

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Accountant Member

**I.T.A. No. 1910 /KOL/ 2014
Assessment Year: 2009-2010**

***Kamal Kanti Pattanayak,.....Appellant
Vill. Jhaupathra, Chanpi (Haldia),
Purba Medinipur
[PAN : AFEPP 7192 K]***

-Vs.-

***Assisant Commissioner of Income Tax,.....Respondent
Circle-Haldia,
Basudevpur, Khanjanchak,
Haldia,
Purba Medinipur-721 602***

Appearances by:

*Shri K.L. Bhowmick, A.R., for the assessee
Shri Rajat Kumar Kureel, JCIT, D.R., for the Department*

Date of concluding the hearing : July 21, 2016
Date of pronouncing the order : September 28, 2016

O R D E R

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals)-XXXIII, Kolkata dated 11.07.2014 for the assessment year 2009-10.

2. The first issue raised in Ground No. 1 relates to the disallowance of Rs.10,67,800/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) under section 40(a)(ia) of the Income Tax Act, 1961.

3. The assessee in the present case is an individual, who is engaged in the business of labour contractor and sub-contractor in the name of his proprietary concern M/s. Kiran Construction. He also carries on the business of running of a Petrol Pump in the name of his other proprietary concern M/s. Shivam Filling Station. The return of income for the year

under consideration was filed by the assessee on 05.10.2009 declaring total income of Rs.13,43,140/-. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee has paid labour charges totalling to Rs.10,67,800/- to seven parties that exceeded Rs.50,000/-. According to the Assessing Officer, the assessee was liable to deduct tax at source from the said payments under section 194C of the Act and since there was failure on the part of the assessee to do so, he disallowed the labour charges of Rs.10,67,800/- under section 40(a)(ia).

4. The disallowance made by the Assessing Officer under section 40(a)(ia) was disputed by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), it was submitted by the assessee that the relevant payments on account of labour charges had not been made by him to any contractor but the same were made to the workers, who had chosen representatives amongst them for the purpose of receiving and disbursing their wages. In this regard, opportunity was given by the Id. CIT(Appeals) to the assessee to produce the wage register or wage-sheets to establish his case that the payments had been made to the representatives of the labours and not to the contractors. The assessee, however, failed to comply with this requirement of the Id. CIT(Appeals) and keeping in view the same, the Id. CIT(Appeals) proceeded to confirm the disallowance made by the Assessing Officer under section 40(a)(ia).

5. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. The Id. counsel for the assessee has furnished before me the details of labour charges paid at page no. 5 of the paper book along with the corresponding wage register to show that the amounts in question paid by the assessee on account of labour charges were actually meant for the workers, which was paid to their group leaders and not to any independent contractor. He submitted that this evidence was produced by the assessee before the Id.

CIT(Appeals) during the course of appellate proceedings on 14.02.2014, but the same has not been considered by the Id. CIT(Appeals). Keeping in view this submissions made by the Id. counsel for the assessee, I consider it fair and proper and in the interest of justice to set aside the impugned order of the Id. CIT(Appeals) on this issue and remit the matter back to him for deciding the same afresh in the light of this evidence, which, according to the assessee, is already available on record before him. Ground No. 1 is accordingly treated as allowed for statistical purposes.

6. The issue raised in Ground No. 2 relates to the disallowance of Rs.78,031/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of assessee's claim for deduction under section 24(b) of the Act.

7. During the year under consideration, the assessee had received rent of Rs.2,60,046/- for the land given on lease to Essar Oil Limited. Against the said income, deduction under section 24(b) was claimed by the assessee amounting to Rs.78,031/-. According to the Assessing Officer, the lease rent of land received by the assessee was chargeable to tax under the head "income from other sources" and not under the head "income from house property" and, therefore, the assessee was not entitled for deduction under section 24(b) of the Act. Accordingly, the claim of the assessee for deduction under section 24(b) was disallowed by him.

8. The disallowance made by the Assessing Officer on account of his claim for deduction under section 24(b) was disputed by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings, a copy of Franchise Agreement entered into between M/s. Essar Oil Limited and his proprietary concern M/s. Shivam Filling Station was produced by the assessee in support of his claim that what was given by him to M/s. Essar Oil Limited was not just the land but even the other facilities including the building constructed on the land as

per the specification of M/s. Essar Oil Limited. The Id. CIT(Appeals), however, found that the Franchise Agreement produced by the assessee was not in respect of leasing out of any immovable property belonged to the assessee. He held that the assessee thus had furnished a completely different agreement, which was neither relevant nor sufficient to support his case on the issue. Accordingly, the disallowance made by the Assessing Officer on account of assessee's claim for deduction under section 24(b) was confirmed by the Id. CIT(Appeals).

9. I have heard the arguments of both the sides on this issue and also perused the relevant material available on record. As submitted by the assessee, the Franchise Agreement entered into with M/s. Essar Oil Limited was inadvertently filed by him before the Id. CIT(Appeals) instead of the lease agreement. He has filed a copy of the lease agreement dated 05.01.2006 entered into between him and M/s. Essar Oil Limited at page nos. 77 to 93 of his paper book as additional evidence and has also filed an application seeking admission of the said additional evidence. Keeping in view the reasons given by the assessee in the said application and having regard to the relevance of the lease deed filed by the assessee as the additional evidence, I admit the same and remit this matter to the file of the Id. CIT(Appeals) for deciding the same afresh in the light of the said additional evidence. Ground No. 2 is accordingly treated as allowed for statistical purposes.

10. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on September 28, 2016.

Sd/-

(P.M. Jagtap)
Accountant Member

Kolkata, the 28th day of September, 2016

Copies to : (1) *Shri Kamal Kanti Pattanayak,
Vill. Jhaupathra, Chanpi (Haldia),
Purba Medinipur*

(2) **Assisant Commissioner of Income Tax,
Circle-Haldia,
Basudevpur, Khanjanchak,
Haldia,
Purba Medinipur-721 602**

(3) *Commissioner of Income Tax (Appeals)-XXXIII, Kolkata;*

(4) *Commissioner of Income Tax- ,*
(5) *The Departmental Representative*
(6) *Guard File*

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.