

IN THE INCOME TAX APPELLATE TRIBUNAL "A(SMC)" BENCH, KOLKATA

BEFORE SHRI RAJESH KUMAR, AM

ITA No.1382/KOL/2024
(Assessment Year:2015-16)

Youth Potent Potation
C/o Atin Das Advocate
DaharpurTamlukPurba Medinipur,
Purba Medinipur, West Bengal
721636

(Appellant)

PAN No. AAIFY3860G

vs.

Income Tax Officer Ward 27(1)
Haldia, Haldia Purba Medinipur,
Haldia, West Bengal-721102

(Respondent)

Assessee by : Shri Siddharth Agarwal, AR
Revenue by : Shri Ashutosh Kumar, DR

Date of hearing: 25.03.2025
Date of pronouncement : 01.04.2025

ORDER

This is an appeal preferred by the assessee against the order of the National Faceless Appeal Centre, Delhi (hereinafter referred to as the "Ld. CIT(A)") dated 04.04.2024 for the AY 2015-16.

02. At the outset, I observe from the appeal folder that there is a delay of 20 days in filing the appeal for which the condonation petition is filed.
03. After perusing the contents of the condonation petition and hearing both the parties, I am quite convinced that the reasons for delay are bonafide, genuine and sufficient and therefore, the delay is condoned and the appeal is admitted for adjudication.
04. The issue raised in ground no. 1 is against the confirmation of addition of ₹3,81,115/- by the Id. CIT (A) as disallowed by the Id. AO u/s 40(b) of the Act.

05. After hearing the rival contentions and perusing the materials available on record I find that the Id. AO has disallowed the partners salary on the ground that the assessee could not prove whether all the 7 partners were working partners. The assessee firm is engaged in the business of retail/ trading of liquor in the name and style of M/s Youth Potent Potation. The inspector was deputed on 08.12.2017 to visit the business premises and verify the role/ business activities of the partners in the partnership firm but nothing conclusive was found. Finally, the AO allowed the salary of two partners only and disallowed the remaining salary of 5 partners and added the same to the income of the assessee.
06. I have perused the partnership deed and find that the salary paid to the partners was in consonance with the deed of partnership. The Id. CIT (A) affirmed the order of the Id. AO without giving any reasonings thereon. In our considered opinion the salary to partners has to be decided by the partners and has to be authorized by the deed of partnership subject to the overall limit as prescribed by section 40(b) of the Act. Accordingly, I am not in agreement with the conclusion drawn by the Id. CIT (A) and consequently, the order of Id. CIT (A) is set aside and the AO is directed to delete the disallowance of ₹3,81,115/-. The ground is accordingly allowed.
07. The issue raised in ground no.2, is against the confirmation of disallowance of ₹1,33,239/- by Id. CIT (A) as made by the Id. AO on account of salary & bonus and staff welfare expenses.
08. The facts in brief are that the Id. AO during the course of assessment proceedings called for the details of major expenses such as salary and bonus of ₹4,20,000/-, Carriage Outward of ₹1,24,545/-, staff welfare of ₹1,12,957/-, for which the details were produced by the

- assessee. According to the Id. AO, the assessee has not produced any details of salary, staff welfare expenses and accordingly, 25% of the total of both the expenses were disallowed.
09. Similarly, the Id. CIT (A) confirmed the same on the ground that no supporting evidences were found.
010. In our opinion the disallowance made by the Id. AO on estimation basis cannot be sustained and so the order passed by the Id. CIT (A) upholding the order of Assessing Officer. In our opinion either the total salary and bonus, staff welfare expenses could have been disallowed for treating the same as not genuine or otherwise, no partial disallowance is sustainable. Accordingly, are inclined to hold that the order passed by the Id. CIT (A) on this issue is incorrect and is accordingly, set aside the same and the Id. AO is directed to delete the addition of ₹1,33,239/-. The ground is accordingly allowed.
011. The issue raised in ground no.3, is against the confirmation of disallowance of ₹35,000/- by the Id. CIT (A) as made by the Id. AO on account of accounting charges paid to the accountant.
012. The facts in brief are that the Id. AO during the course of assessment proceedings, found that the assessee has paid ₹35,000/- as accounting charges without deduction of tax at source for which the assessee has not furnished any reply and accordingly, he disallowed and added back the same to the income of the assessee, which was confirmed by the Id. Commissioner of Income-tax (Appeals).
013. After hearing the rival contentions and perusing the materials available on record, I find that this is mainly the remuneration given by assessee to the part time accountant, who was writing the books of accounts of the assessee and therefore, no TDS is attracted on the

said payment. Accordingly, I set aside the order of the Id. CIT (A) and directed the Id. AO to delete the addition.

014. The issue raised in ground no.4, is against the disallowance of donation expenses of ₹10,000/- by the Id. AO, which was confirmed by the Id. Commissioner of Income-tax (Appeals).

015. The facts in brief are that the assessee has incurred condonation expenses, which were given to various puja pandals in Kolkata. As the assessee is running a liquor shop in the city and such type of donation are essential in order to smoothly run the business. In our opinion, the said expenses were incurred by the assessee to be wholly and exclusively to run the shop and it is supported by series of decisions, wherein it have been held that the puja expenses paid to pedals on various occasions are allowable expense. Accordingly, I set aside the order of Id. CIT (A) and direct the Id. AO to delete the addition.

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

Order pronounced in the open court on 01.04.2025.

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 01.04.2025

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT,
5. Guard file.



BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata