

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E': NEW DELHI
(Through Video Conferencing)**

**BEFORE,
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.2091/Del/2017
(ASSESSMENT YEAR 2012-13)**

Orange Associates Pvt. Ltd. (Formerly One Source Education Pvt. Ltd.) 9, Near Telephone Exchange, Daryaganj, New Delhi-110 002. PAN -AAACS 1177K (Appellant)	Vs.	Asst. CIT, Circle-22(1), New Delhi (Respondent)
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Appellant By	Sh. Tanpreet Kohli, CA.
Respondent by	Ms. Rakhi Vimal, Sr. DR
Date of Hearing	05.01.2021
Date of Pronouncement	05.01.2021

ORDER

PER SUDHANSHU SRIVASTAVA, JM:

This appeal is preferred by the assessee against order dated 19.01.2017 passed by the Learned Commissioner of Income Tax (Appeals)-8, New Delhi {CIT(A)} for Assessment Year 2012-13.

The sole grievance of the assessee is upholding the disallowance of Rs.12,60,000/- u/s 40A (2) (b) of the Income Tax Act, 1961 (hereinafter called 'the Act).

2.0 The brief facts of the case are that the assessee company is engaged in the business of publishing books for the school students. The return of income was filed declaring taxable income of Rs.3,99,96,730/-. After processing of the return, the assessee's case was selected for scrutiny. During the course of assessment proceedings, it was noticed by the Assessing Officer that there was an exponential increase in the Directors' remuneration whereas the salaries of other employees had remained static. The assessee had debited Rs. 84,00,000/- as Directors' remuneration which the Assessing Officer held to be a colorable device to siphon the profits of the assessee company. The Assessing Officer was of the opinion that the assessee could not justify the increase in the Directors' remuneration. The Assessing Officer proceeded to disallow 50% of the remuneration i.e. Rs.42 lacs and added back the same to the income of the assessee.

2.1 The assessee's appeal before the Ld. CIT (A) was partly allowed with the Ld. CIT (A) holding that 50% disallowance was excessive. He restricted the disallowance to Rs.12,60,000/- which is the subject matter of the present appeal before this Tribunal. The grounds raised by the assessee are as under:

"1. That the Authorities below erred both in law and on the facts in invoking the provisions of Sec.40(2)(b) ignoring the facts on record and rejecting the explanation of the assessee in the summary manner. Thus, the addition of Rs.12,60,000.00 as confirmed by the CIT(Appeals) is liable to be deleted.

2. That the Authorities below erred both in law and on the facts in the estimations of excessive salary paid to the Directors @ 15% i.e. Rs.15,50,000.00 out of gross salary paid of Rs.84,00,000.00 to the Directors is excessive, wrong baseless and its based on surmises & conjecture. Thus the disallowance of Rs.12,60,000.00 is liable to be deleted.

3. That the orders of the Authorities below are bad in law and on the facts of the case.

4. That the orders passed are erroneous, illegal and against the principles of natural justice and equity as well as the well settled laws

5. The appellant may kindly be permitted to add more at the time of hearing of appeal."

3.0 The Ld. Authorized Representative submitted that undisputedly there was a substantial increase in the salary of the Directors during the year under consideration but it was to be appreciated that there had been no increase in the salary since April, 2007, whereas the financial performance of the company had improved considerably with there being a quantum jump in the turnover and the net profits of the assessee company during the preceding five assessment years. The Ld. Authorized Representative submitted that the Assessing Officer had made the disallowance in an arbitrary manner without bringing on record any comparable cases where the salary for similar work to people having similar qualifications was being paid at a lower rate. It was submitted that in absence of any material being brought on record to demonstrate as to how the salary paid to the Directors was excessive or was not comparable with market rates, no part of such remuneration could have been legally disallowed in terms of section 40A (2) (b). The Ld. Authorized Representative also submitted that the company as well as Directors to whom the remuneration had been paid were all in the highest tax rate bracket and, therefore, the allegation of the

Assessing Officer that the same was a colorable device to avoid tax was also incorrect.

4.0 Per contra, the Ld. Sr. DR supported the orders of the Lower Authorities and vehemently argued that even if the comparable cases had not been cited by the Assessing Officer, the fact remained that there was 775% increase in the Directors' remuneration and, therefore, since the assessee had failed to justify such increase, disallowance was very much in order.

5.0 We have heard the rival submissions and have also perused the material on record. Undisputedly, there has been a 775% increase in the remuneration to the Directors as compared to the earlier Assessment Years. All the same, it is settled law that although the objective of section 40A(2) is to prevent evasion of tax through excessive or unreasonable payments, but this provision should not be applied in a manner which will create hardship in *bona fide* cases. A perusal of the assessment order shows that the Assessing Officer has not brought any comparable cases on record to establish and buttress his allegation that the salary paid to the Directors was excessive as compared to the salary being paid to

similar persons with similar qualifications and experience. The Ld. CIT (A), though has given partial relief to the assessee by limiting the disallowance to Rs.12,60,000/-, also did not consider this aspect of the case and has reduced the disallowance in an *ad hoc* manner. It is also undisputed that the assessee company as well as Directors both are in the same tax bracket, which is the highest in their cases and, therefore, there can be no question of any evasion of tax by paying remuneration to the Directors. The CBDT Circular No.6-P dated 6th July, 1968 clearly states that no disallowance is to be made u/s 40A (2) in respect of payments made to relatives and sister concerns where there is no attempt to evade tax. Clearly no case of evasion of tax can be made out in the present appeal. This circular is binding on the Department and since no motive to evade tax is established and further since the Assessing Officer has not pointed out any comparables to demonstrate that the salary paid to Directors was excessive, we have no option but to set aside the order of the Ld. CIT (A) and while doing so, we direct the Assessing Officer to delete the entire addition. While doing so, we place reliance on the following judicial precedents:

- (a) CIT vs. Spank Hotels Ltd., [2014] 50 taxmann.com 452 (Delhi)
- (b) Amit Mehra vs. ITO, [2020] 116 taxmann.com 870 (Delhi Trib.)
- (c) Tally Solutions (P.) Ltd. vs. DCIT, [2011] 8 ITR (1) 434 (Bangalore)
- (d) ACIT vs. Doon Valley Motors, [2006] 10 SOT 525 (Delhi)
- (e) Divakar Solar System Ltd. vs. DCIT, [2017] 88 taxmann.com 770 (Kolkata-Trib.)
- (f) Sigma Research & Consulting (P.) Ltd. vs. CIT, [2019] 103 taxmann.com 397 (Delhi)
- (g) CIT vs. Indo Saudi Services (Travel), [2009] 310 ITR 306 (Bombay)
- (h) PCIT vs. Gujarat Gas Financial Services Ltd., [2015] 60 taxmann.com 483 (Gujarat)
- (i) CIT vs. V.S. Dempo & Co. (P.) Ltd., [2010] 8 taxmann.com 159 (Bombay)
- (j) CIT vs. Siya Ram Garg (HUF), [2012] 20 taxmann.com 622 (Punjab & Haryana).

6.0 In the final result, the appeal of the assessee stands allowed.

Above decision was announced on conclusion of Virtual Hearing on 5th January, 2021.

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 05/01/2021

PK/PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI