

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK
'SMC' BENCH, CUTTACK
BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER

ITA No.43/CTK/2015
Assessment Year : 2009-2010

Chandan Kumar Sahoo, N.H.5, Kendrapara.	Vs.	ITO, Ward-2, Paradeep.
PAN/GIR No. AVKPS 3738 C		
(Appellant)	..	(Respondent)

Assessee by : Shri P.R.Mohanty, AR
Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 22 /03/ 2017
Date of Pronouncement : 22/03/ 2017

ORDER

This is an appeal filed by the assessee against the order of CIT(A)-Cuttack, dated 17.10.2014, for the assessment year 2009-2010.

2. The assessee has filed modified grounds of appeal on 17th January, 2017. Ld Departmental Representative had no objection to accepting and adjudicating the same. Hence, the modified grounds of appeal were accepted and the parties were allowed to make their submissions thereon.

3. Ground Nos.1 & 5 of the appeal are general in nature and hence does not require separate adjudication by me.

4. In Ground No.2 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.4,95,400/- u/s.68 of the Act.

5. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. The Assessing Officer observed that the assessee has shown credit balance in the current account at Rs.4,95,400/- for the first time. This balance has been transferred to the capital account of the assessee. The Assessing Officer required the assessee to explain the source of such credit balance but the assessee failed to explain the same satisfactorily. Therefore, the Assessing Officer added the same under section 68 of the Act.

6. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

7. Before me, the Authorised Representative of the assessee submitted that it will be observed from pages 5 and 6 of the paper book, wherein, the ledger account of proprietary business of the assessee Sidhivinayak Tyres and Tarini Engineering is placed. The A.R. of the assessee submitted that at pages 30 to 37 of the paper book, copies of balance sheet of the proprietary business Sri Baladevjew Fuel Centre, Sidhi Vinayak Tyres and Tarini Engineering are filed. From these copies, it can be seen that the assessee was having credit balance in the current account as on 31.3.2009 of

Rs.14,86,248/- in Sri Baladevjew Fuel Centre, overdrawn balance in the current account in Sidhi Vinayak Tyres of Rs.7,77,126/- and overdrawn balance in the current account in Tarini Engineering 2,13,722/-. He submitted that sum total of the balances of current account in the three firms works out to Rs.4,95,400/-, which has been added in the capital account of the assessee. A chart of three proprietorship business as on 31.3.2009 is filed at page 1 of the paper book, which explains the capital account as on 31.3.2009 of the Proprietor Shri Chandan Klumar Sahu. Hence, he submitted that the addition made and sustained of Rs.4,95,400/- was not justified.

8. Ld Departmental Representative could not controvert the above submission of Id Authorised Representative of the assessee.

9. I find that the addition of Rs.4,95,400/- has been made u/s.68 of the Act on account of unexplained credit in the capital account. The explanation of the assessee is that the credit balance in the current account of the assessee in his three proprietary business of Rs.14,86,248/- in Sri Baladevjew Fuel Centre, overdrawn balance in the current account in Sidhi Vinayak Tyres of Rs.7,77,126/- and overdrawn balance in the current account in Tarini Engineering 2,13,722/- respectively and the net results of which works out to Rs.4,95,400/-. Which has been added in the capital account of the assessee. The explanation of the assessee has not been

controverted by the Id D.R. Therefore, I am of the considered opinion that aggregate amount of Rs.4,95,400/- has been duly explained by the assessee by filing the relevant copies of profit and loss account of three proprietary business of the assessee, which remained uncontroverted by the revenue. Hence, the addition made cannot be sustained in law. I, therefore, set aside the orders of lower authorities and delete the addition of Rs.4,95,400/- and allow this ground of appeal of the assessee.

8. In Ground No.3 of the appeal, the grievance of the assessee is that the CIT(A) erred in sustaining the addition of Rs.6,65,000/- u/s.68 of the Act.

9. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. The brief facts of the case are that the Assessing Officer found that a sum of Rs.6,65,000/- has been credited to the account of Tarini Engineering on different dates. The Assessing Officer asked the assessee to explain the credits with necessary evidence. The assessee replied that the amount has been withdrawn from another partnership firm namely, M/s.Jagannath Engineering Works. The Assessing Officer observed that the assessee did not show any income from such firm and also did not produce any evidence of withdrawal of amount from such firm. Hence, he added the same to the income of the assessee.

10. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

11. Before me, Id Authorised Representative of the assessee pointed out from pages 5 -6 of paper book, wherein, ledger account of the firm Sidhi Vinayak Tyres and Tarini Engineering are filed. He pointed out that sum of Rs.2 lakhs on 24.12.2008, Rs.1,00,000/- on 16.2.2009 and Rs.1,00,000/- on 2.3.2009 aggregating to Rs.4 lakhs was paid by Sishivinayak Tyres to the firm Tarini Engineering in cash. He further pointed out that it will be observed from bank statement of Sri Jagannth Engineering Works at State Bank of India, Sikharpur that on 16.8.2009 a sum of Rs.2,65,000/- was paid by Jagannath Engineering Works to the assessee Shri Chandan Kumar Sahu and on the very same date i.e. 16.8.2008, the same was credited in the bank account of the assessee. It was his submission that the total credit of Rs.6,65,000/- is explained and, therefore, the CIT(A) was not justified in confirming the addition of Rs.6,65,000/- u/s.68 of the Act.

12. Ld D.R. could not controvert the submission of Id Authorised Representative of the assessee.

13. I find that the addition of Rs.6,65,000/- u/s.68 of the Act was made by the Assessing Officer on the ground that the assessee explained that Rs.2,65,000/- was received from Jagnath Engineering Works but the assessee did not show any income from such firm and also did not produce any evidence of withdrawal of amount from such firm.

14. Before me, Id Authorised Representative has filed bank statement of Jagannath Engineering Works and has demonstrated that a sum of

Rs.2,65,000/- was credited to the account of the assessee by cheque on 16.8.2008 drawn on State Bank of India, Sikharpur Branch and it was credited on the same date i.e. 16.8.2008. Further, the assessee has shown by filing ledger account of two firms i.e. Sidhivinayak Tyres and Tarini Engineering works that a sum of Rs.4 lakhs was paid by Sidhivinayak Tyres during the period from 24.12.2008 to 2.3.2009 to the assessee in cash, which was credited by Tarini Engineering in its books of account. Thus, the credit of Rs.6,65,000/- was duly explained by the assessee. The explanation of the assessee has not been controverted by Id Departmental Representative. Hence, I am of the considered opinion that the Id CIT(A) was not justified in confirming the addition of Rs.6,65,000/- u/s.68 of the Act. I, therefore, set aside the orders of lower authorities and delete the addition of Rs.6,65,000/- made u/s.68 of the Act and allow this ground of appeal of the assessee.

15. In Ground No.4 of the appeal, the grievance of the assessee is that the CIT(A) erred in confirming the addition of Rs.5,64,521/- under the head "labour charges" and "job works" u/s. 40(a)(ia) of the Act.

16. I have heard the rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, the Assessing Officer found that the assessee has debited Rs.5,64,521/- under the head "labour charges" and "job works. The Assessing Officer observed that it was contract payment and no TDS was deducted u/s.194C of the Act

and, therefore, by invoking the provisions of section 40(a)(ia) of the Act, he disallowed Rs.5,64,521/- and added the same to the income of the assessee.

17. On appeal, the CIT(A) confirmed the action of the Assessing Officer.

18. Before me Id Authorised Representative of the assessee submitted that it was explained before the Assessing Officer as well as the CIT(A) that entire amount was paid during the year itself and that provisions of section 194C of the Act were not applicable as the payment during the year did not exceed Rs.50,000/-. It was also argued that no amount was outstanding and payable at the end of the year. Therefore, in view of the decision of Hon'ble Allahabad High Court in the case CIT vs. Victor Shipping Services (P) Ltd., (2013) 357 ITR 642(All), wherein, it has been held that for disallowing expenses from business and profession on the ground that tax has not been deducted at source, the amount should be payable and not it has been paid by the end of the year,), no disallowance u/s.40(a)(ia) was warranted in the case of the assessee. He further submitted that the SLP filed against the judgment of Hon'ble Allahabad High Court has been dismissed by the Hon'ble Supreme Court vide judgment dated 2.7.2014 in CC No.(s) 8068/2014. He submitted that where there are contrary decisions of Hon'ble High Courts on an issue and none of which is Hon'ble Jurisdictional High court, then the decision in favour of the assessee should

be followed in view of the decision of Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd., 88 ITR 192 (SC).

19. In the facts and circumstances of the case, I find that there is no amounting outstanding and payable at the end of the year. Therefore, I set aside the orders of lower authorities and respectfully following the decision of the Hon'ble Allahabad High Court in the case of CIT vs. Victor Shipping Services (P) Ltd (supra) delete the disallowance of Rs.5,64,521/- made u/s.40(a)(ia) of the Act and allow this ground of appeal of the assessee.

20. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 22/03/2017 in the presence of parties.

Sd/-

(N.S Saini)

ACCOUNTANT MEMBER

Cuttack; Dated 22/03/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Chandan Kumar Sahoo,
N.H.5, Marshaghai, Kendrapara.
2. The Respondent. ITO, Ward-2, Paradeep.
3. The CIT(A) Cuttack
4. Pr.CIT, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack