

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.4614/Del/2019
Assessment Year: 2013-14

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| Sh. Karam Singh Malik, 555, Veer Bazar Gali, Kapashera, Delhi | Vs. | Income Tax Officer, Ward-44(4), New Delhi |
| PAN :AIIPM1627R | | |
| (Appellant) | | (Respondent) |

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| Appellant by | Sh. Suresh Anand, CA |
| Respondent by | Sh. Om Parkash, Sr. DR |

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| Date of hearing | 28.07.2022 |
| Date of pronouncement | 25.10.2022 |

ORDER

This is an appeal by the assessee against order dated 05.02.2019 of learned Commissioner of Income-tax (Appeals)-15, Delhi for the assessment year 2013-14.

2. In ground no. 2, the assessee has challenged disallowance of Rs.27,26,550/-, being deduction claimed under section 36(1)(ii) of the Income-tax Act, 1961 (in short 'the Act') for bonus paid to employees and workers.

2.1 Briefly the facts are, the assessee is a resident individual. For the assessment year under dispute, the assessee filed his

return of income on 28.09.2013 declaring income of Rs.13,50,327/- . In course of assessment proceeding, the Assessing Officer, while verifying the return of income and financial statement found that the assessee is engaged in the business of providing placement and contract labour services and providing manpower solutions as per requirement. On perusing the Audit Report, he found that the assessee has claimed deduction of Rs.27,26,550/-, being bonus paid to employees. Being of the view that such payment is in violation of provision contained under section 36(1)(ii) of the Act, the Assessing Officer disallowed the amount. The disallowance so made, was sustained by learned Commissioner (Appeals).

2.2 Before me, learned counsel appearing for the assessee submitted that the Departmental Authorities have erroneously concluded that the deduction claimed was in violation of section 36(1)(ii) of the Act. He submitted, in Audit Report, the Auditor in column 16(1) of the Audit Report has erroneously mentioned that the amount was otherwise payable to the employees as profits and dividends. He submitted, latching on to this inadvertent mistake, the disallowance has been made. He submitted, the payment of bonus to employees cannot be equated with profits or

dividend payable. In support of such contention, he relied upon a decision of the Special Bench of the Tribunal in case of M/s. Dalal Broacha Stock Broking Pvt. Ltd. Vs. Addl. CIT, in ITA No. 5792/Mum./2009, dated 22.06.2022. Thus, he submitted, deduction claimed is allowable under section 36(1)(ii) of the Act.

2.3 Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

2.4 I have considered rival submissions and perused the materials on record. It is observed, in column no. 16(a) of the Audit Report, the Auditor has mentioned that the amount of Rs.27,26,550/- was otherwise payable to him as profits or dividend. Relying upon this note of the Auditor, the Assessing Officer disallowed the deduction claimed by the assessee on account of bonus to employees. On a perusal of the impugned order of learned Commissioner (Appeals), it is observed, though, the assessee contended that it is a mistake committed by the Auditor in mentioning the deduction claimed at column no. 16(a) of the Audit Report instead of clause 21(b). However, learned Commissioner (Appeals) declined to accept such claim of the assessee on the reasoning that the assessee failed to obtain a

certificate from the Auditor acknowledging the mistake. However, before me, the assessee has furnished certificate dated 15th February, 2019 issued by the same Auditor acknowledging the mistake in reporting the bonus paid to the employee. Of course, the assessee has filed the aforesaid document as additional evidence.

2.5 Be that as it may, the grievance of learned Commissioner (Appeals) regarding non-furnishing of fresh certificate from the Auditor has now been addressed. However, considering the fact that this document was filed as an additional evidence for the first time before him, the Assessing Officer is directed to factually verify the certificate issued by the Auditor and allow the deduction. This is so because, in case of M/s. Dalal Broacha Stock Broking Pvt. Ltd. (supra), the Special Bench of the Tribunal, after analyzing the provisions of section 36(1)(ii) of the Act, has held that any sum paid to an employee as bonus or commission for services rendered has to be allowed as deduction as the reasonableness of the payment or adequacy of services rendered by the employee are not relevant factors in deciding the allowability of deduction. The Bench has held that disabling provision of section 36(1)(ii), which provides that “if the sum so

paid is in lieu of profit or dividend" applies only to employees who are partners or shareholders. In the facts of the present appeal, there is no finding that the employees are either partners or shareholders of the assessee. That being the case, assessee's claim has to be allowed. This ground is allowed.

3. The next issue arising in ground no. 3 relates to addition of Rs.4,56,000/- under section 68 of the Act.

3.1 Briefly the facts are, in course of assessment proceeding, the Assessing Officer, while examining the balance-sheet noticed that in the year under consideration, the assessee had shown unsecured loan of Rs.4,56,000/-. Therefore, he called upon the assessee to prove the genuineness of such loan transaction. Alleging that the assessee failed to furnish the information called for to prove the genuineness of the loan transaction, the Assessing Officer added back the amount of Rs.4,56,000/- to the income of the assessee. Though, the assessee contested the addition, however, the addition was sustained by learned Commissioner (Appeals).

3.2 I have considered rival submissions and perused the materials on record. As discussed earlier, the Assessing Officer made the addition alleging that the assessee did not furnish the

required information to prove the loan transaction. However, it is observed, before the first appellate authority, the assessee produced additional evidences, such as, the bank statements of lenders, copy of Income Tax Return etc. to prove the genuineness of loan transaction. However, learned Commissioner (Appeals) refused to admit the additional evidences. In case, the assessee for some reasons was unable to furnish the evidences to prove the loan transaction before the Assessing Officer and produced the requisite documents by way of additional evidence before learned Commissioner (Appeals), they should not have been rejected, merely because, the Assessing Officer in the remand report observed that such evidences should not be admitted. There can be various factors which could have prevented the assessee from furnishing the requisite documents before the Assessing Officer. However, if the assessee files such documents before learned Commissioner (Appeals), they should not be rejected on technicalities, considering the fact that such evidences may have a crucial bearing in deciding the issue. In view of the aforesaid, I am inclined to restore this issue to the file of the Assessing Officer for fresh adjudication, after considering the evidences filed by the assessee. Needless to mention, the Assessing Officer must provide

reasonable opportunity of being heard to the assessee before deciding the issue.

4. In the result, appeal is partly allowed.

Order pronounced in the open court on 25th October, 2022

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 25th October, 2022.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

