आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA Nos. 6 to 9 & 11/Ind/2023
(Assessment Years:2010-11 2012-13,2013-14 & 2015-16)

M/s. Essargee Construction Pvt. Ltd. A-10, Mezenine Floor Essarjee House Bhopal	Vs.	DCIT 1(1) Bhopal
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAACE 8852F		

Assessee by	Shri Manoj Fadnis, AR
Revenue by	Shri Ashish Porwal, Sr. DR
Date of Hearing	27.07.2023
Date of Pronouncement	31.07.2023

O R D E R

Per Vijay Pal Rao, JM:

These five appeals by the assessee are directed against the five separate orders of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi all dated 23.11.2022 for the Assessment Years- 2010-11 (u/s 143(3)], 2010-11(u/s 154), 2012-13, 2013-14 & 2015-16.

2. First we take up the appeal in ITANo.7/Ind/2013 arising from assessment order passed u/s 147 r.w.s. 143(3) for A.Y.2010-11. The assessee has raised following grounds of appeal:

> *"1.1 That in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in holding that re-opening of the assessment was valid.*
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> *1.2 That the ld. CIT(A)failed to consider that the re-assessment was on account of change in opinion and therefore not permissible under the law.*
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> *2.1 That the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in holding that the provisions of Section 40A(3) are applicable w.r.t. the payment of Rs. 17.50 lakhs*
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> *2.2 That the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has failed to consider that the Court Order dated 18.07.2009 which confirms the payment of Rs. 17.50 lakhs made by the assessee.*
>
> *3.1 That the appellant craves leave to add/modify/change any ground of leave before the final disposal of the appeal."*

3. Ground no.1 is regarding validity of reopening of the assessment. At the time of hearing the Ld. AR of the assesse has not advanced any arguments in respect of the issue of validity of reopening. Even this issue was also not pressed before the Ld. CIT(A) as evident from the impugned order wherein the Ld. CIT(A) has stated that no specific pleading has been made on the issue of reopening except a general reference in the statement of fact. Therefore, indeed the assessee has not pressed ground no.1 challenging the validity of the reopening of the assessment. Accordingly ground no.1 of the assesses appeal is dismissed as not pressed.

4. Ground no.2 is regarding disallowance made u/s 40A(3) of the Act in the respect of payment of cash of Rs. 17.50 lakhs initially the assessment was completed u/s 143(3) on 14.03.2013 whereby the AO assessed the total income at Rs.85,05,390/- as against return income of Rs.17,65,390/-. Subsequently, the assessment was reopened vide notice u/s 148 issued on 04.03.2015 mainly on the ground that the assesse has made cash payment of Rs.17,50,000/- in respect of the purchase of land at Khajuri Khurd which is not allowable u/s 40A(3) of the Act. The AO

issued notice u/s 142(1) on 12.08.2015. in response to the said notice the assesse filed replies dated 13.07.2015 & 13.08.2015 on the issue of cash payment of Rs.17,50,000/-. The assesse explained that the said cash payment was made on account of settlement of court case between the sellers of the land and other parties. Thus, the assesse has submitted that the cash was paid only in compliance to the settlement of Court proceedings and therefore, no disallowance could be made u/s 40A(3) of the Act. The AO did not accept the explanation of assesse and made the disallowance of Rs.17,50,000/- u/s 40A(3) of the Act. The assesse challenged the action of the AO before the CIT(A) but cold not succeed.

5. Before the Tribunal Ld. AR of the assessee has submitted that one Shri Esam Singh Morya has filed a suit in the court of Additional District Judge, Bhopal against the sale of the land by the sellers to the assesse. The suit was pending in the court and therefore, assesse could not purchase the said land till the pendency of the suit. The assesse has settled the dispute with Shri Esam Singh Morya and paid sum of Rs.17,50,000/-. Ld. AR has referred to the application filed before the Court under order 23 Rule 3 of CPC and submitted that in pursuant to the said settlement between the parties the court of Additional District Judge, Bhopal passed an order dated 18.07.2009 disposing of the suit being settled and consequently a decree was also prepared. Thus, the ld. AR has submitted that the cash was paid in peculiar circumstances to settle a dispute pending before court of law and consequently the suit filed by Shri Esam Singh Morya was disposed of being settled between the parties without which the assesse could not have purchase the land in question. The Ld. AR has thus contended that the transactions of payment of cash is not in dispute and the same is genuine. The identity of the payee is also not in dispute as entire record have been filed before the AO and therefore, the provisions of section 40A(3) are not attracted in this case when the payment of cash in question is genuine transaction and there was no scope of any tax avoidance. In support of his contention he has relied upon the judgment of Hon'ble Gujarat High Court in the case of

Anupam Tele Services vs. ITO 366 ITR 122 and submitted that the Hon'ble High Court has observed that paramount consideration of s.40A(3) is to curb and reduce the possibilities of black money transactions when neither the genuineness of the payment nor the identity of the payee were in dispute and the payments were made in the compelling circumstances and on account of peculiar situation then disallowance under section 40A(3) is not sustainable. He has then relied upon the judgment of Hon'ble Rajasthan High Court in case of *Smt. Harshila Chordia vs. ITO 298 ITR 349* and submitted that the Hon'ble High Court has observed that the assessee has proved the payment are made to the seller and identity of the payee have also been proved. Once the assesse produced all the details and record for the purpose of proper identification to enable the ITO to satisfy himself about the genuineness of the transactions then the disallowance u/s 40A(3) is not justified. The ld. AR relied upon the judgment of Hon'ble jurisdictional High Court in case of *CIT vs. Achal Alloys (P) Ltd. 218 ITR 46* and submitted that the Hon'ble High Court has held that where the payments in cash were duly signed by the payee and the instance on making cash payments was founded on fulcrum that payees did not have any bank account . Further the genuineness of the payments was not exposed to any doubt then the disallowance u/s 40A(3) is not justified. Thus, Ld. AR has pleaded that when the transaction is genuine and identity of the payee is not in dispute then the disallowance is not justified. He has also relied upon the order of this tribunal date 11.04.2019 in assesse's own case arising from original assessment order passed u/s 143(3) in ITANo.900/Ind/2016 and submitted that the Tribunal has deleted the addition made by AO u/s 40A(3) of the Act in respect of the cash payment of Rs.5,40,000/-.

6. On the other hand, Ld. DR has submitted that the case law relied upon by the assessee are not applicable in the facts of the present case. He has further submitted that the assesse tried to mislead to AO and Ld. CIT(A) by making plea that the payment was made in pursuant to the

court order whereas the payment was made under the mutual settlement between the parties and not as per the directions of the court.

7. Ld. DR has referred to the finding of the Ld. CIT(A) and submitted that the genuineness of the transaction is not relevant for disallowance u/s 40A(3) of the Act. In support of his contention he has relied upon the judgment of Hon'ble Madras High Court in case of *Vaduganathan Talkies v. ITO 428 ITR 224 (Mad)* and Hon'ble Karnataka High Court in case of *Nam Estates Pvt. Ltd. v. ITO (2020) 428 ITR 186* He has relied upon the orders of the authorities below.

8. We have considered the rival submission as well as relevant material on record. It is evident from the record that one Shri Esam Singh Morya has filed a suit against seller of the land as well as of the assesse in the court of Additional District Judge, Bhopal challenging the transactions of purchase of land by the assesse from the owners. During the pendency of the said suit the assessee and plaintiff Shri Esam singh Morya arrived to a settlement under which the assesse has paid sum of Rs.17,50,000/- in cash on 8th July 2009 and also agree to make the payment of purchase consideration of the land to the land owner as per the schedule of payment agreed upon between the parties. The parties moved an application under order 23 Rules 3 of CPC before Additional District Judge, Bhopal with the prayer that the parties in the suit have arrived to settlement to their full satisfaction and free will and accordingly prayed that the court may accept the settlement and passed decree pursuant to the settlement. The Additional District Judge has consequently passed an order dated 18.07.2009 as well as decree of the suit being settled between the parties. Therefore, the payment of Rs.17,50,000/- made by the assesse in cash to settled the dispute pending in the court was inhabitable to purchase the land in question. Thus, the payment was made for business expediency and specific circumstances to avoid abnormal delay of transactions of purchase of land which could have adversely affected the business of the assesse. The AO has not disputed the genuineness of the transaction and identity of the parties to whom the assesse has paid of

Rs.17,50,000/- in question. Though the payment was made under the mutual settlement but to bring to an end the litigation pending in the court of law and therefore, the settlement made by the assesse with plaintiff who filed the suit was on account of business expediency and rules out any scope or intention of tax evasion on the part of the assesse or other parties as the entire transaction was made part of the court order and decree. Therefore, the genuineness of the transactions and payment as well as identification of the payee were beyond the doubt. The Hon'ble Gujarat High Court in case of *Anupam Tele Services vs. ITO (supra)* has analysed the provisions of section 40A(3) Rule with Rule 6DD of Income Tax Rules 1962 as under:

> *"18. Rule 6DD of the IT Rules, 1962 provides for situations under which disallowance under s. 40A(3) shall not be made and no payment shall be deemed to be the profits and gains of business or profession under the said section. Amongst the various clauses, cl. () which is relevant, read as under:*
>
> *(i) where the payment was required to be made on a day on which the banks were closed either on account of holiday or strike:*
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> *19. It could be appreciated that s. 40A and in particular sub-cl. (3) thereof aims at curbing the possibility of on- money transactions by insisting that all payments where expenditure in excess of a certain sum (in the present case twenty thousand rupees) must be made by way of account payee cheque drawn on a bank or account payee bank draft.*
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> *20. As held by the apex Court in case of Attar Singh Gurmukh Singh (supra). In our opinion, there is little merit in this contention. Sec. 40A(3) must not be read in isolation or to the exclusion of r. 6DD. The section must be read along with the rule. If read together, it will be clear that the provisions are not intended to restrict the business activities. There is no restriction on the assessee in his trading activities. Sec. 40A(3) only empowers the AU to disallow the deduction claimed as expenditure in respect of which payment is not made by crossed cheque or crossed bank draft. The payment by crossed cheque or crossed bank draft is insisted on to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of the income from undisclosed sources. The terms of s. 40A(3) are not absolute. Considerations of business expediency and other relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section. It is open to the assessee to furnish to the satisfaction of the AO the circumstances*

under which the payment in the manner prescribed in s. 40A(3) was not practicable or would have caused genuine difficulty to the payee. It is also open to the assessee to identify the person who has received the cash payment. Rule 6DD provides that an assessee can be exempted from the requirement of payment by a crossed cheque or crossed bank draft in the circumstances specified under the rule. It will be clear from the provisions of s. 40A(3) and r. 6DD that they are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the chances to use black money for business transactions."

21. It was because of these considerations that this Court in case of Hynoup Foods (P) Ltd. (supra) observed that the genuineness of the payment and the identify of the payee are the first and foremost requirements to invoke the exceptions carved out in r. 6DDG) of the IT Rules, 1962.

22. In the present case, neither the genuineness of the payment nor the identity of the payee were in any case doubted. These were the conclusions on facts drawn by the CIT(A). The Tribunal also did not disturb such facts but relied solely on r. 600) of the Rules to hold that since the case of the assessee did not fall under the said exclusion clause nor was covered under any of the clauses of r. 6DD, consequences envisaged in s. 40A(3) of the Act must follow.

23. In our opinion, the Tribunal committed an error in coming to such a conclusion. We would base our conclusions on the following reasons:

(a) The paramount consideration of s. 40A(3) is to curb and reduce the possibilities of black money transactions. As held by the Supreme Court in Attar Singh Gurmukh Singh (supra), s. 40A(3) of the Act does not eliminate considerations of business expediencies.

(b) in the present case, the appellant assessee was compelled to make cash payments on account of peculiar situation. Such situation was as follow-

(1) the principal company, to which the assessee was a distributor, insisted that cheque payment from a co-operative bank would not do, since the realization takes a longer time;

(ii) the assessee was, therefore, required to make cash payments only.

(iii)Tata Tele Services Ltd. assured the assessee that such amount shall be deposited in their bank account on behalf of the assessee;

(iv) It is not disputed that the Tata Tele Services Ltd. did not act on such promise

(v) if the assessee had not made cash payment and relied on cheque payments alone, it would have received the recharge vouchers delayed by 4/5 days and thereby severely affecting its business operations.

We would find that the payments between the assessee and the Tata Tele Services Ltd, were genuine. The Tata Tele Services Ltd. had insisted that such payments be made in cash, which Tata Tele Services Ltd, in turn assured and deposited the amount in a bank account. In the facts of the present case, rigors of s. 40A(3) of the Act must belifted.

24. We notice that the Division Bench of the Rajasthan High Court in case of Smt. Harshila Chordia vs. ITO (2007)208 CTR (Raj) 208 (2008) 298 ITR 349 (Rai) had observed that the exceptions contained in r. 6DD are not exhaustive and that the said rule must be interpreted liberally."

9. The Hon'ble High Court has observed that if section 40A(3) is read together with rule 6DD it will be clear that the provisions are not intended to restrict business activities. The payment by crossed cheque or crossed bank draft is insisted to enable the assessing authority to ascertain whether the payment was genuine or whether it was out of income from undisclosed sources. Considerations of business expediency and other relevant factors are not excluded. Genuine and bona fide transactions are not taken out of the sweep of the section. The Hon'ble High Court further observed that provision of section 40A(3) and Rule 6DD are intended to regulate business transactions and to prevent the use of unaccounted money or reduce the changes to use black money for business transactions. A similar view has been taken by Hon'ble Rajasthan High Court in case of *Smt. Harsila Chordia vs. ITO (supra)* in para 13 to 20 as under:

"13. "Clause (j) of Rule 6DD of the Income-tax Rules, 1962, provides that no disallowance under Section 40A(3) of the Income-tax Act, 1961, shall be made where the assessee satisfies the Income-tax Officer that the payment could not be made by way of a crossed cheque drawn on a bank or by a crossed bank draft-

a. due to exceptional or unavoidable circumstances; or b. because payment in the manner aforesaid was not practicable, or would have

caused genuine difficulty to the payee, having regard to the nature of the transaction and the necessity for expeditious settlement thereof, and also furnishes evidence to the satisfaction of the Income-tax Officer as to the genuineness of the payment and the identity of the payee.

14. About this clause, many doubts were raised and enquiries were directed to the Board as to what shall constitute exceptional and unavoidable circumstances within the meaning of Clause (j). That led to issuance of Circular by the Board on May 31, 1977 ([1977] 108 ITR (St.) 8), which is published in Taxmann, Vol. 1, 1988 Edition. Significantly paragraph 4 of the aforesaid Circular shows very clearly that all the circumstances in which the conditions laid down in Rule 6DD(j) could be applicable cannot be spelt out. However, some of them which will seem to meet the requirements of the said rule are as follows:

a. the purchaser is new to the seller; or b. the transactions are made at a place whether either the purchaser or the seller does not have a bank account; or c. the transactions and payments are made on a bank holiday; or d. the seller is refusing to accept the payment by way of crossed cheque/draft and the purchaser's business interest would suffer due to non-availability of goods otherwise than from this particular seller ; or e. the seller, acting as a commission agent, is required to pay cash in turn to persons from whom he has purchase the goods; or f. specific discount is given by the seller for payment to be made by way of cash.

15. It was further clarified in paragraph 6 that the above circumstances are not exhaustive but illustrative.

16. Therefore, in our opinion, the Tribunal was clearly in error in not travelling beyond the circumstances referred to in paragraph 4 of the Circular and to consider the explanation submitted by the assessee on its own merit.

17. Significantly paragraph 5 reproduced hereinbelow gives a clear indication that Rule 6DD(j) has to be liberally construed and ordinarily where the genuineness of the transaction and the payment and identity of the receiver is established, the requirement of Rule 6DD(j) must be deemed to have been satisfied. Paragraph 5 of the Circular reads as under [1977] 108 ITR (St.) 8, 9:

5. It can be said that it would, generally, satisfy the requirements of Rule 6DD(j), if a letter to the above effect is produced in respect of each transaction falling within the categories listed above from the seller giving full particulars of his address, sales tax number/permanent account number, if any, for the purposes of proper identification to enable the Income-tax Officer to satisfy himself

about the genuineness of the transaction. The Income-tax Officer will, however, record his satisfaction before allowing the benefit of Rule 6DD(j).

18. It appears that fulfilment of the conditions of paragraph 5 of the circular has clearly escaped the attention of the Tribunal. The circular clearly indicates that ordinarily where the Income-tax Officer is satisfied about the genuineness of the transaction and payment and identification of the cash payment is established, the Income-tax Officer shall record his satisfaction about the fulfilment of the conditions for allowing the benefit of Rule 6DD(j). Apparently, Section 40A(3) was intended to penalize the tax evader and not the honest transactions and that is why after framing of Rule 6DD(j), the Board stepped in by issuing the aforesaid circular.

19. This clarification, in our opinion, is in conformity with the principle enunciated by the Supreme Court in CTO v. Swastik Roadways as noticed above.

20. In this case, there is no dispute about the genuineness of the transactions and the payment and identity of the receiver are established. Therefore, the case clearly fell within the parameters of paragraphs 4 and 5 of the aforesaid circular read together.

10. Therefore, if the assesse has brought on record to establish genuineness of the transactions and payment as well as identity of the payee to the satisfaction of the AO then the benefit of Rule 6DD is available. Hon'ble High Court has observed that section 40A(3) was intended to penalize the tax evader and not honest transactions and that is why after framing Rule 6DD(j) the CBDT steps in by issuing the circular dated 31st May 1977 reported in 108 ITR (ST) 8. _The Hon'ble jurisdictional High Court_ in case of _CIT vs. Achal Alloys (P) Ltd.(supra_) has also considered this issue and held as under:

"Section 40A(3) provides an under:

"Where the assessee inours any expenditure in respect of which payment is made, after such date (not being later than the 31st day of March, 1965) as may be specified in this behalf by the Central Government by notification in the Official Gazette, in a sum exceeding ten thousand rupees otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, such expenditure shall not be allowed as a deduction."

contains the proviso as under:

It Provided further that no disallowance under this sub-section shall be made where my payment in a sum exceeding ten thousand rupees is made otherwise than by a crossed cheque drawn on a bank or by a crossed bank draft, in such cases and under such circumstances as may be prescribed, having regard to the nature and extent of having facilities available, considerations of business expediency and other relevant factors.

The Appellate Tribunal found that the genuineness of the payee has not been doubted by the Assessing Officer. It was found that the payment of the cxceeding the limit was made under exceptional and unavoidable circumstances. Placing reliance on Porwal Udyog (India) v. CIT (1982) 135 IIR.991 (MP) it was found that no disallowance was permissible.

Why should every exercise begin with mistrust or no trust? In 1979, Ireland abolished wealth-tax, Germany, substantially lowered it. The U.S.A. cut capital gains tax and the UK reduced its maximum rate of personal tax from 83 to 60 per cent. In 1982, Sweden reduced its marginal rate of personal income-tax from 85 to 50 per cent. In this country, the Government purpons to simplify the income-tax law but pursues the course, may be due to compulsions, in the opposite direction. The provision on hand is intended to destroy intentions of dealing with unaccounted moneys, the purpose behind insistence on cross-cheque or cross-draft is to assure and ensure "genuiner" of dealing and proper assessment of taxable income Even this provision has a permiso to mitigate the hardships.

We notice from the appellate order that the appellate authority found that all the purchases were duly entered in the register through inwards and the production has been accepted. It farther found that the genuineness of the payment was not exposed to any doubt Payments in cash were duly signed by the paynes and the insistence on making the cash payments is founded on the fulcrum that the payees did not have any bank account and that, being illiterates, required the payment in cash.

The Tribunal was this satesfied that no disallowance ought to be made in view of the facts and features fully covered by the provion to the aforesaid section.

" It is in the area of legislative ambiguities, yet not receding, that courts have to fill gaps, clear doubts and mingose hardships. From the words of Judge Learned Hand, spoken in Cabell v. Markham 11245] 148 F 28 737, 739, we get enough light to locate the correct path.

> *"It is one of surest indexes of a mature and developed jurisprudence to remember that statutes always have some purpose or object lo accomplish whose sympathetic and imaginative discovery is the surest guide to their meaning."*
>
> *There is no doubt about the purpose or object of the relevant provision. To accomplish it, we cannot ignore the second proviso engrafted to fill gaps and misgate hardships The Tribunal on appreciation of facts applied this proviso and held that disallowance of payments made to the sellers and consequat addition of equivalent amount to the income as returned were steps hostile to the purpose and object and that the assessee was required to be given the benefit of such payements made in exceptional circumstances. Law lives on logic and as such illogicality, resting on technical view, it lo be spurned.*
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> *This finding of fact, not shown to be perverse or perishable, reached by the Tribunal did not give, as held in CIT Ashoka Marketing LA [1976] 103 ITR 543 (SC) and CIT Korrika Penkalarmy and Sex (1971) 79 ITR 499 (SC), rise to any question of law."*

11. Therefore, the disallowance u/s 40A(3) cannot be made without considering the business expediency and other relevant factors falling in the exceptions given in Rule 6DD of I.T. Rules. The Coordinate Bench of this Tribunal in asessee's own case for arising from the original assessment order passed u/s 143(3) (supra) has considered this issue in para 8 to 10 as under:

> *"8. We have heard rival contentions and perused the records placed before us and gone through the paper book filed by the assessee. The issue raised in this appeal by the assessee revolves around the disallowance of Rs.5,40,000/- u/s 40A(3) of the Act. We observe that the assessee is into the business of purchase and sale of land and civil construction business. It purchased land from Smt. Anar Bai for a total consideration of Rs.36,00,000/-. Out of the total purchase consideration of Rs.36,00,000/- assessee paid cash of Rs.6,20,000/- (verifiable from the Essarjee Constructions Pvt.Ltd ITA No.900/Ind/2016 Registered sale deed as well as affidavit placed in the paper book). Out of the cash payment of Rs.6,20,000/- Ld. A.O has disputed only sum of Rs. 5,40,000/- which in view of Ld. A.O was payment for expenditure in cash exceeding Rs.20,000/-. The total transaction of purchase of land for Rs.36,00,000/- is not disputed and the complete details of consideration paid in cash and cheque are mentioned in the registry sale deed which has been*

executed before the Registering Authority and therefore the genuineness of the transaction cannot be doubted.

9. It is pleaded before us that the seller Smt. Anar Bai was not having a bank account on the date of receiving cash and subsequently when the account was opened the consideration was paid in various instalments by account payee cheques. This fact that Smt. Anar Bai was not having the bank account at the initial date of receiving the consideration in cash has not been disputed by the revenue authorities. The said cash payment was made by assessee for business expediency in order to confirm the purchase deal.

10. Therefore looking to the given facts and circumstances of the case the alleged cash payment of Rs.5,40,000/- comes under the exceptions provided in Rule 6DD of the IT Rules and thus both the lower authorities Essarjee Constructions Pvt.Ltd ITA No.900/Ind/2016 were not justified in sustaining the disallowance u/s 40A(3) of the Act and the same deserves to be deleted. We accordingly order so and allow Ground No.1 & 2 raised by the assessee.

10. Apropos the second plea raised in Ground No.3 of the assessee's appeal contending that the disallowance is not called for as the alleged amount was not claimed as an expenditure during the year becomes infructuous and merely academic as we have already deleted the disallowance u/s 40A(3) of the Act at Rs. 5,40,000/- while adjudicating Ground No.1 & 2 of instant appeal."

12. Though the Ld. DR has relied upon the judgment of Hon'ble Madras High court as well as Hon'ble Karnataka High court however, the jurisdictional High Court is binding on the tribunal functioning at Indore. Accordingly, in the facts and circumstances as discussed above and relied upon the various decisions as well as the judgment of Hon'ble jurisdictional High Court and Coordinate Bench of this Tribunal we decide this issue in favour of the assessee and consequently disallowance made by the AO u/s 40A(3) is deleted.

<u>ITANo.6/Ind/2023 for A.Y.2010-11</u>

The assesse has raised following grounds of appeal:

"1.1.That in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in holding that rectification order passed by the ld. AO is in accordance with the provisions of Section 154.

1.2 That the ld. CIT(A)failed to consider that demand u/s 220(2) could not have been part of notice of demand issued consequent to the order passed u/s 147 r.w.s 143 and therefore could not have been rectified u/s 154.

1.3 That the ld. CIT(A) has failed to consider that the AO has raised the demand u/s 220 without giving credit to the taxes paid.

2.1 That the appellant craves leave to add/modify/change any ground of leave before the final disposal of the appeal."

13. This appeal is arising from the rectification order passed u/s 154 of the Act. The assessee has challenge the jurisdiction of the AO 154 for levying interest u/s 220(2) of the Act.

14. We have heard the Ld. AR as well as Ld. DR and carefully perused the orders of the authorities below. The AO has passed order u/s 154 on 08.02.2018 for rectification of the mistake as under:

"The return of income for A.Y. 2010-11 was files on 30.09.2010 declaring total income of R. 7965390/- order u/s 147/143(3) was passed on 04.11.2015 assessing income of at Rs. 10255390/-. Surcharge and education cess was levied incorrectly in the order u/s 147/143(3). Further, interest u/s 234A, u/s 234B and u/s 220(2) were levied incorrectly.

Revised income and tax calculation is as under.

Assessed income for A.Y. 2010-11	*Rs. 1,02,55,390/-*
Tax@30%	*Rs. 30,76,617/-*
Surcharge@10%	*Rs. 3,07,662/-*
EC & SHEC@3%	*Rs. 1,01,528/-*
	Rs. 34,85,807/-
Interest Chargeable u/s 234A	*Rs. 28,640/-*
Interest Charged u/s 234A	*Rs. 10,160/-*
Short levy of interest	*Rs. 18,480/-*
Interest Chargeable u/s 234B	*Rs. 7,00,607/-*
Interest Charged u/s 234B	*Rs. 6,64,650/-*
Short levy of interest	*Rs. 35,957/-*
Interest Chargeable u/s 220(2)	*Rs. 9,22,471/-*
Interest Charged u/s 220(2)	*Rs. NIL*
Short levy of interest	*Rs. 9,22,471/-*

This being a mistake apparent from the record, notice u/s 154 dated 04.01.2018 was issued. Vide this notice assessee was given an

> *opportunity to submit a written reply either in person or through an authorized representative. However, no one appeared not any written submission was filed. Therefore, it appears that assessee has no objection against rectification. This being a mistake apparent from record within the meaning of section 154 of the I.T. Act 1961, the4 same is being rectified accordingly."*

15. Thus, it is clear that there were mistake in computing surcharge and education cess consequently the interest u/s 234A, 234B and 220(2) were levied incorrectly. The last correction proposed by the AO in the order u/s 154 in respect of the interest u/s 220(2) is nothing but consequential to the rectification in respect of the surcharge and education cess. Even otherwise the interest u/s 220(2) is automatic once the AO issues demand notice after the assesse failed to make payment. Therefore, the issue raised by the assessee in this appeal is purely academic in nature which is not going to change the tax liability of the assesse. Even otherwise once the AO is required to give effect to the orders of the Ld. CIT(A) as well as this Tribunal then this issue of interest u/s 220(2) becomes infructuous.

ITANo.8/Ind/2023 for A.Y.2012-13

The assessee has raised following grounds of appeal as under:

> *"1.1 That in the facts and circumstances of the case, the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the addition of Rs. 4,04,400/- on account of disallowance of interest free advances, without considering that the money lent was out of own sources.*
>
> *1.2 That the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has failed to follow the law laid down by Hon'ble Supreme Court in the case of South Indian Bank Limited v. Commissioner of Income Tax [2021] 283 Taxman 178 (SC) that where interest free own funds available with the assessee exceeds their investments, investments would be presumed to be out of own funds.*
>
> *1.3 That the ld. CIT(A) has erred in not considering the Audited Financial Statements which clearly reveal that the own funds were in excess of the amount lent.*

2.1That the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in considering agricultural income as income from other sources.

2.2 That the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in not considering the income from agricultural activities 1,79,089 as agricultural income inspite of holding in Para 7.1 that "It also gets reflected from the assessment orders of earlier years that the assessee has been showing purchase of agricultural land and showing. them as stock-in-trade in its status as builder and developer."

3.1 That the ld. Commissioner of Income Tax (Appeals)National Faceless Appeal Centre, Delhi has erred in confirming the disallowance of salary paid to working directors.

3.2That the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the decision of the Id. AO who has erroneously considered that the enhancement in remuneration should lead to enhanced benefits to the company in the very same year.

4.1 That the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the disallowance of a provision on which tax has not been deducted.

5.1 That the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the disallowance of Rs. 1,00,000/- which is on ad hoc basis and without rejecting the Audited Financial Statements which is contrary to the settled law.

6.1 That the appellant craves leave to add/modify/change any ground of leave before the final disposal of the appeal."

16. Ground no.1 is regarding disallowance of interest on account of interest free loan given to related parties. The AO noted that the assesse has given interest free loan of Rs.33,70,000/- to related party M/s. Essarjee Education Society. The AO further noted that the assesse has debited amount of Rs.29,24,674/- in the profit and loss account as interest expenses. The AO observed that no business purpose is served by giving such interest free loan and advance to the related party. Accordingly the AO made the disallowance of interest @ 12% on the advance given to the related party. The assesse challenged the action of the AO before the Ld. CIT(A) but could not succeed.

17. Before the Tribunal the Ld. AR of the assessee has submitted that the assesse is having sufficient interest free fund of its own. He has referred to the balance sheet at page 17 of the paper book and submitted that the assesse having Rs.5,72,44,820/- interest free fund in shape of share capital and reserves & surplus and therefore, the advance of Rs.33,70,000/- will be from the assesse's own interest free fund. He has relied upon the judgment of Hon'ble Supreme Court in case of *CIT vs. Reliance industries limited 410 ITR 466* and submitted that the Hon'ble Supreme Court has upheld the judgment of Hon'ble Bombay High court on this issue where the disallowance made by the AO was deleted on the ground that interest free fund available with the assessee were sufficient to meet its investment.

18. On the other hand, Ld. DR has submitted that the assesse has not brought on record to show that the assesse was having enough cash from the interest free fund available to give this loan to the related party. He has relied upon the orders of the authorities below.

19. We have considered the rival submission as well as relevant material on record. As it is evident from the balance sheet as on 31.03.2012 that the assesse was having more this Rs. 5.72 cr. its own interest free fund in the shape of share capital reserves & surplus. It is settled proposition of law that even if the interest bearing fund and interest free funds are put in common pool, the investment or loan given by the assesse would be deemed to have been given from assessee's own interest free fund. The asessees own fund is more than sufficient to advance this amount of Rs.33,70,000/- to the related party. The Hon'ble Supreme Court in case of *CIT vs. Reliance industries limited (supra)* has observed in para 7 as under:

> *"7. Insofar as the first question is concerned, the issue raises a pure question of fact. The High Court has noted the finding of the Tribunal that the interest free funds available to the assessee were sufficient to meet its investment. Hence, it could be presumed that the investments were made from the interest free funds available with*

the assessee. The Tribunal has also followed its own order for Assessment Year 2002-03."

20. Accordingly in the facts and circumstances of the case when the assesse's own interest free fund are sufficient to advance this amount of Rs.33,70,000/- to the related party the disallowance made by the AO on account of interest calculated @ 12% is not justified and the same is deleted.

21. Ground No.2 is regarding the addition made by the AO on account of agricultural income. The AO noted that the assessee has claimed agricultural income of Rs.5,96,964/- after the claiming expenditure of Rs.1,62,800/-. The AO asked the assessee to justify the said claim of agricultural income by furnishing relevant details. In response the assesse submitted only copies of vouchers pertaining to agricultural income. Thus, the AO held that in absence of the other record regarding the expenditure incurred by the assesse for the agricultural operations the claim of the assesse is not acceptable and he has made the addition of the said amount of Rs.5,96,964/- as income from other sources. On appeal the Ld. CIT(A) has confirmed the addition made by the AO.

22. Before the Tribunal Ld. AR of the assessee has referred to the land revenue record to show that the assesse is having agricultural land and as per the record maintained by the Tahsildar the details of crops is given. He has referred to page no.82 & 83 of the paper book and submitted that all the details of the agricultural land in question as well as the crops on the said land are given with the nature of irrigation etc. He has further submitted that the claim of agricultural income has been disallowed by the AO only for year under consideration whereas the AO has not disputed this claim for all other assessment years. He has referred to the return of income for assessment year 2014-15 and submitted that the assessee has disclosed the agricultural income more than the agricultural income for the year and AO has accepted the claim.

23. On the other hand ld. DR has relied upon the orders of the authorities below.

24. We have considered the rival submission as well as relevant material on record. At the outset we note that the assessee has shown agricultural income in its return of income for this year as well as for the A.Y.2014-15 and this fact has not been disputed by the Ld DR. Further when the assessee has produced evidence of owning agricultural income and revenue record showing the cultivation of the land and crop production then the claim of the assessee cannot be denied in toto. The AO has not disputed the claim of agricultural income of Rs.21,52,089/-for A.Y. 2014-15.Accordingly in the facts and circumstances of the case when the AO has not disputed the claim of agricultural income for assessment year 2014-15 then the disallowance made for the year under consideration is not justified the same is deleted.

25. Ground no.3 is regarding disallowance made by the AO on account of salary/remuneration paid to the directors. AO noted during the year under consideration the assesse paid salary to the directors of Rs.53,86,500/- in comparison to Rs.30,24,000/- in the preceding year. The AO was of the view that the increase in the salary is excessive in comparison to the turnover of the assessee. Accordingly the AO made a disallowance of Rs.9,45,000/- being 40% of the increased in the directors salary u/s 40A(2)(b) of the Act. On appeal the ld. CIT(A) has confirmed the addition made by the AO.

26. Before the Tribunal the Ld. AR of the assessee has submitted that the directors of the assessee are well qualified and having overall responsibility regarding the business of Construction, Finance and marketing. He has referred to the details of the salary, turnover from year to year at pages 84 to 86 of the paper book wherein the educational and professional qualification as well as experience of the directors is explained to justify the salary payment and increase in the salary of the directors. Ld. AR has submitted that the AO has just taken into

consideration the turnover during the year under consideration whereas in the business of Real Estate what is relevant is the total asset as turnover is recognizing only when the project is completed and sold out. Thus, the Ld. AR has submitted that the disallowance made by the AO is not justified. He has further submitted that the directors are also paying the tax as maximum marginal rate 30% except one director Ms. Meenu Gupta. He has relied upon the decision of the Chennai Benches of the Tribunal dated 18.05.2022 in case of *Carmel Softech Pvt. Ltd. in ITANO.724/Chhy/2018* and submitted that the Tribunal has held that the provisions of section 40A(2)(b) are not applicable in respect of the salary of the directors in absence of any material brought on record to show that the payment was actually excessive unreasonable having regard to the services rendered by the directors.

27. On the other hand, Ld. DR have relied upon the orders of the authorities below and submitted that there is disproportionate increase in the salary of the directors in comparison to the turnover of the assssee from year to year.

28. We have considered the rival submission as well as relevant material on record. The details of qualification & experience of the directors and payments of the salary to them are given at page 84 to 86 as under:

Justification for Salary

1. Name of the Director : SUNIL KUMAR GUPTA
   - 1.1. Date of birth : 19/07/1967
   - 1.2. Age during FY 2013-14 : 47 Years
   - 1.3. Educational Qualification : B.E. (Civil) passed out in May 1988
   - 1.4. Employed with company since: 1996
   - 1.5. Nature of responsibilities : Shri Sunil Gupta is a qualified Engineer (B.E. Civil). He is the Managing Director of the Company and has the overall responsibilities regarding construction, finance and marketing.
   - 1.6. Details of salary vis-à-vis Turnover/PBT/Total Assets :

Year	Salary	Total Turnover	Profit before Tax	Total Assets
FY 2010-11	14,40,000.00	9,73,61,150.50	1,31,17,918.06	8,28,18,133.11
FY 2011-12	27,31,500.00	10,00,75,630.00	1,14,44,298.84	14,90,14,033.84
FY 2012-13	45,12,600.00	7,57,45,981.00	84,67,881.21	21,08,60,814.63
FY 2013-14	57,60,000.00	5,63,77,883.00	21,91,815.11	37,16,74,710.38

2. Name of the Director : MEENU GUPTA
   2.1. Date of birth : 24/04/1977
   2.2. Age during FY 2013-14 : 37 Years
   2.3. Employed with company since: 1999
   2.4. Nature of responsibilities : Meenu Gupta has been engaged in the business since 1998. She has also varied business experiences, which is reflected in her return as well. She is a well-qualified graduate individual having vast experience in the business. She has actively devoted her time and knowledge to the business for 12-15 years. Further, as of now, the capabilities of male and female entrepreneurs shall not be discriminated; they are to be treated at par with their male counterparts.

   She belongs to a business background family D/o Er. NR Gupta who deals in Ceramic Insulators and manufactures the same at his plant in the Industrial Area of Raebareli, Uttar Pradesh. Over there she looked after the business management and also took care of the marketing department and designed a distribution network for the products they manufactured. After her marriage in 1996, she moved to Bhopal, Madhya Pradesh, and joined Essarjee Constructions Pvt Ltd in 1998 as one of the Directors of the company. Considering her past experiences and ability to deal with clients she seemed to be a great match for the job role. She also helped us with setting up the HR Department.

   2.5. Details of salary vis-à-vis Turnover/PBT/Total Assets :

Year	Salary	Total Turnover	Profit before Tax	Total Assets
FY 2010-11	11,52,000.00	9,73,61,150.50	1,31,17,918.06	8,28,18,133.11
FY 2011-12	18,00,000.00	10,00,75,630.00	1,14,44,298.84	14,90,14,033.84
FY 2012-13	30,06,000.00	7,57,45,981.00	84,67,881.21	21,08,60,814.63
FY 2013-14	38,88,000.00	5,63,77,883.00	21,91,815.11	37,16,74,710.38

3. Name of the Director : GULAB CHAND SHAH
   - 3.1. Date of birth : 20/06/1941
   - 3.2. Age during FY 2013-14 : 74 Years
   - 3.3. Educational Qualification : Diploma in Mechanical Engineering in the year 1974 (Retired from BHEL, Bhopal)
   - 3.4. Employed with company since: 2005
   - 3.5. Nature of responsibilities : Shri Gulab Chand Shah is a 75 year-old, exceptionally well-experienced personnel. He completed his Diploma in Mechanical Engineering from S.V. Govt. Polytechnic, Bhopal in 1974. He has been a part of our organization since 2005. Before that, he worked in BHEL Bhopal, Madhya Pradesh since 1960 and retired as a Senior Engineer in 2001. Being a Senior Engineer at BHEL he was technically sound and held a good rapport among the top executives. Considering the fact that most of our projects were in the vicinity of the BHEL area and hence our customer base. A person who worked with our potential customers for more than 4 decades would naturally know more about what their actual needs were. As a matter of fact, our sales went up tremendously after he joined us. He helped us design and execute well-thought floor plans and layouts.
   - 3.6. Details of salary vis-à-vis Turnover/PBT/Total Assets :

Year	Salary	Total Turnover	Profit before Tax	Total Assets
FY 2010-11	4,32,000.00	9,73,61,150.50	1,31,17,918.06	8,28,18,133.11
FY 2011-12	8,55,000.00	10,00,75,630.00	1,14,44,298.84	14,90,14,033.84
FY 2012-13	13,23,000.00	7,57,45,981.00	84,67,881.21	21,08,60,814.63
FY 2013-14	16,56,000.00	5,63,77,883.00	21,91,815.11	37,16,74,710.38

29. Thus, the assessee has explained the qualification and work experience as well as business knowledge of the directors who are responsible for overall business affairs of the assessee company. we

further note that the AO has made disallowance of 40% of enhancement without doing any exercise to determine what should be the fair salary to the directors having regard to the services they have render to the assessee company. The Chennai Benches of the Tribunal in case of *Carmel Softech Pvt. Ltd. vs. ITO (supra)* has considered an identical issue in para 6 as under:

> *"6. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the Tribunal in the case of The Bombay Samachar Pvt. Ltd., supra, has considered the issue of applicability of provisions of section 40A(2)(b) of the Act to the directors remuneration and held that this provision will not apply to the directors payment for holding that the payment is excessive or unreasonable in the absence of any material brought on record to demonstrate that the payment is actually excessive or unreasonable having regard to market rate for the goods, services or facilities availed or the business need of the assessee or commensurate with the benefit derived by the assessee. In the present case before us also the AO has not carried out any exercise for holding the payment of remuneration to the directors that the same is unreasonable or not in consonance with the payment of directors or remuneration. We note that in this year the turnover is at Rs.1,42,13,393/- and profit earned is at Rs.84,40,020/- and remuneration paid to these three directors are at Rs.75,07,380/-. Even it is accepted position that the directors have paid taxes on these remunerations on maximum margin rate and there is no revenue loss to the Department. In view of the above, we are of the view that in the absence of any findings by the AO that the directors remunerations are excessive and unreasonable, we reverse the orders of lower authorities and allow the appeal of assessee."*

30. It is matter of record that two of the directors are paying income tax at the maximum marginal rate and therefore, there is no revenue loss on this account. Accordingly in the facts and circumstances as discussed above and in view of the decision of the Chenni Benches of the Tribunal (supra), we are of the considered view that an ad hoc disallowance made by the AO without doing the necessary exercise of determination of the fair remuneration of the salary payment to the directors is not justified. Accordingly the disallowance made by the AO is deleted.

31. Ground no.4 is regarding the disallowance made u/s 40(a)(ia) in respect of provisions made on account of auditor fees. The AO has noted that the assessee has claimed the auditor fees in the profit and loss account which was yet to be paid by the assessee as no bill or voucher was received during the year under consideration. Further the assessee has not deducted any TDS in respect of the said claim of auditor fees. Accordingly made disallowance u/s 40(a)(ia) of the Act. Ld. CIT(A) has upheld the disallowance made by the AO.

32. Before us Ld. AR of the assessee has submitted that though the payment was not made but it was ascertain liability of the assessee, therefore, the assesse had made the provision. He relied upon various decisions on the point that provisions made by the assessee on the anticipation of the expenditure is not required to be deducted TDS. Alternatively the Ld. AR has submitted that the claim of auditor fees may be allowed in the subsequent year when the assessee has actually deducted TDS and paid to the Government account. Ld. DR has relied upon the orders of the authorities bellow.

33. We have considered the rival submission as well as relevant material on record. Since it is only the provision for the auditor fees and assessee did not deduct tax at source on the said provisions therefore, in the facts and circumstances of the case we find it appropriate that the claim of auditors fees be allowed by the AO in the subsequent year when the assessee has actually deducted and paid TDS on this amount. Ld. AO is directed accordingly.

34. Ground No.5 is regarding ad hoc disallowance of Rs.1,00,000/- in respect of telephone, traveling and fuel expenses on the ground of personal use. The AO noted that the assessee has debited expenditure under the head of telephone, traveling and fuel expenses in the profit and loss account. The assessee has maintained luxury vehicle. The AO observed that person use of the said expenses by the directors cannot be ruled out and accordingly made a lump sum disallowance of Rs.1 lac and

added to the income of the assessee. The Ld. CIT(A) has confirmed the disallowance made by the AO.

35. Before us the Ld. AR of the assessee has submitted that the disallowance made by the AO is highly arbitrary and unjustified without any material to show that these expenses are incorrect for person use of the directors. He has relied upon the judgment of Gujarat High Court in the case of *Sayaji Iron and Engineering Co. vs. CIT 253 ITR 749, DCIT vs. Brilliant Esates Private Limited* order dated 13.12.2018 in ITANo.349/Ind/2017 Coordinate Bench of this Tribunal. The order of the Coordinate Bench of this Tribunal in case of *DCIT vs. Globus Mega Project Pvt. Ltd. in ITANo.446 & 447/Ind/2018* dated 08.09.2022.

36. On the other hand, Ld. DR has submitted that the AO has made disallowance on the consent of the Ld. AR of the assessee. Thus, the assessee agrees to the disallowance on this account. He has relied upon the order of the authorities below.

37. We have considered the rival submission as well as relevant material on record. The assessing officer has made adhoc disallowance of Rs.1 lac in respect of telephone, traveling and fuel expenses on the ground of personal use of the said expenses by the directors cannot be ruled out. Thus, it is clear that the AO has just doubted the personal use and the disallowance is made purely on the basis of the assumption without bringing any record or fact to show that these facilities are being used for personal purpose of the directors. The Hon'ble Gujarat High Court in the case of *Sayaji Iron and Engineering Co. vs. CIT (supra)* as observed in para 8 as under:

> *"8. In our opinion, as the directors of the assesses were entitled to use the vehicles of the assessee-company for their personal use as per the terms and conditions on which they were appointed, it was not proper on the part of the Assessing Officer to disallow l/6th of the expenditure incurred by the assessee on maintenance of its vehicles. Section 309 of the Companies Act, 1956, provides the modality for determining the remuneration payable to the directors, including any managing or full-time director. Such remuneration is*

payable either as stated in the articles of association of the company or in accordance with the resolution or if provided by articles, by a special resolution which might be passed by the company in the general meeting. This payment of remuneration is subject to overall limits of managerial remuneration laid down in Section 198 of the Act. What is more material for the purpose of the present controversy is the Explanation to Section 198 of the Companies Act which permits and provides that "remuneration" shall include (a) any expenditure incurred in providing any rent-free accommodation, etc., (b) any expenditure incurred in providing any other benefit or amenity free of charge or at a concessional rate, (c) any expenditure which would have been incurred by the director but for such expenditure having been incurred by the company, (d) any expenditure incurred by the company for the purpose of any insurance on the life, etc. Therefore, it is clear that the expenditure incurred by the assessee-company on maintenance of vehicles which were available to the directors for their personal use would fall within the meaning of "remuneration" as defined in the Explanation to Section 198 of the Companies Act, and once such remuneration is fixed as provided in Section 309 of the Companies Act, it is not possible to state that the assessee-company incurred an expenditure for the personal use of the directors, i.e., even if there was any personal use by the directors, the same was as per the terms and conditions of service and in so far as the assessee-company was concerned it was a business expenditure and not disallowable as such."

Thus, in view of the above discussion and following the judgment of Hon'ble Gujarat High Court the adhoc disallowance is not sustainable and liable to be deleted.

ITANo.09/Ind/2023 for A.Y.2013-14

The assessee has raised following grounds of appeal:

"1.That the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the disallowance of salary paid to working directors.

1.2 That the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi has erred in confirming the decision of the ld. AO who has erroneously considered that the enhancement in remuneration should lead to enhanced benefits to the company in the very same year.

1.3 That the ld. AO has disallowed 40 per cent of the increase in directors' salary which is ad hoc in nature and is not in accordance with the facts of the case and the provisions of law.

> *2.1 That the ld. Commissioner of Income Tax (Appeals) National Faceless Appeal Centre, Delhi has erred in confirming the disallowance of a provision on which tax has not been deducted.*
>
> *3.1 That the appellant craves leave to add/modify/change any ground of leave before the final disposal of the appeal."*

38. Ground no.1 is regarding disallowance of salary paid to the directors.

39. We have heard the Ld. AR as well as Ld. AR and considered the relevant material on record. This issue is common and identical to the issue in ground no.3 of the appeal for A.Y.2012-13. In view of our finding on this issue for A.Y.2012-13 disallowance made by AO is deleted.

40. Ground NO.2 is regarding the disallowance made u/s 40(a)(ia) provisions made on account of auditor fees.

41. We have heard the Ld. AR as well as Ld. AR and considered the relevant material on record. This issue is common to the issue in ground no.4 of the appeal for A.Y.2012-13. In view of our finding on this issue for A.Y.2012-13 the AO is directed to allow the claim of the assessee in the subsequent year when the TDS is deducted and paid.

<u>ITANo.11/Ind/2023 for A.Y.2015-16</u>

The assessee has raised following grounds of appeal:

> *"1.National Faceless Appeal Centre, Delhi has erred in confirming the decision of the ld. AO who has erroneously considered that the enhancement in remuneration should lead to enhanced benefits to the company in the very same year.*
>
> *1.2 That the ld. AO has disallowed 30 per cent of the total of directors' salary which is ad hoc in nature and is not in accordance with the facts of the case and the provisions of law.*
>
> *2.1 That the ld. Commissioner of Income Tax (Appeals),National Faceless Appeal Centre, Delhi has erred in confirming the disallowance of Rs. 1,00,000/- which is on ad hoc basis and without rejecting the Audited Financial Statements which is contrary to the settled law.*

3.1 That the appellant craves leave to add/modify/change any ground of leave before the final disposal of the appeal."

42. Ground no.1 is regarding disallowance of salary paid to the directors.

43. We have heard the Ld. AR as well as Ld. AR and considered the relevant material on record. This issue is common and identical to the issue in ground no.3 of the appeal for A.Y.2012-13. In view of our finding on this issue for A.Y.2012-13 disallowance made by AO is deleted.

44. Ground NO.2 is regarding ad hoc disallowance of Rs.1,00,000/- in respect of telephone, traveling and fuel expenses on the ground of personal use.

45. We have heard the Ld. AR as well as Ld. AR and considered the relevant material on record. This issue is common to the issue in ground no.5 of the appeal for A.Y.2012-13. In view of our finding on this issue for A.Y.2012-13 disallowance made by the AO is deleted.

46. In the result, appeals of assesse for A.Y. 2012-13 & 2013-14 are partly allowed and for Assessment Years- 2010-11 (u/s 143(3)], 2010-11(u/s 154), & 2015-16 are allowed.

Order pronounced in the open court on 31 .07.2023.

Sd/-	**Sd/-**
(B.M. BIYANI) Accountant Member	**(VIJAY PAL RAO)** Judicial Member

Indore, 31.07.2023

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