

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'A' KOLKATA

[Before Hon'ble Shri N.V.Vasudevan, JM & Dr.Arjun Lal Saini, AM]

ITA No.1878/Kol/2013
Assessment Year : **2007-08**A.C.I.T., Circle-52,
Kolkata

-versus-

Shri Sudarshan Panja
Kolkata
(PAN:AKBPP 6220 A)
(Respondent)

(Appellant)

For the Appellant: Shri Saurav Kumar, JCIT
For the Respondent: Shri Somnath Roy Chowdhury, AR

Date of Hearing : 01.03.2017.

Date of Pronouncement : 08.03.2017.

ORDER**PER N.V.VASUDEVAN, JM:**

This is an appeal by the Revenue against the order dated 21.03.2013 of CIT(A)-XXXIII, Kolkata relating to A.Y.2007-08.

2. The only issue that arises for consideration in this appeal by the revenue is as to whether the CIT(A) was justified in deleting the addition made by the AO of a sum of Rs.42,44,562/- towards machine hire charges and Rs.1,42,350/- towards car hire charges on the ground that the assessee did not deduct tax at source while making payments of all the aforesaid expenses. The AO invoked the provisions of section 40(a)(ia) of the Income Tax Act, 1961 (Act) for making the disallowances. According to the AO as per the provision of section 194I of the Act the assessee ought to have deducted tax at source while making payment for the aforesaid expenses and since the assessee did not do so the AO made disallowance of the aforesaid sum which have not been claimed as deduction while computing the income from business. As already stated the AO invoked the provision of section 40(a)(ia) of the Act, which provides that no deduction of any sum shall be allowed in computing the income chargeable

under the head 'profits and gains of business or profession' in respect of payments on which tax is deductible at source under the Chapter-XVIIIB of the Act and such tax has not been deducted.

3. The Assessee is an individual. The nature of the business carried on by the assessee has not been mentioned either in the order of AO or CIT(A). The plea of the assessee before Id. CIT(A) was that the entire machine hire charges and car hire charges had been paid during the year itself and no amount remained payable at end of the previous year. The Assessee placed reliance upon decision of Special Bench of ITAT Visakhapatnam in the case of Merilyn Shipping and transport vs ACIT 136 ITD 23 (Viz.). The CIT(A) held that since the entire amount of machinery and car hire charges were paid during the previous year itself, the provisions of Sec.40(a)(ia) of the Act are not applicable. The CIT(A) however held that since the assessment in the case was completed u/s. 144 of I.T. Act, it was not known as to whether such details were available before the assessing officer. The assessing officer was, therefore, directed to call for the details of actual payments of machine and car hire charges from the Assessee and after verification restrict the disallowance only to the amount outstanding, if any, as on 31.03.2007.

4. Aggrieved by the order of CIT(A) the revenue has preferred the present appeal before the Tribunal. At the time of hearing of the appeal it was accepted by the parties before us that the decision of the Hon'ble Calcutta High Court as in the decision rendered in the case of CIT vs Crescent Export Syndicate (2013) 216 Taxman 258 (Cal) it was held that the law laid down by the Hon'ble Special Bench u/s 40(a)(ia) of the Act is applicable only when the disputed amount remained payable in the hands of the assessee and does not apply to the case where the amount has already been paid by the assessee as on the last day of the relevant previous year, is no good law. From a reading of the order of CIT(A) it is very clear that CIT(A) has proceeded to allow relief to the assessee by placing reliance on the decision of the Hon'ble Special Bench in the case of Merilyn Shipping and Transports 136 ITD 23 (SB)(Visakhapatnam). In view of the decision of the Honh'ble Calcutta High Court we are of the view that the ITA No.1878/Kol/2013-Sri Sudarshan Panja A.Y.2007-08

relief allowed by CIT(A) cannot be sustained and therefore the addition u/s 40(a)(ia) of the Act ought to be sustained.

5. The Id. Counsel for the assessee however made submissions before us that the AO has invoked the provision of section 194I of the Act for the purpose of making the impugned disallowance. He brought to our notice that the expression ‘ Rent ‘ for the purpose of section 194I of the Act has been defined by Taxation Amendment Finance Act 2006 only w.e.f. 13.07.2006 to include the payment for use of machinery or plant equipment. According to him prior to the said amendment any payment for use of machinery or plant equipment did not fall within the ambit of section 194I of the Act and therefore the only disallowance of payment on or after 13.07.2006 without TDS are liable for disallowance u/s 40(a)(ia) of the Act. According to the Id. Counsel for the assessee payments for use of machinery, plant and equipment made prior to 13.07.2006 by the assessee was to the extent of Rs.15,58,3365/-. The Id. Counsel also brought to our notice that the provision of section 194I of the Act would apply only where the payment made to a person during the financial year exceeds Rs.1,20,000. It was submitted by him that payments to the extent of Rs.8,31,017/- was payment to persons to whom payments as rent made during the relevant previous year did not exceed Rs.1,20,000 and in respect of such payments also there is no obligation on the part of the assessee to deduct tax at source. It was submitted by the Id. Counsel for the assessee that since the AO did not allow proper opportunity to the assessee and since the CIT(A) decided the issue based on the decision of the Special Bench of ITAT, Visakhapatnam in the case of Merilyn Shipping and Transports (supra), the assessee did not have an opportunity to put forth its claim as is now sought to be put forth before the tribunal. The Id. DR submitted that the aforesaid contention requires verification at the end of the AO.

6. After considering the rival submissions we are of the view that the contention put forth by the Id counsel for the assessee requires verification by the AO and therefore the additions to the extent of the sums referred to by the Id. Counsel for the assessee before us are set aside with the direction to the AO to examine the claim of the

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assessee as stated above and if the claim is found to be correct the AO is directed to delete the disallowance u/s 40(a)(ia) of the Act to the extent the same is found to be correct. With these observations the appeal of the revenue is treated as partly allowed for statistical purposes.

7. In the result the appeal by the revenue is partly allowed for statistical purposes.

Order pronounced in the open Court on 08.03.2017.

Sd/-

[Dr.A.L.Saini]
Accountant Member

Sd/-

[N.V.Vasudevan]
Judicial Member

Dated : 08.03.2017.

[RG PS]

Copy of the order forwarded to:

- 1.Sri Sudarshan Panja, 4th Floor, Flat No.2, 143, Kanungo Park, Kolkata-700084.
- 2.A.C.I.T., Circle-52, Kolkata..
3. CIT(A)-XXXIII, Kolkata.
4. CIT-XVIII, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Asst. Registrar, ITAT, Kolkata Benches

