

आयकर अपीलीय अधिकरण, "ए" न्यायपीठ, चेन्नई

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं श्रीजी. पवन कुमार, न्यायिक सदस्यके समक्ष

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SHRI G. PAVAN KUMAR, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 2147/Mds/2015

निर्धारण वर्ष /Assessment year : 2007-2008

M/s. G.D.J.D. Exports,
No.3, Nowroji Road,
Krishnormi,
Chetpet,
Chennai 600 031.

Vs. The Assistant Commissioner of
Income Tax,
Business Circle XV,
Chennai.

[PAN AAAFG 0414E]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Dr. Anita Sumanth, Advocate

प्रत्यर्थी की ओर से /Respondent by : Shri. B. Lakshminarayanan, IRS ,JCIT.

सुनवाई की तारीख/Date of Hearing : 14-01-2016

घोषणा की तारीख /Date of Pronouncement : 03-03-2016

आदेश / ORDER

PER G. PAVAN KUMAR, JUDICIAL MEMBER:

The appeal filed by the assessee is directed against order of the Commissioner of Income-tax (Appeals)-4, Chennai in ITA No.140/2013-14/2007-08/CIT(A)-4, Dated 8.10.2015 for the

assessment year 2007-2008 passed u/s.143(3) r.w.s.147 and 250 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

2. The assessee has raised two substantive grounds, with regard to Commissioner of Income Tax (Appeals) erred in confirming reopening of assessment and also judicial aspects on limitations of re-assessment proceedings. The second ground on Commissioner of Income Tax (Appeals) erred in confirming the disallowance u/s.40(a)(ia) of the Act though income has been offered to tax in the hands of the recipient. At the time of hearing the Id. Counsel for assessee has not pressed ground on validity of re-assessment proceedings and endorsed on the file and same is treated as dismissed.

3. The Brief facts of the case are that the assessee is in the business of export of yarn and fabrics and filed return of income on 30.10.2007 admitting total income of ₹16,14,192/-. The case was selected for scrutiny and assessment was completed u/s.143(3) dated 17.12.2009 by accepting the returned income. Subsequently, the Assessing Officer have valid reasons to believe that income escaped assessment and issued notice u/s.148 dated 29.03.2012. In compliance to notice the assessee company filed reply to consider original return filed u/s.139(1) of the Act to be treated as Return filed

in response to notice u/s.148 of the Act and Id. Authorised Representative of the assessee appeared from time and time and filed details. In assessment proceedings, the Id. Assessing Officer issued show cause notice where freight charges of ₹36,91,226/- was paid without deduction of TDS. In response, the assessee company submitted that a sum of ₹30,11,123/- was paid to various companies and produced copies of confirming letters from the recipients showing the acceptance of freight charges and offered in their income tax returns for the assessment year 2007-08 and there is no loss of Revenue But the Id. Assessing Officer following the provisions of TDS and ignored the contention of the Id. Authorised Representative though they have been considered by the recipients in their hands. Further, Id. Assessing Officer found a sum of ₹1,56,760/- was paid to various parties where the payments are below ₹20,000/- each and there is no necessity or requirement of TDS deduction and such expenditure pertaining to loading and stuffing charges. For the balance amount the assessee could not produce any evidence of deduction of TDS. The Id. Assessing Officer disallowed ₹35,34,466/- and assessed total income of ₹51,48,658/- and raised demand. Aggrieved by the order of the Assessing Officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals).

4. In the appellate proceedings, the Id. Authorised Representative reiterated submissions made before the Assessing Officer and also contested that the remittances are confirmed by the recipients and offered to taxation in their hands and relied on CBDT Circular No. F.No.275/201/95-IT (B), dated 21.1.1997 were the recipients of advance confirming the amount duly subject to tax in their return of income and no further liability arise. The Id. Authorised Representative also relied on the judgment of Apex Court in case of *Hindustan Coco Cola Beverages P. Ltd vs. JCIT 293 ITR 226* and various High Courts held were the payee in a transaction offered to tax remittances received and there is no further tax liability, the assessee need not be penalized. Further, the Id. Assessing Officer has not understood the spirit of Sec.40(a)(ia) of the Act and subject to tax. The assessee has demonstrated the amount has suffered tax in the hands of the payee and there is no further liability attributable to the assessee. The additions in the reassessment proceedings amount to double taxation once in the hands of payees which would only unjustly enrich the Revenue and other being disallowance in assessment. This is not the intention of legislature framing the provisions of Sec.40(a)(ia) of the Act. Further, the Id.AR alleged that the Id. Assessing Officer has not provided adequate opportunity in respect of

freight charges of ₹5,23,343/- which were not readily available at that time and could not be produced in the hearing proceedings and the same was disallowed. The Id. Commissioner of Income Tax (Appeals) relied on the findings of the Assessing Officer and CBDT circular No.275/1997 issued in respect of section 201(1A) of the Act has gone a step ahead on verifying and perused form no.26A r.w.r.31 ACB of the Income Tax Rules. This statutory form has to be certified based on the details available in the books of Accounts. The Id. Commissioner of Income Tax (Appeals) observed that assessee has not furnished any forms to substantiate their claim giving details of the payees and in the assessment proceedings, the assessee submitted only confirmation letters from the payees. The copies of the Income Tax Return and other documentary evidence of taxes paid was not produced before the Assessing Officer or in Appellate proceedings and decision relied by the assessee in *Hindustan Coco Cola Beverages P. Ltd (supra)* cannot be applied to the present case as the assessee could not substantiate with evidence effected for disallowance of ₹30,11,123/- u/s.40(a)(ia) of the Act further the Id. Commissioner of Income Tax (Appeals) considering non compliance of TDS provisions and no statutory proof of taxes paid concurred with findings of Assessing Officer and confirmed the order of Assessing Officer. In

regard to amount of ₹.5,23,343/- which the assessee could not substantiate and produce certificate from parties or documentary evidence that the parties have filed Income Tax Return. The assessee could only furnish copies of confirmation letters to the extent of ₹5,23,343/- as an additional evidence and the procedure to be followed as per the conditions laid in Rule 46A and not complied with. Further the Commissioner of Income Tax (Appeals) observed that confirmation letter does not mentioned PAN Nos. and address of the Income Tax office where Return of income are filed. The assessee has violated the provisions of Rule 46A in submitting additional evidence and the same was rejected. Aggrieved by the order of the Commissioner of Income Tax (Appeals) the assessee assailed an appeal before the Tribunal.

5. Before us, the Id. Authorised Representative submitted that Commissioner of Income Tax (Appeals) has not given adequate opportunity and rejected the evidences filed in respect of payments made to the recipients who have offered income. Further, the Id. Authorised Representative relied on the decision of *Hindustan Coco Cola Beverages P. Ltd (supra)*. The assessee has filed evidences before Commissioner of Income Tax (Appeals) which could not be filed in the assessment proceedings and the Id. Authorised Representative

prayed that the provisions of Sec. 40(a)(ia) of the Act and the provisions applicable in respect of Sec.201 and 201(1A) of the Act are in the same parameters and the decision of Apex Court shall apply.

6. Contra, the Id. Departmental Representative relied on the findings of the authorities and also submitted that the assessee has only filed PAN numbers and not further evidence to prove that Income Tax returns are filed. The decision relied by the assessee in *Hindustan Coco Cola Beverages P. Ltd (supra)* held in the context of Sec.201(1) and 201(1A) and the Delhi High Court on the similar issue held that decision of TDS deduction u/s.40(a)(ia) cannot be equated to the decision of interest u/s.201(1) and 201(1A) of the Act and also Assessing Officer was denied opportunity to verify fresh evidence filed in appellate proceedings in violation of Rule 46A of the Income Tax Rules and prayed for dismissal of appeal.

7. We after hearing the rival submissions, perused the material on record, circulars and judicial decisions cited. The contention of the Id. Authorised Representative since the recipient has accepted the income and confirmed with the PAN numbers and filed income tax return and there is a discharge of payment of taxes and there is no loss of Revenue to the Income Tax Department. The provisions of

Sec.40(a)(ia) of the Act no doubt are applicable to the assessee but if there is any default on valid grounds for non deduction of TDS same shall be considered in the beneficial manner for allowing the deduction. As the payee has offered such income in his hands and confirmed with fresh evidence. The fresh evidence filed in the appellate proceedings was rejected. The Apex Court decision shall squarely apply to the parameter of Sec.40(a)(ia) of the Act. We are of the considered opinion that the Hon'ble Supreme Court in the case of *CIT vs. Vegetable Products Ltd., 88 ITR 192*, held the decisions favourable to the assessee have to be acted upon. We, therefore considered the disallowance is not in order as income is already offered to tax by payee in their hands and fresh evidences submitted before Commissioner of Income Tax (Appeals) are rejected as violation of Rule 46A of Income Tax Rules. Therefore, we are inclined to set aside the order of Commissioner of Income Tax (Appeals) and remit the issue to the file of the Assessing Officer for limited purpose to verify fresh evidences filed and any interest liability arises on the basis of decision of *Hindustan Coco Cola Beverages P. Ltd (supra)* the assessee is liable to pay interest u/sec 201(1A) and should co-operate in submitting the information and nevertheless to say that

adequate opportunity of being heard be provided to the assessee before passing the order.

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

Order pronounced on Thursday, the 3rd day of March, 2016, at Chennai.

Sd/-
(चंद्र पूजारी)
(CHANDRA POOJARI)
लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-
(जी. पवन कुमार)
(G. PAVAN KUMAR)
न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated:03.03.2016

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |