

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH, 'SMC-1': NEW DELHI**

(Through Video Conferencing)

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER AND MS.
SUCHITRA KAMBLE, JUDICIAL MEMBE**

**ITA No.6547/DEL/2018
[Assessment Year: 2012-13]**

Neetu Juneja, Prop. Tirupati Indane, 28n Netaji Colony, Sanoli Raod, Panipat, Haryana-132103	Income Tax Officer, Ward-3, Panipat, Haryana
PAN-AFYPJ5593G	
Appellant	Respondent

Appellant by	Sh. K.C. Aneja, AR
Respondent by	Ms. Shivani Bansal, Sr. DR

Date of Hearing	08.03.2021
Date of Pronouncement	28.05.2021

ORDER

PER R.K. PANDA, AM,

This appeal filed by the assessee is directed against the order dated 20.06.2018 of the learned CIT(A), Karnal, relating to AY-2012-13.

2. The grounds raised by the assessee are as under:-
- i. *That without being prejudice to the interest of the revenue shop & godown security guards salaries of Rs.324000/- paid to four individual persons and the A.O. without considering the facts disallowed on the*

pretext of not deducted tax at source and The Learned CIT(A) erred in confirming the same.

- ii. That no services of any contractor were availed and the A.O. merely conjecture having made payments to contractor for Rs.324000/- without TDS and wrongly disallowed the salaries.*
- iii. That inspite of confirmations submitted the AO without application of his mind arbitrarily disallowed the shop rent paid Rs.120000/- & godown rent of Rs.236379/- to four co-owners individuals and the Learned CIT(A) erred in confirming the same.*
- iv. That interest of Rs.86,410/- has wrongly been charged on advances made for commercial expediency.*
- v. That there was no justification for adding Rs.250000 for alleged low house hold expenses.*
- vi. That the assessee was disturbed due to family feuds as such delay caused if any please be condoned.*
- vii. That the appellant craves for leave to add & amend any grounds of appeal before the hearings.*

3. Facts of the case, in brief, are that the assessee is an individual and is proprietor of the concern styled Tirupati Indane, engaged in the business of Indane Gas Service at Samalkha. She filed her return of income 17.09.2012 declaring taxable income at Rs.5,05,730/-. During the course of assessment proceedings, the AO noted that the assessee claimed security expenses at Rs.3,24,000/-. However, she has not deducted TDS as per the provisions of section 194-C of the Income Tax Act, 1961. In absence of any reply to the query raised by the AO, invoking the

provisions of section 40a(ia), the AO made disallowance of Rs.3,24,000/-. Similarly on account of non-deduction of TDS from the godown rent of Rs.2,36,379/- and shop rent of Rs.1,20,000/-, the AO made an addition of Rs.3,56,379/- in absence of any reply to the query raised by him. The AO also disallowed proportionate interest @15% on interest free advance of Rs.5,59,159/- in absence of any plausible explanation. Since, the assessee had shown withdrawal of household expenses of Rs.1,06,000/- only for meeting the expenses and considering the fact that the assessee has two children in the age group of 14 year and 11 years who are both school going and husband of the assessee is earning only Rs.2.50 lakhs per annum, the AO made estimated addition of Rs.25,000/- on account of withdrawals for house hold expenses. Similarly, the AO disallowed an amount of Rs.62,176/- being $\frac{1}{6}$ th of the total expenses to Rs.3,73,060/-incurred by the assessee on account of car running expenses, car depreciation, maintenance expenses, car insurance, telephone/mobile bill and interest on car loan for probable personal use. Thus, the AO determined the total income of the assessee at Rs.13,59,700/- as against the returned income of Rs.5,05,750/-

4. In appeal, the learned CIT(A) called for a remand report from the AO. After considering the remand report of the AO and rejoinder of the assessee to such remand report, he restricted the disallowance of various expenses from 1/6th to 1/10 of the expenses and sustained the remaining additions.

5. Aggrieved with such order of the learned CIT(A), the assessee is in appeal before the Tribunal.

6. We have heard the rival arguments made by the both the sides, perused the orders of the Assessing Officer and the learned CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. The first issue raised in the grounds of appeal relates to the disallowance of Rs.3,24,000/- paid to four individual security guards appointed by the assessee. We find the AO disallowed an amount of Rs.3,24,000/- being the salary paid to the security guards on the ground that such payments have been made to the contractor without deducting tax u/s 194-C of the Act. We find the learned CIT(A) sustained the addition by observing as under:-

"I have considered the submissions made by the appellant as well as the remand report of the A.O. dated 01.01.2018. The findings of the AO has clearly shown that no copy of salary register or attendance register was filed nor was the mode of payment indicated. Payments to security guards have been

indicated separately in the P & L A/c. The assessee has not been able to controvert this finding of the A.O. I, therefore, confirm the said addition. This ground of appeal is dismissed."

7. It is the submission of the learned counsel for the assessee that no service of the contractor was availed by her and the payment was made to individual persons and confirmation were also filed before the learned CIT(A). We find the learned CIT(A) rejected the same on the ground that this evidence is not a clinching evidence with regard to proof of payment of salary to the persons engaged by her as security guards. According to her, the assessee has not produced copy of any salary register and attendance register. We find the assessee in the instant case is a small assessee and has produced confirmation of the persons on the letter head of its firm as proof of payment of salary to these persons. Merely because the assessee has not disclosed mode of payment of salary i.e. either by cheque or cash, the same in our opinion should not doubted by the learned CIT(A) especially when such salary to security guards comes to Rs.27,000/- per month for four persons. Even, if the payment is made in cash, there will be no violation of section 40A(3) of the Act. We, therefore, hold that the learned CIT(A) is not justified in sustaining the addition

of Rs.3,24,000/- paid to four individual persons towards salary to security guards. The first issue raised by the assessee is accordingly allowed.

8. The next issue raised in the grounds of appeal relates to the disallowance of Rs.1,20,000/- on account of shop rent and Rs.2,36,379/- on account of godown rent.

9. After hearing both the sides, we find the AO disallowed the amount of Rs.3,56,379/- i.e. (Rs.2,36,379 + Rs.1,20,000) incurred by the assessee as shop rent and godown rent on the ground that the assessee did not file any reply to the query raised by him. We find before the learned CIT(A) has submitted that godown rent of Rs.2,36,379/- was paid to four person who are joint owners of the godown and whose details are as under:-

- i. Jagdish Parshad Jain S/o Sh. Umrav Singh Jain of Samalkha,
- ii. Jai Pal Jain S/o Sh. Murav Singh Jain of Samalkha
- iii. Manoj Jain S/o Sh. Ramesh Jain of Samalkha
- iv. Mahavir Prasad Jain S/o Sh. Umrav Singh Jain of Samalkha

10. It was argued that each co-owner was paid rent of Rs.59334/- in a year and each persons TDS liability was below taxable limit of Rs.180000/- u/s 194(l) of the Act.

11. Similarly, office rent of Rs.1,20,000/- was paid to Mr. Ashok Juneja who is proprietor of M/s Devsons Sanitation and is an exiting income tax assessee at Panipat, who has filed income tax return for AY 2012-13. Further, the rent paid was below statutory limit u/s 194(1) of the Act and therefore there was no necessity for deducting tax source. However, we find the learned CIT(A) after obtaining the remand report from the AO dismissed the ground raised by the assessee on this issue by observing as under:-

"5.3. The A.O. has clearly pointed out the absence of documentary evidence in respect of rent paid at the assessment as well as the remand stage. The documents submitted are basically certificates issued by the appellants and purportedly signed by the co-owners which lack verifiability. The so-called rent agreement is also undated. In the absence of the same, the addition has been correctly made and I confirm the same. This ground of appeal is dismissed."

12. We find the assessee neither at the assessment stage nor at the remand stage has produced sufficient documents or evidence for the allowability of the rent. Considering the totality of facts of the case and in the interest of justice, we deem it

proper to restore this issue to the file of the AO with a direction to grant one more opportunity to the assessee to substantiate her case and decide the issue as per fact and law. Accordingly, the second issue raised by the assessee in the grounds of appeal is allowed for statistical purpose.

13. The next issue raised in the grounds of appeal relates to the disallowance of 86,410/- being proportionate interest on advance of Rs.5,59,159/- to different persons

14. After hearing both the sides, we find the AO disallowed the above amount of Rs.86,410/- being proportionate interest on interest free advance of Rs.5,59,159/-. We find before the learned CIT(A), it was argued that such amount was advanced for business purposes, and therefore, it was for commercial expediency. Therefore, in view of the decision of the Hon'ble Supreme Court in the case of S.A. Builders Ltd. vs CIT reported in (2007) 288 ITR 1 (SC), no disallowance is called for. However, the learned CIT(A) dismissed the ground holding that no plausible explanation was offered for the query raised on this issue except stating that it was needed for business dealings. From the various details furnished by the assessee, we do not find what was the reason for giving such advance. The commercial

expediency of the same has not been established. Further, it has not been established as to whether the assessee's own capital and free reserves are more than the interest free advance extended by the assessee during the impugned assessment year. Considering the totality of facts of the case and in the interest of justice, we restore this issue to the file of the AO with a direction to give one more opportunity to substantiate the commercial expediency or to substantiate that her own capital and free reserves is more than the interest free advances given. The AO shall decide the issue as per fact and law after giving due opportunity of being heard to the assessee. Accordingly, ground no.4 is allowed for statistical purpose.

15. The next issue relates to the disallowance of Rs.25,000/- for alleged low house hold expenses.

16. After hearing both the sides, we find the AO disallowed of Rs.25,000/- on estimate basis being probable house hold expenditure on the ground that the assessee's withdrawal is only Rs.1,06,000/- and her husband is earning approximate Rs.2.50 laksh per annum and the family of the assessee consists of the assessee, her husband and two school going children in the age group of 14 and 11 years. It is the

submission of the learned counsel for the assessee that contribution of her husband is about Rs.2 lakhs and the assessee has shown withdrawal at Rs.1,06,000/- and such combined withdrawal is reasonable for meeting house hold expenses. We find some force in the above arguments of the learned counsel for the assessee. The addition made by the AO is purely on surmises and conjectures and nothing has been brought on record to show any extravagant expenditure incurred by the assessee during the year. Since, the addition made by the AO is based on surmises and conjectures, which has been upheld by the learned CIT(A), therefore, we set-aside the order of the learned CIT(A) and direct the AO to delete the disallowance. Grounds No.4 and 5 are accordingly allowed.

17. Ground no.6 and 7 being general in nature are dismissed.

18. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order was pronounced in the open Court on 28.05.2021.

Sd/-

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER
Delhi; Dated: 28/05/2021.

[R.K.PANDA]
ACCOUNTANT MEMBER

ITAT P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi