

आयकर अपीलीय अधिकरण “B” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री रमित कोचर लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAMIT KOCHAR, AM

आयकर अपील सं./ ITA No. 2360/Mum/2017

(निर्धारण वर्ष / Assessment Year 2011-12)

Benninger India Private Limited 415, Sunshine Plaza, Naigaon Cross Road, Dadar (East) Mumbai-400 014	Vs.	The Dy. Commissioner of Income Tax-1(1) Aayakar Bhavan, M.K. Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
स्थायी लेखा सं./PAN No. AABCB2382E		

अपीलार्थी की ओर से / Appellant by	:	Shri Ishwer Prakash Rathi, AR
प्रत्यर्थी की ओर से / Respondent by	:	Shri S.K. Mitra, DR

सुनवाई की तारीख / Date of hearing:	06-09-2018
घोषणा की तारीख / Date of pronouncement :	28-09-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal of the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-2, Mumbai [in short CIT(A)], in appeal No. CIT(A)-2/IT/44/2014-15, dated 17.01.2017. The Assessment was framed by the Dy. Commissioner of Income Tax, Circle-1(1), Mumbai (in short 'DCIT/ AO') for the A.Y. 2011-12 vide order dated 25.03.2014 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing the professional fee of ₹ 62,500/- considering the same as prior period expenditure. For this assessee has raised the following ground No. 1: -

“1. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) has erred in confirming disallowance of professional fees of Rs 62,500/- as a prior period expenditure.”

3. Briefly stated facts relating to this issue are that the assessee has claimed expenses in the profit and loss account on account of legal expenses. The AO noticed that this amount pertains to earlier period i.e. for AY 2011-12 and not for the relevant AY 2012-13. Accordingly, the AO disallowed the expenses and added back to the returned income of the assessee. Aggrieved, assessee preferred the appeal before CIT(A), who further held that the invoice relates to January 2010 to March 2010 i.e. relating to FY 2009-10 relevant to AY 2010-11 and furthermore, it was observed that the expenditure can be treated as capital in nature and hence directed the AO to allow depreciation as per law. Aggrieved, now assessee is in second appeal before Tribunal.

4. We have heard the rival contentions and gone through the facts and circumstances of the case. Before us, the learned Counsel for the assessee explained that these payments relates to legal and professional charges paid to advocate and solicitors for the period of January 2010 to March 2010. It was explained that the concerned advocate/solicitor raised the invoice on 20th July 2011 for a total sum of ₹ 3,12,501/- towards professional fee for the period 01.01.2010 to 31.03.2011, which was received by the assessee in the month of July 2011 itself. It was claimed



that the assessee booked the said invoice as on 31.03.2011 in its book of accounts. Although, the professional fee for the sum of ₹ 62,500/- pertains to the period 01.01.2010 to 31.03.2010 i.e. prior year charges but the said amount included in the current years invoice and even this came to the knowledge of the assessee on payment of the said bill which arose during the FY 2010-11 relevant to AY 2011-12. It was claimed that the payment of the said liability crystallised during the year 2011-12 itself and hence, this expense for practical purposes is to be considered as current year charge and hence, it should be allowed. The learned Sr. Departmental Representative, only supported the assessment order and the order of CIT(A).

5. Before us, the assessee relied on the bill raised by advocate and solicitor Shri T. Pooran, wherein professional charges from 01.01.2010 to 31.03.2011 was charged by a consolidated bill dated 21.07.2011 for an amount of ₹ 3,12,501/-. There is no dispute in the facts that the amount of ₹ 62,500/- pertains to the period of 01.01.2010 to 31.03.2010 relevant to AY 2010-11 i.e. prior period. But it is to be noted that the liability for this demand has been crystalized only on raising of bills by the concerned advocate cum solicitor vide bill dated 21.07.2011. Hence, we are of the view that these expenses are to be allowed because as the AO has never doubted the genuineness of the expenses. As the liability has been crystalized during the AY 2011-12 and assessee has rightly claimed the same. We allow the claim of the assessee and set aside the orders of the lower authorities. This issue of the assessee's appeal is allowed.

6. The next issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance of remuneration paid to director to the extent of ₹ 8,41,528/-. For this assessee has raised the following ground No. 2: -



“2. On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) has erred in confirming disallowance of directors remuneration to the extent of Rs 8,41,528/-.”

7. Briefly stated facts are that the assessee company paid a sum of ₹ 32,41,528/- being remuneration to its managing director Shri G.N. Guruprasad. The assessee is unlisted closely held company and it was 99.99% subsidiary of M/s Beginninger AG a Swiss Company. The Managing director of the assessee is a professional director but does not hold any equity/share capital of the assessee. The assessee company claimed as deduction of remuneration paid to the Managing Director but the AO while framing the assessment disallowed part of the remuneration of ₹ 8,41,528/- by invoking the provisions of section 40A(2) of the Act by stating that the payment made was excessive of the limits prescribed under companies Act 1956 and hence, it was in violation of Company Law as no permission was obtained from the Central Government. Further, the remuneration paid during the immediate preceding assessment year was an amount of ₹ 17,04,204/- as against remunerations paid during the current assessment year i.e. ₹ 32,41,528/-. Accordingly, the AO disallowed the part of remuneration of ₹ 8,41,528/- by invoking the provisions of section 40A(2) of the Act. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the action of the Assessing Officer. Aggrieved now assessee is in second appeal before Tribunal.

8. Before us, the learned Counsel for the assessee submitted that the managing director Shri G.N. Guruprasad does not held any equity shares in the assessee company and hence assessee is being taxed under the



highest slab rate. It was also claimed that the assessee company was not liable for tax due to substantial losses year to year. According to the learned Counsel there is no scope evasion of tax and in term of CBDT Circular No. 6P dated 6th July 1968 explaining the pre-requisites invoking the provisions of section 40A(2) of the Act are missing. The relevant circular states that it should be borne in mind that the provision is meant to check evasion of tax through excessive or unreasonable payments to relatives and associate concerns and should not be applied in a manner which will cause hardship in bonafide cases. Further, the learned Counsel for the assessee stated that on plain reading of section 4A(2) of the Act, it is clear that the disallowance can be made only and only after considering the fair market value of goods and services or facilities for which payment is made. Further, these expenses are for legitimate business need of the assessee and assessee has derived benefit by incurring these payments. For this the learned Counsel for the assessee also stated that the managing Director is B Tech Graduate in Textile Chemistry from Mumbai University, Department of Chemical Technology and passed out in 1985 and joined Century Spinning and manufacturing cotton mills as management trainee. It was stated that the managing director was paid remuneration based on qualification, long standing experience in textile industry as per industry norms. It was explained that the assessee filed a detail note on the background and achievements of the managing Director in the Textile field. Further, the remuneration paid to managing director in the previous year cannot be a criterion for invoking the provisions of section 40A(2) of the Act as the assessee's turnover stood at ₹ 283 lakhs as compared to ₹ 99 lakhs in immediately previous year. This has resulted into rise of 185% in turnover. The learned Counsel for the assessee also explained that in view of notification G.S. R No. 70 dated 8th February 2011 issued by the Ministry



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of Corporate Affairs, Government of India, Unlisted Public Limited companies are not required to obtain any permission where the remuneration of Director's exceeds limits in cases where they have no or inadequate profits relevant extract of the aforesaid notification dated 8th February 2011 is reproduced below: -

“2. The primary purpose of regulations over managerial remuneration is to protect stakeholders, particularly shareholders and creditors. Unlisted companies are in several respects similar to private limited companies. A substantial number of the applications coming to the Ministry fall under this category and the Ministry's limited manpower is disproportionately involved in, this exercise. In the case of unlisted companies so long as the conditions specified in Schedule XIII, including special resolution of shareholders and absence of default on payment to creditors, are fulfilled approval will not be needed hereafter.

3. Accordingly, Schedule XIII of the Companies Act 1956 is being amended to provide that unlisted companies (which are not subsidiaries of listed companies) shall not require Government approval for managerial remuneration in cases where they have no profits/ inadequate profits, provided they meet the other conditions stipulated in the Schedule.”

None of the above factual aspect was contradicted by the learned Sr. Departmental Representative.



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9. After hearing rival contentions and going through the facts and circumstances of the case narrated in detail above, we are of the view that there is no tax evasion and there is reasonableness of managerial remuneration. Now no approval is required from the Central Government for making payment of higher remuneration even in case of loss in the case of unlisted public company. In view of these facts, we are of the view that this is allowable expenditure and we allow the same accordingly. Orders of the lower authorities are reversed and this issue of assessee's appeal is allowed.

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

Order pronounced in the open court on 28-09-2018.

Sd/-

(रमित कोचर / RAMIT KOCHAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 28-09-2018

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai