

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H", NEW DELHI**

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No.1291/DEL/2024
(Assessment Year: 2018-19)**

Tamura Elcomponics Technologies Private Ltd., vs. National E-Assessment Centre,
C-24, Phase II, NEPZ, Delhi.
Gautam Buddha Nagar – 201 305 (Uttar Pradesh).

(PAN: AADCR4165M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Shivansh Bansal, CA
Shri Pallavi Gupta, Advocate
REVENUE BY : Shri B.S. Anand, Sr. DR.

Date of Hearing : 03.09.2024
Date of Order : 06.11.2024

ORDER

PER S. RIFAUR RAHMAN, AM :

1. This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'ld. CIT (A)] dated 25.01.2024 for the Assessment Year 2018-19.
2. Brief facts of the case are, assessee filed its return of income for Assessment Year 2018-19 declaring total income at Rs.Nil. The case was selected for

complete scrutiny under e-assessment scheme 2019 to verify the issue of business loss and business expenses. Accordingly, notices u/s 143 (2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') were issued and served on the assessee. During assessment proceedings, the Assessing Officer observed from the profit & loss account of the assessee that assessee has claimed personal expenses of Rs.2,72,21,201/- in connection with business. He observed that assessee had not produced any relevant details in support of the personal expenses incurred by it. In absence of the above details of personal expenses, the Assessing Officer disallowed the same u/s 37 of the Act @ 10% and brought to tax.

3. Aggrieved with the above order, assessee preferred an appeal before the NFAC, Delhi and raised grounds of appeal and made a plea how the Assessing Officer can make the disallowance and did not give any reason whatsoever as to how the figure of disallowance of expenses @ 10% was derived by him. The assessee also relied on the decision of PCIT vs. Hero Corporate services Ltd. [2019] 103 taxmann.com 200 (SC) in support of their contention. Ld. CIT (A) remanded the matter back to the Assessing Officer and Assessing Officer has submitted the remand report dated 27.12.2023. The assessee also filed response to the remand report submitted by the Assessing Officer and it was submitted that the assessee was never

asked for any evidences during the assessment proceedings and Assessing Officer cannot make ad hoc disallowances. After considering the remand report, response to the remand report and the assessment order, Id. CIT (A) dismissed various grounds including additional grounds raised by the assessee and in the result, dismissed the appeal filed by the assessee.

4. Aggrieved by the aforesaid order, assessee is in appeal before us raising following grounds of appeal :-

“1. That, on the facts and circumstances of the case the impugned order passed by the Ld. CIT(Appeals) u/s 250(6) of the Act is illegal, arbitrary in contravention of law and judicial precedents, and deserves to be quashed and set aside.

2. That, the Ld. CIT(Appeals) miserably failed to consider the fact that the expenses claimed by the Appellant under of head of "personnel expenses" as mentioned in the audited financials of Appellant are directly related to the business and hence cannot be disallowed U/S 37 of the Act.

3. That, the CIT (Appeals) erred in law by confirming an ad-hoc disallowance of personnel expenditure at the rate of 10% as estimated by the Ld. AO u/s 37 of the Act which is illegal, arbitrary, and hence liable to be deleted.

4. That, the Ld. CIT (Appeals) erred in law and on facts by confirming the disallowance of personnel expenditure without a query being raised about the same by the Ld. AO making the disallowance unsustainable in law.

5. That the Id. CIT (Appeals) has erred in law and failed miserably by passing a non-speaking order and solely relying on the remand report of the AO without considering the merits of the case making the order bad in law and liable to be quashed.

6. That, Ld. CIT(Appeals) miserably failed to consider the fact that the procedure as prescribed under the scheme of 144B of the Act was not followed by the Ld. Assessing Officer thereby violating the principal of natural justice and rendering the entire proceedings non-est.”
5. Ld. AR brought to our notice the relevant facts on record from assessment order and brought to our notice page 31 of the paper book which is the profit and loss account of the assessee company. He submitted that as per Schedule 22 of the Notes to Accounts, it is clearly mentioned as ‘personnel expenditure’ claimed by the assessee of Rs.2,72,21,201/- and Assessing Officer has wrongly presumed the same as ‘personal expenditure’ which is actually ‘personnel expenditure’. With the above observation, Assessing Officer made ad hoc disallowance of 10% without asking for any documentary evidence nor he gave a reason for making ad hoc disallowance @ 10%. Further, he brought to our notice page 32 of the paper book wherein the assessee has given details of salary payment made to the employees along with respective PAN numbers of employees and wages and other benefits paid to workers. He vehemently argued that Assessing Officer has wrongly considered the ‘personnel expenditure’ as ‘personal expenditure’ and he prayed that the addition may be deleted.
6. On the other hand, ld. DR for the Revenue relied on the orders of the lower authorities.

7. Considered the rival submissions and material placed on record. We observed that the Assessing Officer noticed from the Profit and Loss account statement that assessee has claimed expenditure of personnel expenditure, however he has mistook that assessee has claimed personal expenditure without providing any documentary evidences. Accordingly, he made ad hoc disallowance @ 10% of the personnel expenditure. After considering the facts on record, we observed that the addition made by the Assessing Officer is nothing but elementary mistake by presuming the expenses claimed by the assessee as personal expenditure instead of personnel expenditure. Since the assessee has brought to our notice details of payment of salaries and wages to various employees and even Assessing Officer failed to ask for any details before making such ad hoc disallowances, we are inclined to delete the addition made by the Assessing Officer which is a mistake apparent on record and clearly mistaken presumption. Accordingly, the grounds taken by the assessee are allowed.
8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 6th day of November, 2024.

Sd/-
(SUDHIR KUMAR)
JUDICIAL MEMBER

sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Dated : 06.11.2024/TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI