

**Income Tax Appellate Tribunal  
Delhi Bench "G": New Delhi  
Before Shri M. Balaganesh, Accountant Member  
and  
Shri Anubhav Sharma, Judicial Member**

ITA No. 9842/Del/2019  
(Assessment Year: 2008-09)

(Erstwhile) Sumaitri Bima Distributors Pvt. Ltd (Wound-up), 15/5, Mathura Road, Faridabad (Appellant) <b>PAN: AAHCS7137E</b>	Vs. Income Tax Officer, Ward-24(3), New Delhi  (Respondent)
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Assessee by :	Shri R. M. Mehta, Adv
Revenue by:	Shri Anuj Garg, Sr. DR

Date of Hearing	05/10/2023
Date of pronouncement	10/10/2023

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.9842/Del/2019 for AY 2008-09, arises out of the order of the Commissioner of Income Tax (Appeals)-XXV, New Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. 10341/18-19 dated 05.11.2019 against the order of assessment passed u/s 143(3)/254 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 27.12.2017 by the Assessing Officer, ITO, Ward-24(3), New Delhi (hereinafter referred to as 'Id. AO').

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

*"1. That the learned CIT(Appeals) erred both on facts and in law in confirming the order of the Assessing Officer in a mechanical manner without dealing with the detailed written submissions filed during the course of hearing including the judgements relied upon.*

*2. On the facts and circumstances of the case and in law, the Assessing Officer erred in passing the assessment order on the non-existent wound-up company (bearing*

*PAN:AAHCS7137E) and the learned CIT(A) has erred in not deciding the following specific ground raised in appeal:-*

*"That the order dated 27.12.2017 passed u/s 143(3)/254 of the Income-tax Act to give effect to the directions of Hon'ble ITAT is wrong and bad in law as the same could not have been passed on non-existent entity which had been wound up and the necessary information available before the AO."*

*The assessment order passed by Assessing Officer u/s 143(3)/254 of the Act is void ab-initio and the same is liable to be quashed.*

*3.1 That the learned CIT(Appeals) erred both in law and on facts of the case in confirming the action of the Assessing Officer in applying the provisions of section 40(a) of the Act for disallowing expenditure under the head 'Salaries' for alleged non-deduction of tax at source u/s 192, without realizing that section 40(a) did not apply to non-deduction of tax u/s 192 of the Act for impugned assessment year.*

*3.2 Without prejudice to above, the learned CIT(Appeals) further erred in confirming the addition of Rs.10,28,628/- out of salary in spite of the fact that TDS deduction in applicable cases was made by the principal employer with whom the services of the concerned persons/employees had been shared by the appellant.*

*4. That the learned CIT(Appeals) erred both in law and on facts of the case in confirming the addition of Rs.4,20,101/- on account of 'other expenses' disclosed in the Return Form without appreciating that the said amount represents aggregate of a group of expenses shown in the audited profit & loss account and required to be disclosed in the Return as 'other expenses. Detailed explanation filed during assessment as well as in the appeal has been completely ignored.*

*5. That the learned CIT(Appeals) erred both in law and on facts of the case in confirming the addition of Rs.2,76,628/-on account of repairs and maintenance of building without appreciating that the expenses are of day to day nature claimed in the Profit & Loss Account duly audited by the statutory auditors of the company.*

*6. That each ground of appeal is without prejudice to one another.*

*7. That the appellant reserves to itself, the right to add, alter, amend, substitute and/or withdraw any Ground(s) of Appeal on or before the date of hearing."*

3. Ground Nos. 1, 6 and 7 raised by the assessee are general in nature and does not require any specific adjudication.

4. Ground No. 2 raised by the assessee was stated to be not pressed by the Id AR at the time of hearing. The same is reckoned as a statement made from the bar and accordingly ground No. 2 is hereby dismissed as not pressed.

5. Ground No. 3.1 and 3.2 raised by the assessee is challenging disallowance of salary expenses amounting to Rs. 10,28,628/- by applying

the provisions of section 40(a)(ia) of the Act for non deduction of tax at source.

6. We have heard the rival submissions and perused the materials available on record. The assessee is a general insurance commission agent and during the year ended on 31.03.2008 had earned commission income from general insurance business amounting to Rs. 29,16,197/-. It had taken certain employees on deputation from its sister concern M/s. Escorts Finance Ltd and had reimbursed the sum of Rs. 10,28,628/- towards salary of deputed employees to M/s. Escorts Finance Ltd. This payment was made without deduction of tax at source by the assessee. The assessee was of the bonafide belief that since the employees were on the rolls of M/s. Escorts Finance Ltd, the salaries were paid by the Escorts to the employees and the same were subjected to deduction of tax at source in terms of section 192 of the Act by Escorts and since the assessee had merely reimbursed the salary, there was no obligation on the part of the assessee to deduct tax at source. This argument of the assessee was not accepted by the lower authorities. We find that the Id AO had proceeded to disallow the salary expenditure of Rs. 10,28,628/- for making payment without deduction of tax at source u/s 40(a)(ia) of the Act which is evident from para 12 of the assessment order. In this regard, we find that the provisions of section 40(a)(ia) of the Act cannot be applied at all for non deduction of tax at source in respect of salary as the same was introduced in the statute in section 40(a)(ia) of the Act only w.e.f 01.04.2015 and hence, cannot be applied for years prior to AY 2015-16. Accordingly, the disallowances made by the AO u/s 40(a)(ia) of the Act are to be deleted. The ground Nos. 3.1 and 3.2 raised by the assessee are allowed.

7. Ground No. 4 raised by the assessee is challenging the disallowances of other expenses of Rs. 4,20,101/-.

8. We have heard the rival submissions and perused the materials available on record. The present appellate proceeding before us is the second round of proceeding. During the first round, the Tribunal had directed the assessee to furnish details of other expenses before the Id AO and accordingly, had restored the issue to the file of the Id AO. The assessee furnished the break-up of other expenses before the Id AO as under:-

**SUMAITRI BIMA DISTRIBUTORS PVT. LTD.**

**Assessment Year 2008-09**  
**Break-up of ' Other Expenses' shown in ITR-6**  
**(Part A - P&L, Column 36)**

Security Services	37,658.00
Legal and Professional Expenses	31,016.00
Printing and Stationery	1,44,207.00
Postage Expenses	75,457.00
Membership and Subscription Fees	1,751.00
Books Periodicals & Subscription	876.00
Repairs & Maintenances-Vehicles	18,098.00
Bank Charges	1,835.00
Brokerage	11,886.00
Miscellaneous Expenses	97,319.00
<b>Total</b>	<b><u>4,20,101.00</u></b>

9. These expenses are also reflected by the assessee in the profit and loss account under Schedule 6 viz operating and administration expenses. It was pleaded that these expenses are routinely incurred by the assessee in the normal course of its business without which no business could survive. The Id AR before us submitted that since the assessee company had closed its business operations in the year 2014 and no employees were available with the assessee, the assessee could not substantiate the aforesaid expenses with supporting evidences. However, the Id AR pleaded that similar expenses were incurred by the assessee in AY 2006-07 which were allowed by the Id AO and accordingly, there is no reason to take divergent view during the year under consideration.

10. Per contra, the Id DR vehemently argued that the assessee did not furnish any supporting documents to substantiate the allowability of expenses and prayed for confirmation of the disallowances.

11. We find that the aforesaid expenses were also incurred by the assessee in AY 2006-07 to the tune of Rs. 7,81,477/- which was allowed by the Id AO in the scrutiny assessment proceedings u/s 143(3) of the Act dated 4.12.2008. No evidence has been placed on record by the Id. AR to prove the fact whether all supporting evidences were submitted by the assessee during AY 2006-07 before the Id. AO. However, considering the fact that no supporting documents were furnished by the assessee during the year under consideration before the Id AO, we deem it fit and appropriate to disallow 10% of the total other expenses of Rs. 4,20,101/- as expenses not meant for the purpose of business and accordingly direct the Id AO to disallow Rs. 42,010/-. Accordingly, ground No. 4 raised by the assessee is partly allowed.

12. Ground No. 5 raised by the assessee is challenging the disallowance of Rs. 2,75,268/- made on account of repairs and maintenance of building.

13. We have heard the rival submissions and perused the materials available on record. We find that the assessee was conducting its business in the rented premises and had also incurred rent of Rs. 69,766/- debited in the profit and loss account. This rent has been allowed as deduction by the Id AO. The assessee during the year had incurred repair and maintenance on account of building amounting to Rs. 2,75,268/-. The assessee could not furnish the supporting evidence as requested by the Id AO to justify the incurrence of the aforesaid expenses. The Id AR before us merely made a bald statement that none of these expenses were capital in nature and that the same were incurred in the routine manner year on year and that similar expenditure incurred in AY 2006-07 amounting to Rs. 7,58,089/- was allowed by the Id AO in scrutiny assessment proceedings completed u/s 143(3) of the Act on 24.12.2008. He also argued that as and when the business of the assessee reduced, correspondingly all the expenditure including repairs and maintenance of the building also got reduced year on year. Per contra, the Id DR vehemently supported the orders of the lower authorities and stated that each assessment year is separate and decision taken by the Id AO in earlier assessment years need not be followed in another assessment year.

14. At the outset, we find that no evidence has been placed on record by the Id. AR to prove the fact whether all supporting evidences were submitted by the assessee during AY 2006-07 before the Id. AO. We find that the assessee has not furnished any detail giving the break-up of incurring expenditure on account of repairs and maintenance of building during the year under consideration. It was pleaded that assessee was carrying on business on rented premises and had paid rent of Rs. 69,766/- thereon. In a premises where rent of Rs. 69,766/- was paid, incurrence of repairs and maintenance on the said building to the tune of Rs. 2,75,268/- is highly improbable. Hence, it can be safely concluded that some of this expenditure on account of repairs and maintenance of building had not been incurred for the purpose of business of the assessee. Accordingly, we

hold that 50% of repairs and maintenance of building to be not meant for the purpose of business and disallowance of Rs. 1,37,634/- (Rs. 2,75,268 X 50%) would meet the ends of justice. Ground No. 5 raised by the assessee is partly allowed.

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

Order pronounced in the open court on 10/10/2023.

-Sd/-  
**(Anubhav Sharma)**  
**JUDICIAL MEMBER**

-Sd/-  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 10/10/2023  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi