

आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।
BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
AND HON'BLE SHRI MANU KUMAR GIRI, JM

आयकर अपील सं. ITA No.1369Chny/2023
(निर्धारणवर्ष / Assessment Year: 2018-19)

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| M/s Egberts India Private Limited 19, (Old No.11), Nuewry Grandeur B Block, Anna Nagar S.O., Chennai-600 040. | बनाम/ Vs. | ITO Corporate Circle-2(1) Chennai. |
| स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AAACE-1410-F | | |
| (पीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी की ओरसे/ Appellant by | : | Shri Y. Sridhar (FCA)-Ld. AR |
| प्रत्यर्थी की ओरसे/ Respondent by | : | Shri R. Mukundan (JCIT)-Ld. DR |
| सुनवाई की तारीख/ Date of Hearing | : | 10-06-2024 |
| घोषणा की तारीख / Date of Pronouncement | : | 10-06-2024 |

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2018-19 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 08-11-2023 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s. 143(3) r.w.s 143(3A) & 143(3B) of the Act on 04-04-2021. The sole issue that arises for our consideration is disallowance of salary to directors u/s 40A(2)(b). Having heard rival

submissions and upon perusal of case records, the same is adjudicated as under.

Proceedings before lower authorities

2.1 The Ld. AO proposed disallowance of Rs.73.78 Lacs out of consultancy charges paid to one of the directors. The assessee submitted that it paid consultancy charges of Rs.93.78 Lacs to one of the directors, Shri. S. Sridharan who acted as resident director. The other two directors were non-residents. Shri S. Sridharan had several years of experience in related business and engaged in day-to-day business and management and development of the assessee company. The said payment was justified considering the expertise and experience of the said director and it was commensurate and reasonable compared to the size of the assessee's business. The same was supported by the fact that until FY 2016-17, the income comprised only of rental income and interest income. However, during FY 2017-18, the commercial project in Panaiyur-ECR road commenced and the assessee started generating revenues for the said project. In this year, the income from this project was Rs.6.29 Crores. The director being the only resident director was involved in day to day affairs of the company which justify the increased payment in this year. The payment so made was stated to be in conformity with the provisions of the Companies Act. Accordingly, the assessee assailed disallowance of the same u/s 40A(2)(b).

2.2 However, Ld. AO held that it was to be deemed that all permissions and other formalities were completed by the assessee before the commencement of the project. There was no significant change in the other employee cost. No material was placed to show that the director assumed greater responsibilities. In earlier years, the assessee paid a

sum of Rs.20 Lacs and therefore, increase in payment for Rs.78.73 Lacs was disallowed invoking the provisions of Sec.40A(2)(b). The Ld CIT(A) confirmed the disallowance against which the assessee is in further appeal before us.

Our findings and Adjudication

3. In our considered opinion, Ld. AO could not sit on the armchair of the businessman so as to judge the reasonableness of the expenditure to the incurred by the assessee for its business purposes unless it is shown that the said expenditure was excessive having regard to the market price of the goods or services so procured by the assessee. The Hon'ble High Court of Madras in the case of **Computer Graphics Pvt. Ltd. (155 Taxman 612)** held that the reasonableness of the expenditure for the purpose of business had to be adjudged from the view point of a businessman and not that of the Revenue while invoking Section 40A(2). Unless there is proof of excessive / unreasonable payment, no disallowance could be made u/s 40A(2) of the Act.

4. From the financial statements as placed on record, it could very well be seen that the assessee has generated revenue from operations for Rs.629.29 Lacs in this year whereas in earlier year, there is no such revenue. The same would show that there is substantial increase in revenue in this year. It could also be seen that the payee director is sole resident director in India and the other two directors are non-resident and therefore, he would have greater role to play. During this year, the project of the assessee has started generating revenues and the payee director has been involved in day to day affairs of the assessee-company which quite justify the increased payment in this year. The payment so made is stated to be in conformity with the provisions of the Companies

Act. Another fact brought to our knowledge by Ld. AR is that the assessee has deducted due TDS against such payments and the payments so received by the assessee has ultimately been offered to tax by that director in his return of income.

5. Another aspect of the matter is that Ld. AO has not brought on record any material to demonstrate that the payment is actually excessive or unreasonable having regard to the market rates of services so procured by the assessee or the business need of the assessee or benefits derived by the assessee there-from. The Ld. AO has merely disallowed differential of remuneration in two years without establishing the reasonableness of the payment. In the absence of such an exercise, no case of excessive expenditure could be made out against the assessee.

6. Finally, considering the facts and circumstances of the case, the impugned disallowance stand deleted. The Ld. AO is directed to re-compute the income of the assessee.

7. The appeal stand allowed in terms of our above order.

Order pronounced on 10th June, 2024.

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| Sd/- | Sd/- |
| (MANU KUMAR GIRI) | (MANOJ KUMAR AGGARWAL) |
| न्यायिक सदस्य / JUDICIAL MEMBER | लेखक सदस्य / ACCOUNTANT MEMBER |
| चेन्नई Chennai; दिनांक Dated : 10-06-0024 | |
| DS | |

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF