

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

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 5199/Del/2018 : Asstt. Year : 2014-15

Changex Services Pvt. Ltd., D-134, 1 st Floor, East of Kailash, New Delhi-110065	Vs	Income Tax Officer, Ward-6(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAEC3268P		

Assessee by : Sh. Sharad Shah, CA

Revenue by : Ms. Alka Gautam, Sr. DR

Date of Hearing: 26.08.2021

Date of Pronouncement: 01.09.2021

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT(A)-2, New Delhi dated 11.05.2018.

2. The Assessing Officer disallowed the salary and incentives paid to the Directors of Rs.1,05,00,000/- u/s 40A(2)(a). The Id. CIT (A) confirmed the addition to the extent of 75% and allowed 25% of the claim holding it as reasonable.

3. The relevant undisputed facts examined for adjudication for the issue were that,

- a. The assessee company was incorporated in March 2011, engaged in Consultancy Services, having two shareholder Directors namely, Mr. Shalabh Sahai and Rahul Nainwal.
 - b. Owing to its nascent stage of set-up, the shareholder/Directors i.e. Mr. Shalabh Sahai and Rahul Nainwal, did not draw any expenditure towards, their 'Salary/ Remuneration/ Incentives'.
 - c. During the current year, the Directors received (i) a 'Directors Remuneration' of Rs.1,00,000/-; and (ii) an 'Incentive' of Rs.1,05,00,000/-.
 - d. The amount was treated as 'Salary' in the hands of the Directors and TDS was accordingly deducted u/s 192 of the Act.
 - e. The AO had questioned the transaction under Section 40A(2)(a) of the Act between the assessee company and the two Shareholder/ Directors and sought for submission of documents to substantiate/ prove the 'reasonableness of the payment along with supporting evidences'.
 - f. The AO held that the amounts paid is unreasonable and also that it was a strategy to benefit the Directors instead of paying the dividend by the company. The AO held that it was a ploy to avoid payment of dividend tax.
4. Heard the arguments of both the parties and perused the material available on record.

5. We find that the Directors were MBA holders from the institution known as IRMA, Anand. It is a fact on record that the shareholder Directors have not drawn much salary in the earlier years owing to nascent stage of formation of the company. While disallowing the remuneration paid u/s 40A(2)(a), we find that the AO has not determined the "fair market value of the services" in comparison with any other "industry averages". Moreover, in the instant case, even if it is presumed that the dividend has been declared by the company, then also it would have been received by the shareholder Directors only. The recipients would enjoy the tax free benefit. The finding of the AO that payment of high salary is a ruse to avoid payment of dividend tax is not found to be on a reasonable ground as the receipt of salary by the Directors is taxed at maximum marginal rate. Similarly, we are unable to sustain the *raison d'être* of the Id. CIT (A) restricting the disallowance to 75% without any good enough reason.

6. In a nutshell, the disallowance made by the authorities u/s 40A(2)(a) without examining any analogous cases cannot be sustained.

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

Order Pronounced in the Open Court on 01/09/2021.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 01/09/2021

Subodh Kumar, Sr. PS

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member