

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCH 'SMC' MUMBAI**

**ITA No.8814/Mum/2010  
Assessment Year: 2006-2007**

**ROYAL HYDRAULIC PVT LTD  
57 RANGAONWALA BLDG  
91 MOHD ALI ROAD  
MASJID BUNDER  
MUMBAI -400003**

**Vs**

**INCOME TAX OFFICER  
WARD-7(2)(1), MUMBAI**

**R K Panda, AM**

**Dated: February 28, 2011**

**Appellant Rep by:** None  
**Respondent Rep by:** Shri R K Gupta/DR

**ORDER**

**Per: R K Panda:**

This appeal filed by the assessee is directed against the order dated 22.9.2010 of the CIT(A)-13, Mumbai relating to assessment year 2006-07.

2. Notice issued through RPAD by the Registry was returned un-served by the Postal Authorities with the remarks 'left'. Therefore, the appeal is being disposed of on the basis of the material available on record and after hearing the Id DR.

3. The assessee, in its grounds of appeal, has challenged the order of the CIT(A) in confirming the disallowance of Rs. 96,380/- on account of salary paid to the Director.

4. Facts of the case, in brief, are that the assessee company is engaged in the business of importer and reseller of rubber products and chemicals. During the course of assessment proceedings, the Assessing Officer noted from the tax audit report and the various submissions filed by the assessee that out of the total salary of Rs. 9,12,144/- paid to its employees, a sum of Rs. 1,23,120/- has been paid to the Managing Director Mr Mazhar Vohra and an amount of Rs. 1,92,760/- paid to the Director Mrs Samina M Vohra . The Assessing Officer asked the assessee to explain as to why such substantial amount paid as remuneration should not be treated as excessive and to justify the reasonableness. The assessee, vide its reply dated 6.11.2008 sated as under:

*"Shri Mazhar Vohra looks after the marketing of the company and Smt Samina Vohra is in-charge of the company and looks after all the activities of the company. The Board of Director has approved the above Directors Remunerations and relevant*

*copies of the Resolutions are attached herewith. Considering the sales of around Rs. 70 to 80 lacs p.a and size of the company, the above remuneration paid to the director is reasonable and in line with the earlier years."*

4.1 The assessee has also filed various correspondences signed by the lady director as an evidence for the type of work done by her.

4.2 However, the Assessing Officer was not convinced with the explanations given by the assessee. He noted that Mrs Samina Vohra is drawing a salary of Rs. 1,92,760/- which is more than the salary drawn by the Managing Director at Rs. 1,23,120/-. According to the Assessing Officer Smt Samina Vohra does not contribute much to the assessee's business except for signing few correspondences with the banks. The marketing aspect of the assessee's trading business is done by the Managing Director, who is drawing less salary than the lady director. Therefore, according to the Assessing Officer the remuneration paid to Smt Samina Mazhar Vohra, who happens to be the wife of the Managing Director, is unreasonable and excessive. The Assessing Officer, further observed from the nature of activity undertaken by the assessee company that there are transactions taking place among the group concerns. Therefore, payment of remuneration to the director in general is excessive and unreasonable.

4.3 After considering the total employees cost shown by the assessee for the year, the Assessing Officer came to the conclusion that services rendered by Mrs Samina Mazhar Vohra does not deserve a much higher salary for signing few correspondence letters and does not convey the legitimate needs of the business or profession. According to him, the company has reduced its net profit by diverting such a substantial and unreasonable amount of remuneration to the lady director. In view of the above, he disallowed an amount of Rs.96,380/- being 50% salary paid at Rs. 1,92,760/- to the lady director u/s 40A(2)(b) of the I T Act.

5. Before the CIT(A), the assessee reiterated the same submissions as made before the Assessing Officer. It was further submitted that Smt Samina Vohra is overall In-charge of the company and looks after all the activities of the company. The decision of the Hon'ble Supreme Court in the case of *CIT vs Edward Keventer P Ltd reported in 115 ITR 149 (SC)* was also relied upon, according to which no part of remuneration paid to the director could be regarded as excessive or unreasonable, if the legitimate business need of the company and the benefit derived by or accruing to it there from, were taken into account from the point of view of a businessman.

5.1 However, the CIT(A) was not convinced with the arguments advanced by the assessee before him and confirmed the action of the Assessing Officer by holding as under:

*" Perusal of the few correspondences filed by the appellant shows that Smt S M Vohra has made correspondence with bank for issue of cheque book/correspondence with bank for challans/correspondence with M/s Anjali Sales Corporation enclosing cheques/correspondence with M/s Swastic Engineering Works regarding payments towards overdue bills etc. Apparently, it seems that these correspondences are made in nature of administrative work and does not involve major management decisions etc. As such, giving a salary of Rs. 1,92,760/- to the director (who looks after mere routine work viz-a-vis salary of Rs. 1,23,120/- to the Managing Director is unjustified.*

*Accordingly, under the facts and circumstances of the case, the disallowance made by the Assessing Officer u/s 40A(2)(b) is upheld."*

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

7. I have considered the arguments advanced by the Id DR and perused the orders of the authorities below. There is no dispute to the fact that an amount of Rs. 1,92,760/- has been paid as remuneration to the director Smt Samina Vohra. There is also no dispute to the fact that the above salary paid to the lady director is higher than the salary paid to the Managing Director Shri Mazhar Vohra at Rs. 1,23,120/-, who happens to be the husband of the director Smt Samina Vohra. According to the revenue, the salary paid to the lady director Smt Samina Vohra is excessive and unreasonable since she has only made some correspondences with banks for issue of cheque book and correspondences with M/s Anjali Sales Corporation and M/s Swastic Engineering Works for payments towards overdue bills etc.

7.1 In appeal, according to the CIT(A), these correspondences are in the nature of administrative work and does not involve major management decisions etc. However, according to the assessee, Smt Samina Vohra apart from doing this work, was also overall In-charge of the company affairs. In my opinion, there should not be any disallowance of remuneration u/s 40A(2)(b) under the facts and circumstances of the case. It is abundantly clear from the facts brought on record by the Assessing Officer as well as the CIT(A) that Smt Samina Vohra is regularly attending office, correspondences with various parties and makes correspondences with banks.

7.2 It has been held by the Hon'ble Supreme Court in the case of CIT vs Edward Keventer P Ltd (supra) that no part of remuneration paid to director could be regarded as excessive or unreasonable, if the legitimate business need of the company and the benefit derived by or accruing to it there from, were taken into account from the point of view of a businessman. Although the above decision was cited before the CIT(A), which I find has been mentioned at page 3 of the order of the CIT(A), I find the CIT(A) has not considered the same. His findings, in my opinion are on general basis while upholding the action of the Assessing Officer. It is the well settled proposition of law that the Assessing Officer cannot direct the assessee to conduct its business in a particular manner. It is for the assessee how to conduct its business in a particular manner. It has been submitted before the Assessing Officer and the CIT(A) that Mrs Samina Vohra was overall In-charge of the company and looks after all the activities. This aspect has not been proved to be false or untrue. Therefore, merely because the remuneration of the lady director is more than that of the Managing Director, the same, in my opinion cannot be held as excessive or unreasonable. No part of the salary should be disallowed u/s 40(2)(b) of the Act especially under the given facts and circumstances of the case. In this view of the matter, I set aside the order of the CIT(A) and direct the Assessing Officer to delete the addition. I hold and direct accordingly. The ground raised by the assessee is accordingly allowed.

8. In the result, the appeal filed by the assessee is allowed.

(Order pronounced on the 28.2.2011.)