

| आयकर अपीलीय अधिकरण न्यायपीठ, कोलकाता |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, KOLKATA

BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

**I.T.A. No. 533/Kol/2023**  
**Assessment Year: 2013-14**

<b>Patni Solutions</b> 31, Maharshi Devendra Road 4 <sup>th</sup> Floor Near Posta Petrol Pump Kolkata - 700006 <b>[PAN : AAJFP4351Q]</b>	Vs	<b>Income Tax Officer, Ward-37(3), Kolkata</b>
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Manoj Kataruka, Advocate
Revenue by :	Shri Braj Kishore Singh, JCIT, CIT D/R

सुनवाई की तारीख/Date of Hearing : 13/07/2023  
घोषणा की तारीख /Date of Pronouncement: 25/07/2023

**आदेश/ORDER**

**PER DR. MANISH BORAD, ACCOUNTANT MEMBER :**

The present appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter the "ld. CIT(A)") dated 21/03/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2013-14.

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

*"1. That on the facts and in the circumstances of the case, the order passed by the Assessing Officer without any jurisdiction and upheld by the Ld. CIT(A) is erroneous and bad in law.*

*2. That on the facts and in the circumstances of the case, the action of the Ld. CIT(A) to uphold the order passed by the Assessing Officer without the issue of notice u/s 143(2) is erroneous and bad in law.*

*3. That on the facts and in the circumstances of the case, the action of the Ld. CIT(A) to confirm the action of the AO in making addition of Rs.10,78,005/- being 15% on the expenditure on salary on ad hoc basis is contrary to the material evidences on record and the addition is arbitrary, excessive and illegal.*

4. *That the order of the Ld.CIT(A) confirming the action of the A.O. is arbitrary, excessive and illegal.*

5. *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, the Id. Counsel for the assessee submitted that, he is not pressing, Ground Nos. 1 and 2. Accordingly the same are dismissed as not pressed.

4. Ground Nos. 4 & 5 are general in nature which need no adjudication.

5. The effective issues is raised in Ground No. 3 challenging the action of the Id. CIT(A) in sustaining the disallowance @ 15% of the salary expenditure as against 30% made by the Assessing Officer.

6. The Id. Counsel for the assessee at the outset submitted that the assessee is into the business of recovery agent and works for HDFC Bank. It receives commission for the amount recovered on behalf of the banks and financial institutions. The margin of profit is very meagre and during Assessment Year 2013-14, the net profit was 0.37% which has further scaled down to 0.09% during Assessment Year 2017-18 and, therefore, the assessee has closed its business. The claim of the assessee is that the assessee has to hire the employees for the work of recovery. The identity proofs are collected and also the information is sent to the local police station for verification purposes. All the details of addresses of the employees were provided to the assessing officer but few of them did not turn up which was beyond the control of the assessee. It was thus prayed that the alleged disallowance sustained by the Id. CIT(A) may be deleted.

On the other hand, the ld. D/R vehemently argued supporting the order of the ld. CIT(A).

7. We have heard rival contentions and perused the material placed before us.

8. We notice that the assessee earns income from various banks and financial institutions for collecting amounts from various customers of the bank against instalments due. During the year commission of Rs.1,04,12,098/- was received. Against the said commission income assessee has claimed various expenses but the one which is for our consideration is salary expenses and the same amounted to Rs.71,86,701/-. When the ld. Assessing Officer enquired the genuineness of the said expenditure during the course of assessment proceedings carried out under section 143(3) of the Act, it was stated by the assessee that there are 71 employees. The assessing officer issued notices under section 133(6) of the Act to about 30 employees but only 14 reply to the assessing officer and recorded their statements. Since more than half of the persons did not reply to the notice under section 133(6) of the Act, the ld. Assessing Officer was of the view that the assessee has claimed excess expenditure to avoid income tax and accordingly disallowed 30% of the expenditure incurred on salary i.e., Rs.71,86,701/- and added Rs.21,56,010/- to the income of the assessee. Further when the assessee carried the matter before the ld. CIT(A), he partly succeeded as ld. CIT(A) restricted the ad hoc disallowance to 15% thereby sustaining the addition to the extent of Rs. 10,78,005/-.

8.1. We notice that the assessee is maintaining complete details of the employees recruited by it and before us also sample copies of the identity cards of the employees are placed on which are certified by HDFC Bank,

copies of letters addressed to the police station for verification, identity proofs in the form of voter card/PAN card and HDFC Bank Ltd.'s code of conduct letter is issued. The books of accounts are also audited and the same have not been rejected by the assessing officer. The basis for the alleged disallowance is mainly for non-appearance of some of the employees. We note that 14 employees have recorded their statements but certain part of their statements indicated that employees' PF & ESI were not deducted, salaries were given in cash, salary certificate/Form 16 were not issued etc.. Thus, there are certain deficiencies in the records maintained by the assessee but considering other surrounding circumstances including the audited statements, details maintained by the assessee about each of the employees, profit percentage offered in the subsequent years, we in order to end the dispute sustain the disallowance @ 5% of the salary expenditure during the year. In other words disallowance of Rs.3,59,335/-, is sustained. The assessee gets relief of Rs.7,18,670/-.

9. In the result, appeal of the assessee is partly allowed.

**Order pronounced in the Court on 25<sup>th</sup> July, 2023 at Kolkata.**

*Sd/-*

**(DR. MANISH BORAD)  
ACCOUNTANT MEMBER**

Kolkata, Dated 25/07/2023

*\*SC Sp/2*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

**Assistant Registrar**  
आयकर अपीलीय अधिकरण  
**ITAT, Kolkata**