT(A). Thus, the assessee gets relief of Rs. 12,316/- in ground no. 2 and Rs. 6,350/- in ground no. 3. Accordingly, ground nos. 2 & 3 are partly allowed.

9. Ground no. 4 is against the finding of ld. CIT(A) sustaining the disallowance at the rate of 5% amounting to Rs. 2,66,948/- made by ld. AO on the expenditure pertaining to freight and transport, staff welfare expense, general expense, salary, wages, bonus and travelling expenses. We observe that ld. AO has made disallowance not specifically pointing out any discrepancy but made *ad-hoc* disallowance. On the other hand, the assessee is also unable to furnish complete details as required.

10. We, thus, considering the fact that the assessee maintains books of accounts regularly and they have not been rejected and therefore, being fair to both the parties, sustain the disallowance at Rs. 75,000/- as against Rs. 2,66,948/- sustained by ld. CIT(A). Thus, ground no. 4 raised by the assessee is partly allowed.

11. Ground no. 5 is general in nature which needs no adjudication.

12. In the result, the appeal filed by the assessee is partly allowed.

Kolkata, the 12th May, 2023

Sd/-
[Sanjay Garg]
Judicial Member

Sd/-
[Manish Borad]
Accountant Member

Dated: 12.05.2023

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Mridul Kotriwala, 6, Burdwan Road, Kolkata-700 027.**
- 2. ITO, Ward-29(1), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata