$~64

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 13/2019

SIROHI DETECTIVES & SECURITIES AGENCY (P) LTD ..... Appellant

Through: Mr. S. Krishnan, Advocate.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX ..... Respondent

Through: Appearance not given.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

O R D E R

% **14.01.2019**

CM No. 1267/2019

Application for condonation of delay of 57 days in re-filing of the appeal is allowed for reasons stated in the application.

ITA No. 13/2019 And CM No. 1266 (Application for condonation of 87 days in filing the appeal)

Before issuing notice on the application for condonation of delay of 87 days, we have deemed it appropriate to examine the appeal on merits.

2. The impugned order, dated 15.2.2018 of the Income Tax Appellate Tribunal ('Tribunal' for short) dismisses the appeals preferred by the appellant, SIROHI DETECTIVES & AGENCIES (P) LTD for the

Assessment Years 2002-2003 and 2003-2004. The present appeal under Section 260A of the Income Tax Act, 1961 (‘Act’, for short) pertains to Assessment Year 2002-2003.

3. The appellant assessee, during the Assessment Year, was engaged in providing security guards to many corporates, private sector undertakings and other organizations.

4. The impugned order has sustained disallowance of Rs. 11,39,222/- in terms of the order passed by the Commissioner of Income Tax (Appeals) out of the salary payable account for the following reasons: -

> " After hearing both the sides and perusing the materials on record and the orders of the authorities below, we find that the assessee did not produce any evidence regarding outstanding payments appearing in the balance sheet at the end of both the financial years. The assessee has submitted that no any defect has been pointed out by the authorities below is not correct because he did not produce the books of account before them. The assessee has shown huge amount of sundry creditors payable to security guards which is 43.34% of the total salary debited into profit and loss account which comes equal to five months' salary. However, on perusal of the balance sheet for both the years under consideration, we find that the closing, balance in bank is Rs.22,01,036/- and Rs.21,76,150/- at the end of the year. We also find that the salary to staff payable in both the years was Rs.1,14,43,166/- and Rs.91,24,308/- which comes near about 5 times of the monthly salary to be paid to the security guards. It is not understandable as to how a security guard getting salary of Rs.3000/- to Rs.3500/- per month would survive without getting salary equal to average five months' salary. The assessee has also failed to explain as to why he did not make payment of salary and showed it as outstanding when the assessee was maintaining huge balances in its bank accounts. Therefore, the ld. Authority below has logically restricted the

> disallowance to 5% of the total salary, which appears quite justified. We, accordingly, do not find any infirmity in the impugned order, which deserves to be sustained. Accordingly, both the appeals of the assessee are liable to be dismissed."

5. Having heard the Counsel for the appellant-assessee, we are not inclined to interfere with the impugned order which records finding of fact and is certainly not perverse. The Assessing Officer during the course of the Assessment Proceedings for earlier Assessment Year 2000-01 had issued notices under Section 133(6) of the Act to 67 creditors for verification, as salary amounting to Rs. 93,78,946/- was shown as payable at the end of the year. All notices were received back unserved. On being confronted, the appellant-assessee had produced 12 persons out of the 67 creditors whose statements were recorded on oath by the Assessing Officer. Assessment Order making addition of Rs. 19,83,035/- was passed. Subsequently proceedings under Section 263 of the Act were initiated by the Commissioner of Income Tax for enhancement etc.

6. Appellant-assessee had thereupon approached the Settlement Commission declaring undisclosed income for Assessment Years 2001-02, 2002-03 and 2003-04.

7. Rs. 5 Lakhs each was declared as undisclosed for the Assessment Years 2002-03 and 2003-04. Applications for settlement for the Assessment Years 2002-03 and 2003-04 were not admitted as no assessment proceedings were pending. The appellant-assessee had however, agreed to addition of Rs. 10 Lakhs as undisclosed income (Rs 5 Lakhs each for Assessment Years 2002-03 and 2003-04) in the settlement application for the Assessment Year 2001-

02.

8. The Tribunal, in the impugned order had reproduced the comparative chart for the Assessment Years 2001-02 and 2002-03 which reads as under:

"

A.Y.	Total Receipts	Amount debited as salary	Amount paid to security staff as salary	Amount shown payable as on 31st March	Remarks
	1.	2.	3.	4.	
2001-02	23033967	21640880 (93% of 1)	20603979 (89% of 2)	9378950 (45% of 3)	Amount allowable 15727162 after disallowance of Rs.4876817 as above.
2002-03	24191092	22784433 94% of 1	22049709 91% of 2	1144316 51% of 3	

"

9. In the given facts, addition of Rs. 11,39,222/- sustained by the Tribunal instead of Rs. 5 Lakhs accepted by the appellant-assessee in the Settlement application, for the reasons stated in the impugned order is justified. We do not find any reason to interfere with the said finding on the ground that the decision is not based on any material evidence or that it is perverse. Cogent and valid reasons have been given by the Tribunal.

10. Learned Counsel for the appellant-assessee has submitted that the books of accounts of the appellant were audited and therefore the book results should not be disbelieved. Furthermore, books of accounts were

destroyed in fire regarding which a certificate had been produced and hence no addition should have been made.

11. Filing of the settlement application itself indicates that the appellant-assessee had not disclosed full and true taxable income. As the settlement application was dismissed, re-assessment proceedings were initiated. Audit therefore cannot be treated as sacrosanct.

12. In view of the aforesaid factual position, we do not think that the impugned order require requires interference on the ground that it is perverse and contrary to law.

13. Recording the aforesaid, we are not inclined to issue notice on the application for condonation of delay and hence the said application and the appeal are dismissed.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

JANUARY 14, 2019
MR