

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “SMC-2” BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA Nos. 1448 & 1449/Del/2020

[Assessment Years : 2014-15 & 2015-16]

Rajiv Gupta, 66, Model Basti, Near Filmistan Cinema, New Delhi-110006. PAN-AAXPG9184C	vs	ITO, Ward-63(5), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Sh. S.L.Deepak, CA	
Respondent by	Sh. Om Prakash, Sr.DR	
Date of Hearing	11.11.2021	
Date of Pronouncement	17.12.2021	

ORDER

PER KUL BHARAT, JM :

Both appeals filed by the assessee for the assessment years 2014-15 & 2015-16 are directed against the orders of Ld. CIT(A)-20, New Delhi, both dated 26.02.2020. Since the identical grounds have been raised, both these appeals are taken up together and are being disposed off by way of the consolidated order.

2. First we take up assessee's appeal in **ITA No.1448/Del/2020** pertaining to **Assessment Year 2014-15**. The assessee has raised following grounds in this appeal:-

1. *“It is contended that the CIT(A) has erred in conforming the addition of Rs.14,38,628/- out of salary, staff welfare and bonus claimed in the P&L Account.*

2. *It is contended that the assessee is an established LIC agent working for more than 30 years and serving almost 8,000 clients geographically spread over. The door-step series provided essentially require an elaborate field staff.*
3. *It is contended that the computation of Tax and interest needs to be worked.”*

2. Facts giving rise to the present appeal are that the assessee filed return of income on 07.10.2014 declaring income at Rs.8,38,360/-. Subsequently, the case was selected for scrutiny assessment and the assessment was framed vide order dated 25.04.2016 by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (“the Act”) who assessed the income at Rs.9,42,580/-. However, the assessment order was revised by the Pr.CIT, Delhi-21 and the Assessing Officer was directed to examine afresh the issues. In pursuance of the order passed by Ld.CIT(A) u/s 263 of the Act, the Assessing Officer passed the revised impugned order. Thereby, he assessed the income at Rs.27,75,170/- against the income at Rs.9,42,580/- which was assessed vide order dated 25.04.2016 in the original assessment proceedings. The Assessing Officer made disallowance in respect of the interest of Rs. 1,50,000/- claimed u/s 24 (b) of the Act, disallowance of interest on housing loan mistakenly claimed of Rs. 1,88,924/- and disallowance of expenses related to Salary, Staff Welfare and Bonus Expenses of Rs. 14,38,820/-.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who are considering the submissions of the assessee, partly allowed the appeal. Thereby, he confirmed the addition of Rs.14,38,628/- and the interest of Rs.1,50,000/- claimed as deduction u/s 24(b) of the Act.

4. Aggrieved against this, the assessee is in appeal before this Tribunal.
5. The present appeal is barred by 75 days. Ld. Counsel for the assessee submitted that the appeal could not be filed in time due to spread of Covid-19. He submitted that under this extra ordinary difficult time a liberal view may be adopted.
6. Ld. D.R opposed these submissions ad submitted that no reasonable cause is demonstrated by the assessee. Therefore, the appeal deserves to be dismissed being barred by time.
7. I have heard the Ld. Authorized Representative (AR) for the assessee and Ld. DR for the Revenue and perused the material available. Looking to the extra ordinary circumstances and wide spread of Covid-19 during the relevant time. I hereby condone the delay and admit the appeal for hearing.
8. The only effective ground is against confirming the addition of Rs. 14,38,628/- made on account of disallowance of expenses out of salary, Staff Welfare and Bonus etc.
9. Ld. Counsel for the assessee submitted that the entire addition has been made purely on the basis of conjectures and surmises. He contended that the authorities have not brought any adverse material on record. The disallowance has been made on the basis of guess work which is not permissible under law. He submitted that the assessee is an agent of LIC, in this line of business, the assessee is required to visit places of his clients for the purpose of business.

Hence, for the purpose of business the assessee had deployed staff and paid salary to them.

10. I have heard the rival submissions and perused the material available on record and gone through the orders of the authorities below. The Ld.CIT(A) has confirmed the addition by observing as under:-

“4.3. The next issue pertains to the disallowance of Rs. 14,38,628/- made out of the expenses claimed by the appellant. It was noticed by the AO that the salary, staff welfare and bonus expenses claimed do not seem to be reasonable and reliable in case of LIC agent and cash Payments exceeding Rs.20,000/- totaling Rs.2,19,581/- which do not find place in the ledger account of salary. Therefore, it was estimated by the AO that the reasonable payment to employees comprise of near about 25% of gross receipts. Therefore, an amount of Rs. 14,38,628/- being difference of total salary, staff welfare and bonus claimed in P&L a/c and 25% of commission was added to the total income of the assessee.

During the course of appellate proceedings, the appellant has contended that the assessee is having 4000 to 5000 policy holders and to keep it running he had to do the various expenses which are very much necessary to conduct in these types of business to make it run. Therefore, the expenses claimed are reasonable and genuine.

The contentions of the AR have been considered and the order of the AO has also been perused. It was noticed by the AO that the assessee had debited bonus amounting to Rs. 4,00,000/-, salary amounting to Rs. 26,34,775/- and staff welfare amounting to Rs. 78,492/- which comes to near 46.47% of the total commission as per P&L a/c for FY 2013-14 which is not reasonable as per the business in which the assessee operates. It was further observed by the AO that the assessee does not pay salary regularly for the year under consideration to few employees, the payment

mechanism is not found regular and the salary consideration. Also, the monthly salary payments are not even for the year under consideration. Further, as per the environment in which the assessee operates, it was estimated that the reasonable payment to employees comprise of near about 25% of gross receipts. Therefore, an amount of Rs, 14,38,6287- being difference of total salary, staff welfare and bonus claimed in P&L a/c and 25% of commission is added to the total income of the assessee for AY 2014- 15. Therefore, considering the facts and circumstances of the case, I do not find any reason to interfere with the findings of the AO and accordingly, the addition of Rs. 14,38,628/- made by the AO is hereby confirmed.”

11. I find that the Ld.CIT (A) erred in sustaining the disallowance on the ground that expenses so claimed are excessive and abnormal without adverting to the evidences field in support of the claim. Even the A.O also made disallowance without assigning any reason as to how the expenses claimed are excessive and unreasonable. The Revenue has not brought any adverse material on record except saying that the expenses are unreasonable. Therefore, such a casual approach by the authorities below cannot be affirmed. No disallowance is permissible under the law purely on the basis of guess work. There has to be some finding with regard to evidences filed by the assessee. Therefore, having regard to the facts of the present case the decision of the authorities below cannot be sustained. I, therefore, direct the A.O to delete the addition. The ground of assessee's appeal is allowed.

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

13. Now, we take up the appeal of the assessee in ITA No. 1449/Del/2020.

The assessee has raised following grounds of appeal:-

ITA No. 1449/Del/2020

“1. It is contended that the CIT(A) has erred in confirming the addition of Rs. 13,93,501/- out of salary, staff welfare and bonus claimed in the P & L Account.

2. It is contended that the assessee is an established LIC Agent working for more than 30 years and serving almost 8,000/- clients geographically spread over. The door-step services provided essentially require an elaborate field staff.

3. It is contended that the computation of Tax and Interest needs to be re-worked.”

14. The facts and the grounds are identical as were in ITA No. 1448/Del/2020. The only effective ground in this appeal is against confirming the addition of Rs. 13,93,501/-, out of salary, staff welfare and business claimed in profit and loss account. Ld. D.R adopted the same argument as were in ITA No. 1448/Del/2020.

15. I have considered the rival submissions and perused the material available on record and gone through the orders of the authorities below. A

similar ground of the assessee's appeal in ITA No. 1448/Del/2020 has been allowed vide para 10 of this order by holding as under:-

“10. I find that the Ld.CIT (A) erred in sustaining the disallowance on the ground that expenses so claimed are excessive and abnormal without adverting to the evidences filed in support of the claim. Even the A.O also made disallowance without assigning any reason as to how the expenses claimed are excessive and unreasonable. The Revenue has not brought any adverse material on record except saying that the expenses are unreasonable. Therefore, such a casual approach by the authorities below cannot be affirmed. No disallowance is permissible under the law purely on the basis of guess work. There has to be some finding with regard to evidences filed by the assessee. Therefore, having regard to the facts of the present case the decision of the authorities below cannot be sustained. I, therefore, direct the A.O to delete the addition. The ground of assessee's appeal is allowed.

16. Therefore, taking a consistent view, the ground raised in this appeal is allowed. The Assessing Officer is, therefore, directed to delete the Addition. This ground of assessee's appeal is allowed.

17. In the result, both the appeals of assessee in ITA No. 1448/Del/2020 and ITA No. 1449/Del/2020 are partly allowed.

Above decision was pronounced on conclusion of Virtual Hearing in the presence of both the parties on 17th December, 2021.

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

Amit Kumar/R.N

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI