

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

ITA No.6446/Del/2019  
Assessment Year: 2015-16

Micron Enterprises Pvt. Ltd., C-157, BSR Road Industrial Area, Ghaziabad	<b>Vs.</b>	ITO, Ward-1(4), Ghaziabad
<b>PAN :AADCM1378D</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Somil Agrawal, Adv. Dr. Rakesh Gupta, Adv.
Department by	Sh. Akhilesh Kumar Yadav, Sr. DR

Date of hearing	05.12.2024
Date of pronouncement	18.12.2024

**ORDER**

**PER SATBEER SINGH GODARA, JM**

This assessee's appeal for assessment year 2015-16 is directed against the Commissioner of Income Tax (Appeals) [in short, the "CIT(A)"], Ghaziabad's order dated 31.05.2019 passed in case no. 376785631280118, involving proceedings under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. Heard both the parties. Case file perused.

3. We advert to the first and foremost issue between the parties wherein the assessee's case is that the learned lower authorities have erred in law and on facts in invoking section 40A(3) cash expenditure disallowance of Rs. 31,17,973/- in the course of assessment dated 28.12.2017, as upheld in the lower appellate discussion.

4. Learned counsel's sole substantive argument before us is that once the payments herein are made for plying/hiring or leasing goods carriage, admittedly, pre-revise the threshold limit of Rs.35,000/- which has nowhere been considered in the Assessing Officer's tabulation to this effect at page 2 in para 4 of the assessment discussion. The Revenue could hardly dispute that the assessee's instant limited prayer more requires a factual reconciliation than our substantive adjudication once it has chosen not to press for the instant first and foremost substantive ground except to this limited extent. We thus deem it appropriate to direct the learned Assessing Officer to verify all the relevant facts afresh as per law in very terms, subject to a rider that the assessee shall plead and prove its case within three effective opportunities at its his own risk and responsibility in consequential proceedings.

Ordered Accordingly. This first substantive ground is treated as partly accepted for statistical purposes to the above limited extent.

5. We come to assessee's second substantive ground that both the learned lower authorities have erred in law and on facts in invoking 20% disallowance of its salaries, wages and electricity expenses; coming to Rs. 23,57,144/- in question. We find that neither the assessee has been able to plead or prove its corresponding explanation all along thereby satisfying the rigor of section 37(1) of the Act nor the department could pinpoint any specific defect at its behest going by the corresponding entries in the audited books of account. We thus deem it appropriate in these peculiar facts that an estimated ad-hoc disallowance at the rate of 5% herein only would be just and proper subject to a rider that the same shall not be treated as a precedent. Ordered accordingly.

7. Lastly comes section 68 unexplained cash credits addition of Rs.22 lakhs which allegedly represents assessee's unsecured loans received from M/s. Shashi Metals Pvt. Ltd. It's case before us is that it had not availed any such loans as per its books of account from M/s. Shashi Metals Pvt. Ltd. Learned counsel takes us to the assessee's stand adopted to this effect which has nowhere been

specifically rejected either in the assessment or in CIT(A)'s detailed discussion. We thus deem it appropriate in these peculiar facts to restore the assessee's instant last sole issue for afresh adjudication of the learned assessing authority in very terms subject to a rider that it shall be the taxpayer's risk and responsibility to plead and prove all the relevant facts within three effective consequential proceedings in above terms.

8. No other ground or argument has been pressed before us.
9. This assessee's appeal is partly allowed in above terms.

***Order pronounced in the open court on 18<sup>th</sup> December, 2024***

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

***Sd/-***  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

Dated: 18<sup>th</sup> December, 2024.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi