

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

I.T.A Nos. 2701 & 2702/Kol/2013
Assessment Years: 2005-06 & 2006-07

Assistant Commissioner of Income-tax,
Circle-33, Kolkata.
(Appellant)

Vs. Joydeb Chandra
(PAN: ABZPC3187E)
(Respondent)

Date of hearing: 20.09.2016
Date of pronouncement: 14.10.2016

For the Appellant: Shri Banibrata Dutta, Addl. CIT, Sr. DR
For the Respondent: Shri Soumitra Choudhury, Advocate

ORDER

Per Shri M. Balaganesh, AM:

Both these appeals by revenue are arising out of separate orders of CIT(A)-XIX, Kolkata vide appeal Nos. 140 & 141/CIT(A)-XIX/Circle-33/Kol/12-13 both dated 25.09.2013. Assessments were framed by DCIT, Circle-33, Kolkata u/s. 143(3)/147 of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AYs 2005-06 and 2006-07 vide his separate orders both dated 31.12.2010. Since issues are identical and facts are common and for the sake of brevity, we dispose of both the appeals by this consolidated order.

2. The only issue to be decided in these appeals is as to whether the Id CIT(A) is justified in deleting the disallowance made u/s 40(a)(ia) of the Act in the facts and circumstances of the case. The facts of Asst Year 2005-06 are considered herein and the decision rendered thereon would apply with equal force for the Asst Year 2006-07 as the facts are identical except with variance in figures.

3. The brief facts of this issue is that the assessee is an individual contractor engaged in various contractual jobs with Government of West Bengal particularly with the PHE Department running its business under the name and style of ‘Oriental Engineering Co.’. The assessee has been authorized as per contract with the various department to maintain the Pump Houses, Guarding, Supply of Oil and Fuel to run the pumps and overall

maintenance and look after the security aspects. The Id AO observed that the assessee had spent a sum of Rs. 62,90,803/- on account of operation and maintenance charges in different pump houses maintained by the PHE , Government of West Bengal, including labour charges at Ganga Sagar Mela. The assessee also spent Rs. 4,63,297/- on account of site labour charges at their various sites. The Id AO disallowed a sum of Rs. 67,64,900/- u/s 40(a)(ia) of the Act for payment of labour charges without deduction of tax at source. The assessee submitted that the payments to labourers are made as per Contract with the various PHE department, Government of West Bengal wherein the rate of payment per labour is also guided by the terms and conditions of the contract. The assessee placed the copies of the contract with the authorities. As per the contract, the wages per day fixed was Rs 65/- and hence there was no obligation to deduct tax at source in terms of section 194C of the Act as admittedly it falls within the Tax deduction limits prescribed in the said section.

The Id CITA deleted the addition by observing as under:-

“6.5. Wages are liable for TDS u/s 192, but if the wages are below the basic exemption limit then there is no need to deduct tax on it. But if the labourers are supplied by a Labour Contractor, then TDS is liable to be made on the bill of the Labour Contractor if it exceeds Rs. 20,000/- and if it exceeds Rs. 50,000/- during the whole year. The AO could not find/allocate a single case where payment exceeds Rs.50000/- to justify his addition or for that matter there was a contract. It was found that expenses were incurred by the appellant on account of hired labourers taken at different sites. These types of payments were made to daily hired labourers and hence do not fall within the ambit of section 194C of the Act. Hence, the disallowance was arbitrary and is liable to be deleted. Last but not the least while going through the assessment order it is observed that the AO passed a non-speaking order for making disallowance u/s 40(a)(ia) and the order is also silent on the reason for the impugned addition made. In view of this the addition on this count amounting to Rs.67,64,900/- is deleted.”

4. Aggrieved, the revenue is in appeal before us on the following grounds:-

“1. A.R. has admitted that there was violation of provisions u/s.194C himself as per Para(3) of the order.

2. Similarly Para 4.1 and Para No. 4.2 of the A.O.'s order in which it is very clear that the assessee never produced the bills, voucher before the A.O. in any of the expenses.

3. Even if we see the 3 CD report, the auditor himself given avoiding answer by saying "nil" there by it is clear that the assessee never followed TDS provisions.

4. Report under 26AS has not submitted by the assessee.

5. The Ld. CIT(A) deleted the additions by simply picking the word "Cursory Glance" and deleted the entire addition without appreciating the facts.

6. The Ld. CIT(A)'s observations is wrong and not according to facts because the A.O. was

unable to verify the entire books, bills and vouchers as per order sheet noting since assessee's A.R. not produced. Hence, it is factually wrong to "presume" that only cursory glance was made by the A.O.

7. How come CIT had come to such conclusion without examined any facts is doubtful and based on assumption only the addition was deleted."

5. The Id DR argued that assessee is engaged in doing contract work with Government of West Bengal and had engaged several labourers for the same and made payment of labour charges. He stated that the assessee had not maintained proper wages register with proper deduction of PF and ESI thereon which was not done by the assessee. Even the books of accounts were not produced by the assessee. Only list of labourers to whom payments were made were produced by the assessee. In response to this, the Id AR argued that without engaging these labourers, the assessee could not have carried out the Government contract. All the wages paid is less than Rs 2000 per month and hence there is no obligation to deduct tax at source under section 194C of the Act. Moreover, the entire details regarding the payment of labour charges were filed before the lower authorities which are also enclosed in the paper book filed before this tribunal. Accordingly, he prayed for non-interference in the order of the Id CITA.

6. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee containing the summary of paper book submitted to the Id AO on 8.12.2010 (page 1 of PB) ; names and addresses of workers to whom wages were paid (pages 2 to 16 of PB) ; details of labour charges (pages 17 to 77 of PB) ; vouchers for payment of wages (pages 115 to 144 of PB) and reply to Id AO vide letter dated 10.11.2010 furnishing the details of labour charges for Rs. 95,63,200/- (Pages 171 to 179 of PB) . Similar details were also filed by way of a separate paper book for the Asst Year 2006-07 comprising of pages 1 to 250 by the Id AR. We find that the entire details of labour charges were duly filed before the Id AO. We find that these details were not properly appreciated by the Id AO while making the disallowance. Infact certain labourers had even confirmed before the Id AO in response to notice u/s 133(6) of the Act. All these labour payments were maximum to the extent of Rs. 2,015/- per month. We hold that the payments made thereon would definitely not fall within the limits for tax deduction obligations prescribed u/s 194C of the Act. We find lot of force in the argument of the Id AR that without incurrance of these labour charges, it would not be practically possible to

execute the Government contracts by the assessee. Hence in these facts and circumstances, we hold that there is no obligation to deduct tax at source in terms of section 194C of the Act and therefore disallowance made u/s 40(a)(ia) of the Act is not warranted. Accordingly, the grounds raised by the revenue are dismissed.

7. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the open court on 14.10.2016

Sd/-
(N.V. Vasudevan)
Judicial Member

Sd/-
(M. Balaganesh)
Accountant Member

Dated : 14th October, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – ACIT, Circle-33, Kolkata
2. Respondent –Shri Joydeb Chandra, 7/1A, Abhoy Halder Lane, Kolkata-700 012.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.