

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No. 662/JP/2017
निर्धारण वर्ष/Assessment Year : 2011-12.

Shri Mukesh Rustogi, 342, Gurujambeshwar Nagar, Lane-6, Vaishali Nagar, Jaipur.	बनाम Vs.	The ACIT, Circle-3, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. ACTPR 9169 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Shrawan Gupta (Advocate)
राजस्व की ओर से / Revenue by : Shri P.P. Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 23.10.2017.
घोषणा की तारीख / Date of Pronouncement : 24/10/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

This appeal by the assessee is directed against the order of Id. CIT (A)-1, Jaipur dated 13.04.2016 pertaining to assessment year 2011-12. The assessee has raised the following grounds of appeal :

1. The impugned order u/s 143(3) dated 11.12.2013 is bad in law and on facts of the case, for want of jurisdiction, barred by limitation and various other reasons and hence the same may kindly be quashed.
2. Rs. 5,71,280/- : The Id. CIT (A) has grossly erred in law as well as on the facts of the case in confirming the disallowance of Rs. 5,71,280/- u/s 40(a)(ia) made by the AO on account of non deduction of TDS, on the amount which has been paid before the end of year and tax has been paid by the recipient. Hence the disallowance addition so made and confirmed by the CIT (A) is being totally contrary to the provisions of law and facts. Hence the same may kindly be deleted in full.

3. Rs. 2,25,281/- : the Id. CIT (A) has grossly erred in law as well as on the facts of the case in partly confirming the disallowance of Rs. 2,25,281/- made by the AO of Rs. 2,78,626/- on account of various expenses. Hence the disallowance so made and partly confirmed by the CIT (A) is being totally contrary to the provisions of law and facts. Hence the same may kindly be deleted in full.
4. The Id. AO erred in law as well as on the facts of the case in charging of interest u/s 234B, 234C & 234D as consequential in nature. The appellant totally denies its liability of charging of any such interest. Hence the interest so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.
5. The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing.

2. Briefly stated the facts of the case are that the case of the assessee was picked up for scrutiny assessment and the assessment under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) was framed vide order dated 11.12.2013. While framing the assessment, the AO made additions on account of disallowance out of interest payment of Rs. 5,71,280/- by invoking provisions of section 40(a)(ia) of the Act, disallowance out of vehicle running expenses of Rs. 24,977/-, disallowance out of business promotion of Rs. 28,368/-, disallowance out of Telephone expenses of Rs. 87,657/- and disallowance out of Traveling expenses of Rs. 1,37,624/-. Aggrieved, the assessee preferred an appeal before Id. CIT (A), who after considering the submissions of the assessee partly allowed the appeal of the assessee. Now the assessee is further in appeal before this Tribunal.

3. At the time of hearing, the Id. Counsel for the assessee submitted that he does not wish to press Ground No. 1. Therefore, the same is dismissed as not pressed.

4. Ground No. 2 relates to confirming the disallowance of Rs. 5,71,280/- u/s 40(a)(ia) of the Act on account of interest expenses to private parties i.e. NBFC on which no TDS was deducted. The Id. Counsel for the assessee reiterated the submissions as made in the written brief. He submitted that the Income Tax Department has issued a certificate u/s 197(1) to Cholamandalam DBS Finance for non deduction of TDS, a certificate issued by the M/s. Indiabulls Financial Services Ltd. wherein they have confirmed about inclusion of interest charged by them from V.R. marketing during the year 2010-11 in their taxable income and have accordingly paid the tax, all NBFCs are well known Nbfd and some of them are also listed companies and the accounts of all are subject to statutory audit under the Companies Act Therefore, there remains no doubt of non-inclusion of interest charged by them in their income and consequently payment of income tax thereon. Section 40(a)(ia) is applicable only to the expenditure which is payable as on 31st March of every year and cannot be applied on expenditure which have already been paid during the year, without deducting tax at source.

4.1. On the contrary, the Id. D/R relied on the order of the Assessing Officer.

4.2. We have heard rival contentions, perused the material on record and gone through the orders of the authorities below. After considering the totality of facts and the decision of Hon'ble Delhi High Court rendered in the case of CIT vs. Ansal Landmark Township (P) Ltd. 377 ITR 635 (Delhi), we restore the issue to the file of

the Assessing Officer for verification with regard to the Certificate as furnished by the assessee. The AO after verifying the same from the respective parties i.e. NBFCs would delete the disallowance in case the Certificate is found in order. The appeal of the assessee is allowed for statistical purposes.

5. Ground No. 3 relates to confirming the disallowance of Rs. 2,25,281/- on account of various expenses. The Id. Counsel for the assessee submitted that the AO has not specifically pointed out any defect except that the expenses are not properly vouched. The AO disallowed the expenses on the ground that the some of the payments were made in cash and personal use etc. could not be ruled out. The Id. Counsel submitted that only on these basis no disallowance can be made without bringing any cogent material.

5.1. On the other hand, the Id. D/R supported the orders of the authorities below.

5.2. We have heard rival contentions, perused the material on record and gone through the orders of the authorities below. The Id. CIT (A) while confirming the disallowance has observed in para 3.2.2 of his order as under :-

" 3.2.2. I have duly considered the submissions of the appellant, assessment order and the material placed on record. It is noted that the AR of the appellant agreed for the additions made by the AO on account of vehicle running expenses (10%), business promotion expenses (10%), telephone expenses (5%) and travelling expenses (10%). It is trite law that no estoppels lie against statute and the AO has to determine the correct income of the appellant in view of the provisions of the Act. It is noted from the assessment order that specific defects were pointed out by the AO in respect of telephone

expenses and travelling expenses. The AR of the appellant agreed for the additions (now disputed by the appellant) and thus the AR prevented the AO for making further enquiries in respect of the expenses claimed by the appellant. During appellate proceedings, the appellant was not able to confront the findings recorded by the AO in the assessment order in respect of telephone and traveling expenses. It is also noted that the AO has made disallowances in respect of business promotion and vehicle running expenses without any cogent reasons and bringing on record any material which may justify the said disallowances.

(ii) Therefore, looking to the totality of facts and circumstance of the case, it is held that the disallowance made by the AO on account of telephone and travelling expenses was justified, hence sustained. Further, the disallowance on account of vehicle running and business promotion cannot be sustained. Thus, out of the total disallowance of Rs. 2,78,626/- made by the AO, a sum of Rs. 2,25,281/- (87,657 + 1,37,624) is hereby sustained and thus the appellant gets a relief of Rs. 53,345/- (24,977 + 28,368)."

In view of the above finding of the Id. CIT (A), we do not find reason to interfere in the order of Id. CIT (A), the same is hereby affirmed. The ground of the assessee is rejected.

6. Ground No. 4 relates to charging of interest under section 234B, 234C and 234D. The assessee has not submitted any details in respect of this ground. The ground is consequential in nature. Therefore, the A.O. is directed to give appeal effect while deciding the issue accordingly.

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

Order is pronounced in the open court on 24.10.2017.

Sd/-
(भागचन्द)
(BHAGCHAND)
लेखा सदस्य/Accountant Member
Jaipur

Sd/-
(कुल भारत)
(KUL BHARAT)
न्यायिक सदस्य/Judicial Member

Dated:- 24/10/2017.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Shri Mukesh Rustogi, Jaipur.
2. The Respondent – The ACIT, Circle-3, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 662/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

