

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI

BEFORE HON’BLE SHRI PAVAN KUMAR GADALE, JM
AND

HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

(Hearing through Video Conferencing Mode)

आयकरअपील सं./ I.T.A. No.275/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s Edwise Consultants Pvt. Ltd. Jer Mahal, Opp. Metro Cinema Dhobi Talao, Mumbai – 400 002	बनाम/ Vs.	DCIT-Circle 4(1)(2) 642, Aaykar Bhawan M.K.Road, Mumbai – 400 020
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAACR-2363-N		
<input type="checkbox"/> पीलार्थी/ Appellant	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Rajeev Khandelwal – Ld. AR
Revenue by	:	Shri T.R.Khalsa-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	30/12/2020
घोषणा की तारीख / Date of Pronouncement	:	30/12/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. In the captioned appeal for Assessment Year (AY) 2012-13, the assessee is aggrieved by confirmation of disallowance of Rs.13 Lacs by Ld. Commissioner of Income Tax (Appeals)-2, Mumbai [CIT(A)], Appeal No.CIT(A)-2/IT/10084/2018-19 dated 30/08/2018. The impugned disallowance was made by Ld. AO invoking the provisions of Sec.40A(2)(a) while framing assessment u/s 143(3) on 19/03/2015.

2. The Ld. AR relied on the order of this Tribunal in assessee’s own case for Assessment Years 2008-09 to 2010-11, ITA Nos. 5376/Mum/2011 & ors., common order dated 14/10/2015 to submit

that similar disallowance made in those years has been deleted by the Tribunal. The Ld. DR, on the other hand, drawing attention to the orders of lower authorities, submitted that the assessee paid excessive remuneration despite reduction in overall profitability and turnover.

We have carefully heard the rival submissions. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

3. The impugned disallowance stem from the fact that the assessee paid aggregate remuneration of Rs.130 Lacs to three of its directors, as tabulated in para 5.1 of the order. The disallowance stem from the fact that there was reduction in profit to Rs.9.85 Crores during the year as against Rs.10.26 Crores in the preceding year. Similar fall in overall revenue was noted which led Ld. AO to conclude that the remuneration was excessive and unreasonable in terms of Sec.40(2)(a) and accordingly, he made adhoc disallowance of 10% against the remuneration so paid by the assessee.

The stand of Ld. AO, upon confirmation by Ld.CIT(A), is in further appeal before us.

4. Upon careful consideration of factual matrix as enumerated in preceding paragraphs, it is quite discernible that the adhoc disallowance of 10% has been made only in view of the fact that there was overall reduction in profit and turnover during the year. The said reasoning, on standalone basis, would not suffice to make adhoc disallowance of legitimate business expenditure incurred the assessee. Upon perusal of documents on record, we find that the

assessee as well all the three director fall within the maximum tax bracket and the assessee would not gain anything by booking excessive expenditure. The remuneration so paid by the assessee has been reflected by directors in their respective Income Tax Returns. No violation of any rules under The Companies Act has been demonstrated before us while paying the stated remuneration. Pertinently, the Tribunal, on similar facts and circumstances, in AYs 2008-09 to 2010-11, deleted the disallowance by observing that the Ld.AO had not examined the claim of the assessee in terms of mandatory conditions prescribed in Sec.40(2)(a) which cast an onus on the Ld. AO to determine the excessive payment having regard to the market value of the goods, services or facilities for which he payment was made or having regard to legitimate business needs of the assessee. We find similar factual matrix in this year. Further, the facts of the case are covered by the ratio of binding decisions of Hon'ble Bombay High court in **CIT V.s Indo Saudi Services Travels Pvt. Ltd. (310 ITR 306)** as well as **V. S. Demo & Co. P. Ltd. (336 ITR 209)**. Going by the same, we are inclined to delete the impugned adhoc disallowance of Rs.13 Lacs. This ground stand allowed. No other grounds have been urged before us.

5. The appeal stands partly allowed in terms of our above order.

Order pronounced on 30th December, 2020.

SD/-

(Pavan Kumar Gadale)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 30/12/2020
Sr.PS, Sudip Sarkar

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.