

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-3', NEW DELHI**

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

**ITA No. 298/Del/2015
AY: 2011-12**

Studio Digital Prints P.Ltd.
1796, Kotla Mubarakpur
New Delhi 110 003

vs. ITO, Ward 9(2)
New Delhi

PAN: AAVFS 1531 R
(Appellant)

(Respondent)

Appellant by : Sh. Manoj Kumar, C.A.
Respondent by : Sh. B.Ramanjaneyulu, Sr.D.R.

ORDER

This is an appeal filed by the Assessee directed against the order of the Ld. Commissioner of Income Tax (Appeals)-XII, New Delhi dated 15.10.2014 pertaining to the Assessment Year (A.Y.) 2011-12.

Though a number of grounds were taken by the assessee, the effective ground no.3(a) and ground no.4(a) read as follows.

3(a): Addition/disallowance u/s 40(a)(ia) of the Act – Rs.20,36,030/- : (a) That on the facts and in the circumstances

the case, the sustaining of the addition/disallowance of Rs.20,36,030/- in respect of the following:

<i>(i) Under remuneration to Directors –</i>	<i>Rs.8,40,000/-</i>
<i>(ii) Under payment to contractors –</i>	<i>Rs.9,60,677/-</i>
<i>(iii) Under legal & professional charges –</i>	<i>Rs. 2,35,353/-</i>
<i>Total :</i>	<i><u>Rs.20,36,030/=</u></i>

made u/s 40(a)(ia) of the Act by the ld.CIT(A) is arbitrary, erroneous and bad, both in the eye of law and on facts.

4(a): Addition/disallowance under DVAT of Rs.3,96,371/-:

(a) That on the facts and in the circumstances the case, the sustaining of the addition/disallowance of Rs.3,96,371/- in respect of DVAT is erroneous and bad in law.

2. After hearing rival contentions I hold as follows.

3. As regards payment to contractors, the assessee submits that the amount payable to the following contractors as on 31st March, 2011 is 'nil'.

MK Printer

AVM Security Services

Mahendra Pal

Nitin Enterprises

As there is no outstanding payable to the contractor as on 31st March, 2011, no tax need to be deducted at source. I rely on the proposition laid down by Hon'ble Allahabad High Court in the case of CIT vs. Vector Shipping Services (P) Ltd. Muzaffarnagar in ITA no.122 of 2013 dated 9.7.2013. The Hon'ble Supreme Court

dismissed the Special Leave Petition filed by the Revenue on this matter in the case of CIT, Muzaffarnagar vs. M/s Vector Shipping Services (P) Ltd. vide its order dt. 4.7.2014 in CC no.8068/2014.

3.1. Though certain contrary decisions of Hon'ble Gujarat High Court as well as Hon'ble Calcutta High Court have been cited by the Ld.D.R., I follow the ratio laid down by Hon'ble Allahabad High Court in the case of M/s Vector Shipping Services (P) Ltd. (supra) and direct the Assessing Officer (AO) to delete the addition as this view is a possible view and is in favour of the assessee. Hence the disallowance is hereby deleted.

3.2. As far as amounts due to UES Express Pvt.Ltd. is concerned it is a case of transport contractor and as the PAN number has been supplied, there is no statutory requirement of deducting tax at source. Consequently no disallowance could be made u/s 40(a)(ia) of the Income Tax Act, 1961 (the Act).

3.3. An amount of Rs.11,620/- is paid for small job works. This is less than Rs.30,000/-. As there is no requirement of deducting tax at source on such payments. Hence the disallowance u/s 40(a)(ia) of the Act on this count is deleted.

3.4. Thus the entire disallowances made u/s 40(a)(ia) of the Act on payment to contractors is hereby deleted.

4. Regarding payment of Rs.2,98,706/- towards legal and professional charges, we find that no amount is due to Naik and Associates, M/s RRI Tax India and Shri Sharad Nagpal as on 31st March, 2011.

4.1. Thus applying the ratio of decision laid down in the case of CIT vs. Vector Shipping Services (P) Ltd. in CC no.8068/2014 (supra), I delete the disallowance made under u/s 40(a)(ia) of the Act. Regarding payment made to other professionals, the assessee claimed that the amounts are not subject to TDS. This issue may be verified by the AO. Hence this issue is set aside to the file of the A.O.

5. The next issue pertains to DVAT payment. The assessee claims that Rs.1,75,000/- was paid before the due date of filing of the return and the disallowance should be restricted to the balance amount. This claim of the assessee requires verification by the A.O. Hence we set aside the issue to the file of the A.O. for fresh adjudication.

6. In the result the appeal is partly allowed.

Order pronounced in the Open Court on 05th January,2017.

Sd/-

(J.SUDHAKAR REDDY)
ACCOUNTANTMEMBER

Dated: the 05th January, 2017

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Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
- 5.DR;
- 6.Guard File

By Order

Asst. Registrar