

IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH: KOLKATA
[Before Shri Mahavir Singh, JM & Shri M. Balaganesh, AM]

I.T.A No.225/Kol/2013
Assessment Year: 2008-09

Income-tax Officer, Ward-29(1), Kolkata. Vs.

Sandeep Basu
(PAN:AHOPB6856C)

(Appellant)

(Respondent)

Date of hearing: 21.09.2015

Date of pronouncement: 05.10.2015

For the Appellant: Shri D. Banerjee, JCIT

For the Respondent: N o n e

ORDER

Per Shri Mahavir Singh, JM:

This appeal by assessee is arising out of order of CIT(a)-XVI, Kolkata in Appeal No. 25/CIT(A)-XVI/10-11 dated 16.10.2012. Assessment was framed by ITO, Ward-29(1), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the Act) for AY 2008-09 vide its order dated 09.12.2010.

2. The first issue in this appeal of assessee is against the order of CIT(A) in deleting the disallowances of Rs.60,36,613/- and Rs.10,22,300/- made u/s. 40(a)(ia) of the Act by the AO for non-deduction of tax at source. For this, revenue has raised following ground no.1:

“1. On the facts and in the circumstances of the case the Ld. CIT(A) erred in law as well as on facts in deleting the disallowances of Rs.60,36,613/- and Rs.10,22,300/- made u/s. 40(a)(ia) by the AO for non-deduction of tax at source by placing reliance on the decision of ITAT, Vishakapatnam in the case of Merilyn Shipping & Transports Vs. Addl. CIT, Range-1, Vishakapatnam.

3. Briefly stated facts of the case are that the AO made addition on account of purchases of Rs.60,36,613/- and for professional works at Rs.10,22,300/- by observing that assessee did not deduct TDS while making payments to various advertising agencies for purchase of time slot. The AO also observed that the assessee is the proprietor of M/s. Sunday, an advertising agency and engaged in the business of contractual job as agent. Hence, assessee is liable to deduct TDS on payments made to the contractors u/s 194C of the Act. Aggrieved, assessee preferred appeal before CIT(A), who deleted the additions by following the decision of ITAT, Visakhapatnam bench (SB) in the case of Merilyn Shipping & Transports Vs. Addl. CIT in I. T. A No. 477(VIZ) of 2008 for AY 2005-06 dated 14.03.2012. Aggrieved, revenue came in appeal before Tribunal.

4. We have heard rival submissions and gone through facts and circumstances of the case. We find that the issue in this AY arises in the context of the disallowance by the Assessing Officer of the payment made by the Assessee to Media and Electronic Media and payment made to Artists, which payments, according to the Revenue, ought to have been made only after deducting tax at source under Section 194C of the Act thereby invoking the provisions of section 40(a)(ia) of the Act. Before the ITAT, it was urged by the Assessee that in view of the circular no. 715 dated 08.08.1995 of CBDT, the payment made could not have been disallowed as the taxes are not deductible from the media. We find that this issue is now covered by the decision of Hon'ble Calcutta High Court against assessee in the case of CIT v. Crescent Exports Syndicate (2013) 216 taxman 258 (Cal), wherein it is held that the payments which are paid as well as payable both are covered for invoking the provisions of section 40(a)(ia) of the Act for making disallowance for non-deduction of tax at source. Accordingly, this issue is decided in favour of revenue and against assessee. This issue of revenue's appeal is allowed.

5. Alternatively, we are of the view that recently Hon'ble Delhi High Court in the case of CIT Vs. Ansal Land Mark Township (Pvt.) Ltd. 61 Taxman 45 (Del), wherein it has been held as under:

“s. 40(a)(ia) disallowance for failure to deduct TDS on payment if payee has offered amount to tax. Second Proviso to s. 40(a)(ia) inserted by Finance Act 2013 w.e.f. 1.4.2013 should be treated as curative and to have retrospective effect from 1.4.2005.”

In terms of the above, we set aside the order of CIT(A) and restore the issue back to the file of AO for verification of payment of tax in respect of such income, whether the same is included by the recipients or not. If payment is included in the income and taxes are paid by respective recipients then addition should be deleted in term of the second proviso to section 40(a)(ia) of the Act. The assessee will lead the evidence in this respect before the AO. We direct the AO accordingly. Appeal of revenue is allowed for statistical purposes.

6. The next issue in this appeal of revenue is against the order of CIT(A) in deleting the addition of Rs.56,835/- made by AO in absence of supporting evidence without giving any opportunity to the AO as required under Rule 46A. For this, revenue has raised following ground no.2:

“2. On the facts and in the circumstances of the case the Ld. CIT(A) erred in law as well as on facts in deleting the addition of Rs.56,835/- made by the AO in absence of

supporting evidences without giving any opportunity to the AO as required under Rule 46A.”

7. After hearing Ld. DR, it is seen that the CIT(A) deleted the addition of Rs.56,835/- as made by AO in absence of supporting evidence without giving any opportunity to the AO as required under Rule 46A. Since we set aside the order of CIT(A) and restore the issue as aforesaid before the AO, for this issue also, we deem it fit to set aside the order of CIT(A) and restore the issue to the file of AO for fresh adjudication. Needless to say, assessee should be given adequate opportunity to produce evidence before the AO. This ground of appeal of revenue is allowed for statistical purposes.

8. In the result, the appeal of assessee is allowed for statistical purposes.

9. Order is pronounced in the open court on 05.10.2015.

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Mahavir Singh)
Judicial Member

Dated : 05th October, 2015

Jd. Sr. P.S

Copy of the order forwarded to:

1. APPELLANT óITO, Ward-29(1), Kolkata.
2. Respondent ó Shri Sandeep Basu, 607, Lake Gardens, Kolkata-700045
3. The CIT(A), Kolkata
4. CIT Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.