

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER AND SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 2846/Del/2024

(Assessment Year : 2018-19)

GPA Capital Foods Pvt. Limited F-1734-1735, DSIIDC Industrial Area, Narela Delhi-110 040 PAN : AAJCA 1965 A (Appellant)	Vs .	Assistant Commissioner of Income Tax (OSD), Circle-10, Delhi-110 002 (Respondent)
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Assessee by	Shri S.K. Gupta, CA
Respondent by	Shri Ram Krishan Meena, Sr. DR

Date of Hearing	07/11/2024
Date of Pronouncement	29/11/2024

ORDER

PER VIMAL KUMAR, JM:

1. The appeal filed by Assessee is against order dated 15/05/2024 of Learned Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre, Delhi [hereinafter referred to as 'Ld. CIT(A)'] arising out of Assessment Order dated 20/03/2021 of National e-Assessment Centre, Delhi / Learned Assessing Officer (hereinafter referred as 'Ld. AO') u/s 143(3) read with sections 143(3A) & 143(3B) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for the Assessment Year 2018-19.

2. Brief facts of case are that appellant/assessee on 22/09/2018 filed Income Tax Return declaring income of Rs.3,00,74,890/-. On 27/03/2019 ITR was revised at income of Rs.3,00,92,860/- which was processed on 04/06/2019. The case was selected for scrutiny through CASS to examine the issues of (i) Expenditure of Personal Nature and (ii) ICDS Compliance and Adjustment during the year. Notice u/s 143(2) of the Act issued on 22/09/2019. Subsequently, notice u/s 142(1) of the Act was issued on 09/12/2020 calling for certain information/documents. The assessee company was engaged in manufacturing processing and packaging of Pulses of various types and Besan. The name of the company has been changed from Agro Pure Capital Foods Pvt. Ltd. to GPA Capital Foods Pvt. Ltd. w.e.f., 03/10/2018. Appellant/assessee paid salary to four persons namely (i) Anoop Goyal Rs. 18,00,002/- (ii) Ekta Goyal Rs.8,40,002/- (iii) Jatin Goyal Rs.9,60,002/- (iv) Akhil Goyal Rs. 12,00,002/- who were either persons covered u/s 40A(2)(b) or relatives of share holders / key persons of the company. On considering the fact, additions of Rs.12,00,000/- and 11,99,499/- were made by Ld. AO vide order dated 20/03/2021.

3. Appellant / assessee filed appeal before Learned CIT(A) which was dismissed vide order dated 15.05.2024.

4. Being aggrieved, appellant/assessee preferred present appeal.

5. Learned Authorized Representative for appellant/assessee submitted that Ld. CIT(A) erred in confirming the ad-hoc disallowance of Rs.12,00,000/- out of Rs.48,00,000/- paid to four individuals on the ground that payment has been made to related parties and ignoring the contention of appellant on the ground of parity of tax rate in the case of payees and appellant, there was no loss to the revenue. Learned CIT(A) was not justified in rejecting the ground of no loss to the revenue in payment to related parties as supporting evidence of the ITR filed by the payees were fresh evidences for which no application under rule 46A was made. Learned CIT(A) erred in considering the payment made to Sh Akhil Goyal on account of salary Rs.12,00,000/- as the payment covered u/s 40A(2)(b) of the Act for making *ad-hoc* disallowance of 25% covered in Ground No.1 and 2 ignoring the fact that the above payee is not a person covered u/s 40A(2)(b) of the Act. The Learned CIT(A) has erred in confirming the disallowance of interest expenses of Rs.11,99,499/- u/s 36(1)(iii) of IT Act on proportionate basis on the ground that there was investment in work in progress as per balance sheet as on 31/03/2018 amounting to Rs.99,95,824/-. During appeal before Ld. CIT(A), it was contended and taken note of by Learned CIT(A) in para 7.4 (PB 256) that due to non-issue of show cause notice regarding the above disallowance, the appellant is getting first opportunity to raise grievance against the above action of Learned AO at first appellate stage. But Ld. CIT(A) at same time rejected the evidences of returns filed by the payee employees to prove the point that they have paid tax on the income earned

from the appellant company @ 30% by taking the objection that these are additional evidences and no separate application for admission of additional evidence under rule 46A is filed. The evidences in the form of ITR's for AY 2018-19 are placed in paper book at pages 91-113 which show that the tax rate paid by the employees in question is 30% which is not much lower than the tax rate paid by the company.

5.1 To support the theory of no loss to revenue by making payment to the concerned employees, reliance is placed in the Board Circular No 6-P dated July 1968 where it was communicated to field officers that no disallowance was to be made under sec. 40A(2) in respect of payment made to the relatives and sister concern where there was no attempt to evade tax. In *Orange Associates Pvt. Ltd. v. ACIT* (2021)85 ITR 33 (SN) (Delhi) (Trib) the Tribunal held that the assessee-company and its directors were both in the same tax bracket, the highest and, therefore, there could be no question of any evasion of tax by paying remuneration to the directors relying on the above Circular. Similar view was taken in the decision of *M/s IKEA Trading (India) P Ltd vs DCIT* 83 ITR (Trib) 415 (ITAT Delhi).

5.2 Coming to the objection of the revenue that there is no deduction on account of ESI/EPF on salary paid to above employees with other two employees all related to the directors/shareholders, it is submitted that above objection is

misplaced as under PF/ESI provision, the employees drawing salary exceeding Rs.15,000/- have the option of not getting covered under the above welfare schemes. Accordingly, the above employees drawing higher salaries have exercised above available option. Therefore, no adverse view be kindly taken to support the disallowance in present case as exercise of above option is as per law. In case of Sh. Anoop Goyal (Rs.18,00,000/-), the salary drawn in preceding AY 2017-18 (PB 114-120) was Rs.9,00,000/- from other employer i.e. M/s Ram Swarup Dass Foods P. Ltd. and due to higher income offered, he 18 (PB 114-120) was Rs.9,00,000/- from other employer. i.e. M/s Ram Swarup Dass Foods P. Ltd and due to higher income offered, he switched over to the present employer.

5.3 Similarly, in the case of Ekta Goyal (Rs.8,40,000/-), she was earning in preceding AY 2017-18 (PB 121-126) for Rs.4,80,000/- and there is increase of 75% from preceding assessment year due to extra responsibility of managing and supervising e-sales.

5.4 In case of Sh. Jatin Goyal (Rs.9.60,000/-), who is not person not covered within the definition of relatives covered u/s 40A(2)(b) of the Act as he is son of Sh Anoop Goyal, the brother of director and he in the AY 2019-20 (PB 127-131) got hike of Rs.8,40,000/- to Rs.18,00,000/- when he switched over another employer i.e. M/s R S Triveni Foods P. Ltd. This fact shows that salary paid to him was fair and reasonable.

5.5 Coming to the fourth person Sh Akhil Goyal (Rs. 12,00,000/-), he got four-time hike to Rs.48,00,000/- in AY 2019-20 (PB 132-139) from another employer. Further, he is not covered in the list of relatives being identified as relative of shareholder the disallowance made u/s 40A(2)(b) is not justified.

5.6 It is a case of adh-hoc disallowance @25% of the salary of Rs.48,00,000/- paid to four employees. The fact that 75% of the salary paid has been found to be reasonable, shows that claim of appellant was not without basis. The reason given by the learned CIT(A) for confirming the disallowance is that the appellant has not filed any evidence of educational qualification of the above employees. The above objection of Learned CIT(A) is not relevant when the appellant is able to establish that these persons have been employed on the comparable salaries in the past and also in the future as the case may be.

5.7 Even otherwise, the Learned AO has not given any reason as to why he is making disallowance of 25% of salary paid and what yardstick he has applied to justify the disallowance of 25% of salary paid. In absence of any basis given in the assessment order, the adh-hoc disallowance is not justified. Reference to decision of Hon'ble Co-ordinate Bench in case of Indraprastha Logistics P Ltd vs ACIT ITA No.5708/Del/2018 dated 30.08.2023 was made.

5.8 Hon'ble High Court of Delhi in CIT v. DLF Hilton Hotels (2016) 69 taxmann.com 300 has held that where the assessee had reasonably established that the expenses incurred by it were for running business and in the absence of any finding by the AO that the expenses were non-genuine and the fact that the books of accounts of the assessee had not been rejected, 50% of the expenses could not be disallowed on an arbitrary basis. Apart from the provisions of section 40A (2) (b), there is no provision under the Act, which clothes the assessing officer with the power to go into the issue of reasonableness of the expenditure incurred by an assessee where the party is not related in terms of 40A(2), which is the case of the payments to Sh Jatin Goyal Rs 9,60,000/- and Sh Akhil Goyal Rs 12,00,000/-. there is no scope for the assessing officer to examine the reasonableness of the expenditure and to disallow any part thereof. Reliance is placed on Shaw Wallace Distilleries Ltd. vs. ACIT: 85 TTJ 236 (Del.) and DCIT vs ICICI Web Trade Ltd.: ITA No. 6559/M/2006 (Mum.). In fact, there is no provision in the Act which clothes the AO with power to go into the question of reasonableness of the expenditure which is otherwise deductible unless the same is covered by section 40A(2) (b) of the Act.

5.9 The action of Learned AO without rejecting books of accounts is against the decision of Hon'ble Delhi High Court in identical facts of the case in PCIT vs. R.G. Buildwell Engineers Ltd. (2018) 258

Taxman 371 (Del) approved by Hon'ble Apex Court in (2018) 259 Taxman 370 (SC) holding that no disallowances can be made without rejecting the books of account.

5.10 From the audited balance sheet (PB 7-35) available on record, the appellant had interest free resources in form of share capital Rs.8,94,30,000/- and reserves Rs.23,11,28,148/- aggregating Rs.32,05,58,148/- as on 31.03.2017 (PB 14) against which the investment in work in progress amounting to Rs.99,95,824/- can be attributed to be from the interest free funds in the absence of any nexus above investment with the interest bearing loans established by Learned AO. This is case of utilization of funds available in the common pool and there is no evidence to show that the interest-bearing funds have been utilized for the expenses debited under the capital work in progress, the Learned AO in such circumstances is not justified in drawing presumption that in the work in progress the interest-bearing funds have been used. Such presumption is contrary to decision of Hon'ble Apex Court in the case of CIT vs Reliance Industries Ltd 410 ITR 466 (SC) dt: 02.01.2019 wherein it was held that if the interest free funds available to the assessee are sufficient to meet its investment, it could be presumed that the investments are made from the interest free funds available with the assessee and not from borrowed funds.

6. Learned Authorized Representative for Department of Revenue relied on the order of Learned CIT(A).

7. From examination of record in light of aforesaid rival contention, it is crystal clear that Learned CIT(A) confirmed ad-hoc disallowance of Rs.12,00,000/- out of 48 lacs paid to four individuals on the grounds that payment has been made to related parties ignoring the ground of parity of tax rate in the case of payee and appellant there was no loss of Revenue and on the ground that the supporting evidence of the ITR filed by payee were fresh evidence for which no application u/s 46A was made.

8. The additional evidence i.e., ITR for the year 2018-19 on page No.91 to 113 showed that the tax rate by the employees in question is 30% which is not much lower than the tax rate paid by the company who is to separate the theory of no loss making payment to the concerned employee. Reliance was placed on Board Circular No.6 No.6-P dated July, 1961 where it was communicated to field officers that no disallowance was to be made u/s 40A(2) in respect of payment made to the relatives and sister concern where there was no attempt to evade tax. As per ratio of judgment in Orange Associates Pvt. Ltd. vs. ACIT (supra), it is well settled law that the assessee company and its director were both in the same tax bracket, the highest and, therefore, there could be no question of

any evasion of tax by paying remuneration to the directors relying on the above Circular.

9. The objection of Revenue regarding non-deduction of ESI/EPF on salary of persons is without merit as the employees drawing higher salaries and exercised the option of non-deduction. Shri Anoop Goyal (Rs.18,00,000/-) salary drawn in preceding A.Y. 2017-18 (PB 114-120) was Rs.9,00,000/- from other employer. Similarly, Ekta Goyal (Rs.8,40,000/-) was earning in preceding AY 2017-18 (PB 121-126) for Rs.4,80,000/-. Shri Anoop Goyal and Ekta Goyal were offered more salaries by the present employers as compare to the preceding assessment years. Shri Jatin Goyal and Shri Akhil Goyal were not covered in the list of relatives under section 40A(2)(b) of the Act. Hon'ble Delhi Court in CIT vs. DLF Hilton Hotels (2016) 69 taxmann.com 300 (Del) held that where the assessee had reasonably established that the expenses incurred by it were for running business and in the absence of any finding by the AO that the expenses were non-genuine and the fact that the books of accounts of the assessee had not been rejected, 50% of the expenses could not be disallowed on an arbitrary basis. Accordingly, ground No.1 to 3 are allowed.

10. Learned CIT(A) confirmed disallowance of Rs.11,99,499/- u/s 36 (1)(iii) of the Act on proportionate basis. Hon'ble Apex Court in the case of CIT vs Reliance Industries Ltd 410 ITR 466 (SC) dt:

02/01/2019 wherein it was held that if the interest free funds available to the assessee are sufficient to meet its investment, it could be presumed that the investments are made from the interest free funds available with the assessee and not from borrowed funds. In view of the above material facts and well settled principle of law, ground No.4 is allowed. Impugned order of CIT(A) is set aside.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this day 29th November, 2024.

**Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

**Sd/-
(VIMAL KUMAR)
JUDICIAL MEMBER**

Dated: 29/11/2024

Priti Yadav, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI