

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

**Before Shri P.M. Jagtap, Accountant Member
and Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 366/KOL/ 2015
Assessment Year : 2010-2011**

Amiruzzaman Kazi,.....Appellant
New Panchabati Complex,
Flat No. 3D, 3rd Floor,
Kaikhali Ghosh Para,
Kolkata-700 052
[PAN : BBRPK 6559 D]

-Vs.-

Income Tax Officer,.....Respondent
Ward-49(2), Kolkata,
Manicktala Civic Centre,
Uttarapan Complex,
Kolkata-700 054

Appearances by:

Shri Soumitra Choudhury, Advocate, for the assessee
Shri Tanuj Niogi, JCIT, Sr. D.R., for the Department

Date of concluding the hearing : November 18, 2015

Date of pronouncing the order : November 27, 2015

O R D E R

Per Shri P.M. Jagtap:-

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-15, Kolkata dated 07.01.2015 for the assessment year 2010-11 and the solitary issue raised therein relates to the addition of Rs.3,11,59,812/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) on account of disallowance of labour charges under section 40(a)(ia) for the failure of the assessee to deduct tax at source from the payment thereof.

2. The assessee in the present case is an individual, who is engaged in the business of manufacturing of leather goods. The return of income for the year under consideration was filed by him on 14.10.2010 declaring total income of Rs.4,34,519/-. In the profit & loss account filed alongwith the said return, a sum of Rs.3,26,95,812/- was debited by the assessee under the head 'wages'. During the course of assessment proceedings, the claim of the assessee for wages was examined by the Assessing Officer and on such examination, he found that the expenses claimed by the assessee under the head 'wages' to the extent of Rs.3,11,59,812/- were actually incurred on account of fabricating charges. He also found that the said charges were paid by the assessee to the outside fabricators and, therefore, he was liable to deduct tax at source from the said payments under section 194C of the Act. Since no such tax at source was deducted by the assessee, the Assessing Officer required the assessee to explain as to why the fabrication charges amounting to Rs.3,11,59,812/- should not be disallowed under section 40(a)(ia) of the Act. In reply, no explanation was offered by the assessee inspite of sufficient opportunity afforded by the Assessing Officer. The Assessing Officer, therefore, proceeded to make a disallowance on account of fabricating charges under section 40(a)(ia) of the Act.

3. The disallowance made by the Assessing Officer on account of fabricating charges under section 40(a)(ia) was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and the following submissions in brief were made on behalf of the assessee in writing before the Id. CIT(Appeals) in support of his case on the issue:-

“(i) The addition of Rs.3,11,59,812/- towards payment of wages is not tenable as the said payment was made to daily -rated/piece-rated worker without any contract either oral or written through labour sardar who is also a labourer. The Labour sardar did the identification of each labourer who worked with him for disbursement of periodical payments. The payment sheet or acquittance roll was not asked for by the Ld. A.O. at the time of scrutiny. In this regard the assessee relied on the judgement apart from the case laws given earlier in the grounds of appeal

Ratnakar Sawant, Dinesh N. Shah & Co. v. ITO [2012] 22 taxmann. com 218 (Mumbai -Trib.).

ii) That the provision of section 40a(ia) is not applicable to the expenditure that has already been paid during the year but is applicable only for the expenditure i. e. "payable" as on 31s/ March, as per verdict of special bench i) Merilyn Shipping and Transport Ltd. (136 ITD 23) (SB) (viz) ii) Verdict of Allahabad High Court in the case of CIT vs. Vector Shipping Services (P) Ltd. 357 ITR 642.

The Department's SLP to the Supreme Court in this regard has been unconditionally dismissed in limine upholding the verdict of Special Bench (viz.).

iii) That the provisions of section 194C will not be applicable to the term "work" where the "work" will not include manufacturing or supplying a product according to the requirement or specification of a customer vide decision of CIT-XVII, Delhi vs. Silver Oak Laboratories P. Ltd. June 13, 2013 (SC)".

4. The Id. CIT(Appeals) did not find merit in the submissions made by the assessee as per clause (ii) & (iii) of its letter and rejected the same after discussing the relevant case laws and legal position in detail in his appellate order. As regards the submissions made by the assessee as per clause (i) that the amount in question was paid towards wages and the said payments having been made on daily rate basis or piece rate basis, the provisions of section 194C were not applicable, Id. CIT(Appeals) required the assessee to adduce evidence in support of the same. As stated by the Id. CIT(Appeals) in his impugned order, the assessee, however, failed to produce such evidence and keeping in view the same, the Id. CIT(Appeals) rejected the contention raised by the assessee as per clause (i) of the submissions for the following reasons given in his impugned order:-

"In leather garment work, the labour input of each artisan is crucial and an error of judgment in one case renders him ineligible to receive wages for the end product as it would This is in contrast with a construction contract where hundreds of labour perform the same task and individual input cannot be verified. Further in the case of the assessee most of the sums paid to the Contractor Fabricator were paid by cheque and not in cash. This is seen from the analysis of the assessee's bank

account No. 0084250313391 with United Bank of India and a/c. No.05910200000624 with Bank of Boroda. The Bank Statement are available in the assessment folder. This is not the modus operandi of any Head Labour or Labour Sardar. Therefore, it is clear that the payments were made only to Contractor Fabricators and not to a head labourer or sardar. The assessee has not been able to even prima facie establish that the Contractor Fabricators were not receiving the sums in their own capacity as claimed by the assessee”.

The Ld. CIT(Appeals) thus confirmed the disallowance of Rs.3,11,59,812/- made by the Assessing Officer under section 40(a)(ia) on account of fabricating charges. Aggrieved by the order of the ld. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the material available on record. The main contention raised by the ld. Counsel for the assessee before us is that the entire details in the form of payment sheets showing payments made to Labour Sardars and labourers on account of fabricating charges were furnished by the assessee before the ld. CIT(Appeals) and these documents filed by the assessee before the ld. CIT(Appeals) for the first time as additional evidence, were not taken into consideration by him while deciding the issue relating to the disallowance under section 40(a)(ia). The ld. D.R., on the other hand, has pointed out from the impugned order of the ld. CIT(Appeals) that there is no mention of such documents filed by the assessee before the ld. CIT(Appeals) and as per the observations recorded specifically by the ld. CIT(Appeals), the assessee, in fact, failed to produce any such evidence despite sufficient opportunity given by the ld. CIT(Appeals). The ld. Counsel for the assessee, however, has filed a paper book before us containing copies of these documents with the certificate that the same were filed before the ld. CIT(Appeals). There is thus a clear contradiction in the claim made by the ld. Counsel for the assessee in this regard and the observations recorded by the ld. CIT(Appeals) in his impugned order . We, therefore, consider it fair and proper to remit the matter back to the ld. CIT(Appeals) with a direction that if the additional evidence in the

form of payment-sheets running into more than 400 pages was actually filed by the assessee during the course of appellate proceedings before him, the same may be considered as per Rule 46A of the Income Tax Rules, 1962 and the issue may be decided afresh on such consideration.

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

Order pronounced in the open Court on November 27, 2015.

Sd/-

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

(P.M. Jagtap)
Accountant Member

Kolkata, the 27th day of November, 2015

Copies to : (1) ***Amiruzzaman Kazi,***
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(2) ***Income Tax Officer,***
Ward-49(2), Kolkata,
Manicktala Civic Centre,
Uttarapan Complex,
Kolkata-700 054

(3) ***Commissioner of Income-tax (Appeals)- 15, Kolkata***
(4) ***Commissioner of Income Tax, Kolkata***
(5) ***The Departmental Representative***
(6) ***Guard File***

By order

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

Laha/Sr. P.S.