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

Date of Decision: September 12, 2014

+ **ITA 593/2014**

COMMISSIONER OF INCOME TAX-III Appellant

Through Ms.Suruchi Aggarwal, Sr. Standing
Counsel

versus

M/S SPANK HOTELS LTD. Respondent

Through

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J (ORAL)

1. The assessment year in question is 2009-10 and the respondent assessee, a company, for the year had filed a return declaring income of Rs.4,46,22,010/-. This was the net taxable profit declared.

2. The Assessing Officer disallowed payment of Rs.48,30,000/- out of Rs.60,00,000/- made to the Director by invoking Section 40A(2)(b) of the Income Tax Act, 1961 (Act, for short). He held that reasonable salary payable would be Rs.1 lac per month. The exact reasoning given by the Assessing Officer in this regard is reproduced below:-

“3. Salary paid to the Directors:

During the year under assessment the assessee has shown loss from business activity. It was stated that the assessee company

was engaged in the business of financing and investment. It was noticed from the P&L account that there were only two items of receipt, first of Rs. 5,29,54,306/- as interest received and second of Rs. 13,90,626/- as dividend received. The second item of Rs. 13,90,626/- was claimed exempt and hence was not declared as business income. As against these two items of income, substantial amount of Rs. 72,60,704/- was debited as expense in the P&L account under various heads. Since the dividend has been claimed exempt, this expenditure of Rs.72,60,704/- was claimed against the only item of Rs.5,29,54,306/- shown as business income.

It was found that out of total expenditure debited at Rs.72,60,704/-, the major expenditure of Rs.60,30,000/- was debited under the head salary and wages. It was further noticed that this expenditure of Rs. 60,30,000/- was on account of salary and HRA paid to Sh. Patanjali Keswani, Director for the period April, 2008 to March, 2009. In view of the nature and quantum of the business income and also the fact that the payment was made to the person covered under section 40A(2)(b) of the Act, the assessee was required to explain as to why not disallowance may be made in view of the facts mentioned in assessment orders for earlier years. The assessee submitted its reply vide letter dated 28/11/2011. On reconsideration of facts it is found that the salary paid to Mr. Patanjali Keswani is unreasonable and highly excessive and is hit by provisions of Section 40A(2)(b) of the Act also. The quantum of salary is highly excessive and manifestly disproportionate to the relative quantum and nature of business of the company. Considering the reply of the assessee and increasing inflation in the economy the salary to the Director is held to be reasonable at Rs. 1,00,000/- per month and balance amount is disallowed. Accordingly, a salary of Rs. 12,00,000/- @ Rs. 1,00,000/- per month for the period April, 2008 to March, 2009 is allowed and excessive salary of Rs.48,30,000/- (Rs.60,30,000 - Rs. 12,00,000) is disallowed. This gives an addition of Rs. 48,30,000/- in form of salary to the director, the assessee has furnished inaccurate particulars of income for

which penalty proceedings u/s 271(1)(c) of the Act are being initiated separately.

(Addition of Rs. 48,30,000/-)

3. In the reasoning given in paragraph 3, the Assessing Officer had referred and adverted to the position that the respondent assessee had earned interest income of Rs.5,29,54,306/- under the head 'income from business'. The assessee had also received dividend income of Rs.13,90,626/-. This, the Assessing Officer observed, would not constitute a justification for payment of the aforesaid salary.

4. It appears that in earlier years similar disallowance were made, though not to this extent. Addition of about Rs.30 lacs made in earlier years, were deleted in the appellate proceedings and no further appeal was preferred by the revenue. It is stated that this was due to low tax effect.

5. The Commissioner of Income Tax (Appeals) deleted the aforesaid disallowance after referring to the findings in the earlier proceedings, and after giving details of the education and practical experience of the Director.

6. It was highlighted in the order that the Director was a graduate from IIT Delhi and also had a degree in MBA from IIM-Kolkata. He had 15 years of experience in Taj Group of Hotels as Chief Operating Officer of Taj Business Hotels, and Sr. Vice President of a special project. Later, he also worked as Director of A.T.Kearney Inc.'s India Office.

7. Thereafter, the Commissioner of Income Tax (Appeals) observed that the respondent assessee was engaged in financing business. Their business and profits had increased substantially over a period of time. A chart giving details of interest income earned, noticed in the first appellate order is reproduced below:-

“The comparative chart of interest income and net profit for year ended 31.03.2007, and 31.03.2008, 31.03.2009 and 31.03.2010 is as under:-

<i>Particulars</i>	<i>31.03.2007</i> <i>(Rs.)</i>	<i>31.03.2008</i> <i>(Rs.)</i>	<i>31.03.2009</i> <i>(Rs.)</i>	<i>31.03.2010</i> <i>(Rs.)</i>
<i>Interest Received</i>	<i>1194247</i>	<i>5006561</i>	<i>52954306</i>	<i>36742554</i>
<i>Net Profit</i>	<i>5482938</i>	<i>10490032</i>	<i>47089728</i>	<i>30381919</i>

8. It stands recorded that the respondent assessee was setting up hotels in Gurgaon and Hyderabad under the guidance of the said Director and expenditure as on 31.03.2009 on the capital work in progress was to the tune of Rs.36.70 Crores and due to the efforts of the said Director funds to the tune of Rs.49.99 Crores had been raised by the respondent assessee. The amount paid to the respondent director had resulted in deduction of tax at source of Rs.20,92,000/- and income tax paid by the said director was at the maximum marginal rate.

9. The aforesaid findings, we feel are factual and effectively and positively deal with the question of reasonableness of the said payment. In view of the aforesaid position, we do not find any merit in the present appeal and the same is dismissed in limine.

SANJIV KHANNA, J

V. KAMESWAR RAO, J

SEPTEMBER 12, 2014/_{km}