

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

ITA No.382 of 2014 (O&M)

Date of decision: 03.03.2015

Commissioner of Income Tax-I, Ludhiana

....Appellant

Versus

M/s Kudu Industries, Ludhiana

.....Respondent

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE G.S.SANDHAWALIA**

Present: Mr.Rajesh Katoch, Advocate, for the appellant.

G.S.Sandhawalia J.

CM No.24208-CII of 2014

Application for condonation of delay of 69 days in filing the appeal, is allowed, in view of the averments made in the application, which are duly supported by an affidavit of the Commissioner of Income Tax-I, Ludhiana (for short, the 'CIT').

CM No.24209-CII of 2014

Application for exemption to file true copies of the assessment order dated 16.12.2011 (Annexure A-I), CIT(A)'s order dated 06.09.2012 (Annexure A-II) and ITAT's order dated 23.12.2013 (Annexure A-III), is allowed, in view of the averments made in the application, which are duly supported by an affidavit of the CIT.

ITA No.382 of 2014

The present appeal, preferred by the Revenue, has been filed under Section 260A of the Income Tax Act, 1961 (for short, the 'Act'), against the order dated 23.12.2013 (Annexure A-III), passed by the Income Tax Appellate

No.1252/Chd./2012, for the assessment year 2009-10.

The Revenue has claimed the following questions of law for determination by this Court:

“(a) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was correct in deleting the disallowance u/s 40A(2)(b) made by the Assessing Officer after examining the unreasonableness of the huge salary paid to Mr. R.S.Saluja vis-a-vis the profits & turnover of the firm as well as average salary being paid to the management personnel by its group company, i.e. SEL Manufacturing Ltd. which has more than 13 times the turnover than the assessee firm.

(b) Whether on the facts and in the circumstances of the cases and in law, the Hon'ble ITAT was correct in deleting the disallowance u/s 40A(2)(b) made by the Assessing Officer, ignoring the fact that the profits of the firm and the individual for the Asstt. Year 2009-10 are not taxable at the same rate, as the profits of the firm for Asstt. Year 2009-10 are taxable at the flat rate of 30.90% and the individual assessee has the benefit of tax slabs? ”

The Joint Commissioner of Income Tax (OSD) Circle-I, Ludhiana, being the Assessing Officer (for short, the 'AO'), vide order dated 16.12.2011 (Annexure A-I), noticed that the respondent-assessee/firm had paid an amount of ₹24 lacs to Shri R.S.Saluja, who is father of one of the partners and a person covered under Section 40A(2)(b) of the Act. Accordingly, justification was sought as to why the salary should not be treated as excessive and the reply of the assessee was rejected wherein the background of the person was explained as to how he could contribute towards the direction in which the company could be taken. The fact that the turn-over of M/s SEL Manufacturing Company Ltd. was ₹590 crores while that of the assessee/firm was ₹48 crores, weighed with the AO whereby it came to the conclusion that the monthly taxable profits were ₹1.47 lacs while the salary paid to the said person was ₹2 lacs, which was more than the total profits of the firm, per month. Accordingly, the AO came to the conclusion

of salary, amounting to ₹18 lacs was disallowed under Section 40A(2) and added back to the income of the assessee.

The CIT, vide order dated 06.09.2012 (Annexure A-II), rejected the contention of the Revenue and allowed the appeal by holding that the AO could not substitute the wisdom of the partners of the firm to hold that the salary was excessive and unreasonable. Accordingly, the disallowance made by the AO was directed to be deleted by noticing that both the assessee/firm as well as Shri R.S.Saluja were on the same tax bracket and his experience would take the assessee/firm to greater heights and the appeal was partly allowed.

The Revenue filed an appeal against the said order of the CIT before the Tribunal, which came to the conclusion that the Revenue had failed to point out any motive of tax planning or tax advantage under the Act and what had to be seen is whether the said expenses were excessive or unreasonable with regard to the services or facilities being provided. It was, accordingly, held that except doubting the genuineness of the said expenditure, there was no other finding that the expenditure was excessive or unreasonable. Resultantly, the appeal of the revenue was dismissed, which led to the filing of the present appeal, challenging the said findings recorded.

Counsel for the Revenue has argued that the monthly profits of the assessee/firm was only ₹1.47 lacs while the salary of Shri R.S.Saluja was ₹2 lacs and therefore, the question of law, framed above, arose as there was unreasonableness of the huge salary paid and comparison could not be made to M/s SEL Manufacturing Company Ltd.

The said submission, is without any basis. The assessee, in its reply, had given justification of the salary and given the following reasons for the high salary being paid to Shri R.S.Saluja:

“Sh. Ram Saran Saluja is aged about 68 years, who promoted the R.S.Saluja Group in 1969. He holds a bachelors degree in arts from Punjab University. He is the main person behind the establishment and growth of the RS Saluja Group (Group) and development. He has over 40 years of experience in the textile industry. He has started with a modest business to manufacture hosiery products and knitted fabrics catering to the domestic market. Over the years he has evolved as an integrated textile player with presence in all the value added segments, from yarn manufacturing, dyeing to manufacture of dyed knitted cloth and garments. Kudu Industries is the flagship concern of R S Saluja Group. Mr. R.S.Saluja looks after the complete function of production planning of yarn and fabric dyeing and has been able to achieve the sale level of more than Rs. 48 Crores for the year under consideration. He provides strategic direction in selection of technology and machineries, in setting up of new manufacturing facilities and improvement of production processes, exploring and diversifying into new ventures. The group turnover is more than 1000 crores as on date. Keeping in view, his services and experience, contribution etc. the payment account of salary made to him quite reasonable.”

The justification, thus, would go on to show that the said person is successfully running the business of the group which had a return of more than thousand crores, on account of his experience. The main company he had established way back in 1969 and due to his experience of over four decades, he had also been able to help the respondent/assessee concern to achieve the sale level of ₹48 crores. Merely because the company was, at present, earning low monthly taxable profits, would not be a ground, as such, to disallow the salary to the tune of ₹2 lacs per month, which Shri R.S.Saluja was being paid, keeping in view his background, experience and therefore, it cannot be said that he was a man of straw. The CIT and the Tribunal both have recorded a finding that it is not that the said person was taxed at a lower rate than that of the assessee-firm and therefore, they had correctly held that the AO could not substitute the

unreasonable. The findings which have been recorded are purely on facts arising out of the peculiar circumstances of the case and no question of law, as such, arises out of the facts of the case which would require adjudication as has been sought to be contended.

Accordingly, finding no merit in the present appeal, the same is dismissed.

(S.J.Vazifdar)
Acting Chief Justice

(G.S.Sandhawalia)
Judge

03.03.2015
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