

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

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 1196/Kol/2023
Assessment Year: 2009-10

Sushmita Sahoo Seth AE 53, Salt Lake Sector-1 Kolkata - 700064 [PAN: BLZPS5904C]	Vs	ACIT, Circle -26(1), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Nitish Bhandary, A/R
Revenue by :	Shri P.P. Barman, Addl. CIT, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 03/04/2024
घोषणा की तारीख/Date of Pronouncement : 16/04/2024

आदेश/O R D E R

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The instant appeal is directed at the instance of the assessee against the order of the National Faceless Appeal Centre, [hereinafter the "1d. First Appellate Authority"] dt. 11/09/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2009-10.

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

"1. That under the facts and circumstances of the case and in law the order passed by CIT(A) is bad-in-law, arbitrary, perverse, unsustainable and against the principles of natural justice.

2. That under the facts and circumstances of the case the Learned CIT (Appeals) has grievously erred in sustaining the addition / disallowances of Rs. 14,69,750 being 50% of the bonus paid on an ad-hoc-basis without any concrete finding.

3. That under the facts and circumstances of the case the Learned CIT (Appeals) has grievously erred in sustaining the addition / disallowances of Rs.

14,69,750 being 50% of the bonus paid on an ad-hoc-basis even though the books of account of the assessee has not been rejected by the Ld. Assessing Officer, Circle 26(1), Kolkata.

4. That the learned CIT(A) grossly erred in not considering the written submissions and evidences furnished during the course of appellate proceedings.

5. The appellant craves leave to make any addition, alteration or modification etc., of the grounds either before the appellate proceedings, or in the course of appellate proceedings."

3. The sole grievance of the assessee is against the disallowance of bogus expenditure at Rs.14,69,750/-. Though the assessee filed an adjournment application but on perusal of the records, we notice that this is the second round of proceedings and only a single issue is raised against *ad hoc* disallowance of bogus expenses and, therefore, it is decided to adjudicate the issue on the basis of available records.

4. We have heard the Id. D/R and perused the record placed before us. We notice that the assessee is an individual carrying on man power recruitment agency business. For Assessment Year 2009-10, return selected for scrutiny and assessment completed u/s 143(3) of the Act making various disallowances. Thereafter, the assessee carried the matter in appeal before the Id. CIT(A) but could partly succeed.

5. Thereafter, on preferring appeal before this Tribunal, one of the issue regarding disallowance of bogus expenses was restored to the file of the Id. Assessing Officer for fresh adjudication. In compliance thereto, the Id. Assessing Officer carried out proceedings u/s 143(2)/254 of the Act and after considering the submissions of the assessee, again made an *ad hoc* disallowance of 50% of the total bogus expenditure and made an

addition of Rs.14,69,750/-, which was subsequently confirmed by the Id. CIT(A) also.

6. We on perusal of the records notice that the assessee is regularly engaged in this business and is claiming expenditure of bonus consistently. The Assessing Officer in the first round disallowed Rs.29,49,500/- u/s 36(1)(ii) of the Act on account of lack of evidence and explanation. Assessee furnished complete details about the employees' contribution towards PF & ESI deposited on behalf of employees. Considering these details, the Id. CIT(A) gave substantial relief to the assessee sustaining disallowance only @ 10%. This Tribunal vide its order dt. 18/08/2017 restored the matter to the Id. AO. We find that the Id. AO without considering the fact that the assessee is deducting and depositing PF & ESI of its employees which proves that the assessee has various employees working with it and bonus has been paid to these employees, has again made *ad hoc* disallowance of 50%. Such action of the AO has been confirmed by the Id. CIT(A) only on the ground of non-furnishing of complete list of employees.

7. We notice that these details were filed before the Id. CIT(A) in the first round of proceedings also and details of the same is available in paper book page 23 to 26. Considering these details, which also includes the proof of payment of bonus, deduction and deposit of PF & ESI, assessee consistently showing income from business of manpower recruitment agency and has declared income of Rs.34,40,480/- in its return of income for AY 2009-10, books of accounts are regularly

maintained and thus , we fail to find any merit in the finding of both the lower authorities as they are not supported by any evidence which could prove that claim of bonus is bogus and thus they deserve to be set aside. We accordingly hold that the assessee had made a genuine claim of bonus and revenue authorities erred in making disallowance on *ad hoc* basis ignoring details filed by the assessee. Accordingly, the alleged disallowance of Rs.14,69,750/- is deleted and effective grounds raised by the assessee are allowed.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 16th April, 2024 at Kolkata

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(DR. MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 16/04/2024

SC SPS

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 फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata