

आयकर अपीलिय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्ष) Before श्री जे. सुधाकर रेड्डी, लेखा सदस्य एवं/and श्री ऐ. टी. वर्की, न्यायीक सदस्य)
 [Before Shri J. Sudhakar Reddy, AM & Shri A. T. Varkey, JM]

I.T.A. No. 1693/Kol/2019
Assessment Year: 2014-15

M/s. Hamilton & Co. Ltd. (PAN:AAACH8178B)	Vs.	Deputy Commissioner of Income-tax- Circle-11(1), Kolkata.
Appellant		Respondent

Date of Hearing (Virtual)	04.05.2021
Date of Pronouncement	05.05.2021
For the Appellant	Shri Sunil Surana, FCA
For the Respondent	Shri Dhruvajyoti Roy, JCIT

ORDER

Per Shri A.T.Varkey, JM

This appeal preferred by the assessee is against the order of Ld. CIT(A)-4, Kolkata dated 30.05.2019 for A Y 2014.

2. At the outset, the Ld. AR Shri Sunil Surana, FCA submitted that though the assessee has raised 5 (five) grounds of appeal, the assessee is not pressing ground nos. 1 and 5 because these are general in nature and he is not pressing ground no. 4 since the amount involved is small i.e. Rs.7,379/-. So, these grounds 1, 4 and 5 stand dismissed. So, it is noted that assessee is only contesting ground nos. 2 and 3 which are pertaining to one issue which is reproduced as under:

“2. For that the Ld. CIT(A) has erred in confirming the disallowances made by the assessing officer u/s. 36(1)(ii) of the Income Tax Act, 1961 of Rs.15,99,169/- as bonus and commission paid to the directors as per agreements of appointment with them and were also within the limit permissible under Company Law.

3. For that the Ld. CIT(A) has erred in confirming the disallowances of bonus and commission to Directors by stating that these were not linked to any specific service rendered and without going through the facts that the whatever be the nomenclature the remuneration within the prescribed limit as per company law is allowable.”

3. In respect of the aforesaid grounds it is noted that it pertains to disallowance of bonus and commission paid to the directors to the tune of Rs.15,00,000 and

Rs.99,169/- respectively totalling to Rs.15,99,169/- as per the agreement of their appointment with the assessee; and since amount given to the directors were within the prescribed limit as per the Company Law, the claim of expenditure ought to have been allowed by the AO. According to the Ld. AR, the action of the Ld. CIT(A) to confirm the disallowance is unsustainable. And he drew our attention to the fact that similar disallowance was made by the AO in assessee's own case for AY 2013-14 and the issue came up before this Tribunal and same was adjudicated in ITA No. 1441/Kol/2018 wherein the Tribunal was pleased to allow the claim of the assessee on this issue vide order dated 20.03.2019 wherein the Tribunal has held as under:

"2. After hearing rival contentions, we find that section 36(1)(ii) of the Act reads as follows:

(ii) any sum paid to an employee as bonus or commission for services rendered, where such sum would not have been payable to him as profits or dividend if it had not been paid as bonus or commission;

3. We note that the payments in question was made to Mrs. Rekha Jalan and Mr. S.K. Jalan, who were directors of the assessee company. These payments were made pursuant to agreements for payment of bonus and commission copies of which were furnished to the Revenue. The payments were made within the limit prescribed by law. The CIT(A) upheld the disallowance on the ground that the agreements are generally worked. In our view, this is not a valid ground to make this disallowance. Agreements are to be understood in such a way in which both the parties to the agreement, desired and understood. Section 36(1)(ii) does not apply in this case. Hence, we allow the grounds of the assessee."

4. Since the Tribunal has already adjudicated the very same issue in favour of the assessee and since there is no change in facts or law, we respectfully following the order of the coordinate bench allow the claim of the assessee and direct the AO to delete the addition of Rs.15,99,169/-.

5. In the result, the appeal of assessee is partly allowed.

6. Order is pronounced in the open court on 5th May, 2021.

Sd/-
(J. S. Reddy)
Accountant Member

Sd/-
(A. T. Varkey)
Judicial Member

Date: 5th May, 2021

Jd (Sr. PS.)

Copy forwarded to –

1. Appellant – M/s. Hamilton & Co. Ltd., Ground Floor, Empire House, A. K. Nayak Marg, Fort, Mumbai-400 001.
2. Respondent - Pr. CIT-10, Kolkata.
3. CIT(A)-4, Kolkata. (Sent through e-mail)
4. CIT , Kolkata.
5. DR, ITAT, Kolkata. (Sent through e-mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata.