



IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR
BEFORE SHRI P.K. BANSAL, VICE PRESIDENT AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

ITA no.11/Nag./2014
(Assessment Year : 2009-10)

Asstt. Commissioner of Income Tax
Circle-8, Nagpur Appellant

v/s

Shri Roshanlal Ramdeo Jaiswal
Manohar Chowk, Gondia Respondent
PAN – ABNPJ5222D

Cross Objection no. 3/Nag./2014
(Arising out of ITA no. 11/Nag./2014)
(Assessment Year : 2009-10)

Shri Roshanlal Ramdeo Jaiswal
Manohar Chowk, Gondia Cross Objector
PAN – ABNPJ5222D (Original Respondent)

v/s

Asstt. Commissioner of Income Tax
Circle-8, Nagpur Respondent
(Original Appellant)

Assessee by : Shri M.K.M. Agrawal
Revenue by : Shri A.R. Ninawe

Date of Hearing – 28.06.2017

Date of Order – 29.06.2017

ORDER

PER AMARJIT SINGH, J.M.

The appeal filed by the Revenue and Cross Objection by the assessee are directed against the order dated 15th October 2013,

passed by the learned Commissioner (Appeals)-II, Nagpur, for the assessment year 2009-10.

2. The Revenue has raised the following grounds of appeal:-

"1. Whether on facts and in the circumstances of the case, the CIT (Appeals) has erred in deleting the addition made by AO on a/c of disallowance u/s 40A(3) by holding that the relationship between BSNL and the assessee was principal and agent?"

2. Whether on the facts and in the circumstances of the case, the CIT (Appeals) has erred in holding that the relationship between BSNL and the assessee was principal and agent and hence there was no sale and purchase between the two?"

2. Brief facts of the case are that the assessee filed return of income for the assessment year 2009-10 on 29th September 2010, declaring total income to the tune of ₹ 10,66,770. the return of income was processed under section 143(1) of the Income Tax Act, 1961 (for short "*the Act*"). Thereafter, the case was selected for scrutiny under CASS. Notice under section 143(2) dated 20^h August 2010, was issued and served upon the assessee. Subsequently, the notice under section 142(1) fo the Act was also issued and served upon the assessee. The assessee was deriving his income from wholesale trading of Country Liquor, Petrol Pump (Indian Oil Corp.), BSNL Franchise, retail liquor shop. The books of account were maintained and were audited as required under section 44AB of the Act. A copy of audit report along with Balance Sheet, Profit & Loss account and other details were also

filed. The assessment was completed after making various disallowances and assessing the income to the tune of ₹ 1,39,05,095. The assessee was not satisfied, therefore, the assessee filed an appeal before the learned Commissioner (Appeals) who deleted the addition made by the Assessing Officer on account of disallowance under section 40A(3) of the Act. Therefore, the Revenue has filed the present appeal before us.

ISSUE NO.1 AND 2

3. Under these issues, the Revenue has raised the sole point in connection with the deletion of the addition made by the Assessing Officer on account of disallowance under section 40A(3) of the Act. The learned Commissioner (Appeals) has held the relationship between the assessee and BSNL as "*principal and agent*", therefore, he was of the view that the provisions of section 40A(3) of the Act was not applicable to the case of the assessee. Before going further, we deem it necessary to advert the finding of the learned Commissioner (Appeals) on record on these issues.

"6. I have carefully considered the facts of the case and written submission of the appellant. The issue of disallowance u/s 40A(3) in respect of purchases made from BSNL have been the subject matter of appeal in the immediately preceding year in the case of the appellant. The appellant has submitted a copy of order passed by the CIT(A)-II, Nagpur vide order No. CIT(A)-11/564/10-11 dated 12-03-2012 wherein the disallowance u/s 40A(3) on identical facts was dealt by my predecessor. The relevant portion of the order of CIT(A) is reproduced as under:-

"However, appellant has claimed that there is relationship of principal and agents and between appellant and BSNL and hence appellant can give cash collected on behalf of principal and section u/s.40A(3) is not attracted. Appellant has placed reliance on the judgment of Kerala High Court in case of Vodafone Essar Cellular Ltd. vs. Asstt. CIT in IT A No. 1742, 1759, 1761 to 1764, 1773 & 1780 of 2009 dt. 17.08.2010 and ITAT, Cochin Bench 127 ITD 440 (2011). I find that relationship of principal / agent is there and appellant is getting only commission out of it. Hence, there is no sale purchase and section 40A(3) is not attracted. Hence, addition on this account is deleted."

4. On appraisal of the above mentioned findings, we observe that the learned Commissioner (Appeals) deleted the addition raised in view of the provisions under section 40A(3) of the Act on the basis of finding of the learned Commissioner (Appeals)-II, Nagpur, in which on the basis of identical facts the addition deleted by the said appellate authority raised in view of section 40A(3). The addition was deleted on the basis of the judgment passed in the case of Vodafone Essar Cellular Ltd. vs. Asstt. CIT in ITA no.1742, 1759, 1761 to 1764, 1773 & 1780 of 2009 dated 17th August 2014 and also relied upon the findings of the Co-ordinate Bench of the ITAT, Cochin Bench, in the case of S. Rahumathulla v/s ACIT,[2010] 127 ITD 440 (Cochin). The Hon'ble High Court of Kerala and the Tribunal, Cochin Bench, have held that the relationship between the assessee and the BSNL is "*principal and agent*" in nature, therefore, the provisions under section 40A(3) has not been attracted and accordingly the learned Commissioner (Appeals) also deleted the addition made by the

Assessing Officer to the tune of ₹ 7,62,692. No distinguishable material has been produced before us to deviate from the findings of the learned Commissioner (Appeals) in question. The matter of controversy has been adjudicated earlier in the above mentioned case and the case of the assessee has duly been covered with the case relied upon by the learned Counsel for the assessee mentioned above. Finding no tangible material or any other law contrary to the law relied upon by the learned Counsel for the assessee, we are of the view that the learned Commissioner (Appeals) has passed the order in question judiciously and correctly which is not required to be interfered with at this appellate stage. Accordingly, these issues are decided against the Revenue and in favour of the assessee. Thus, the grounds raised by the Revenue are dismissed.

5. In the result, Revenue's appeal is ordered to be dismissed.

C.O. NO.3/Nag./2014

6. The assessee has filed the cross objection in connection with the controversy which has been raised by the Revenue in its appeal in ITA no.11/Nag./2014. Since the matter of controversy has been adjudicated in favour of the assessee while deciding the issues no.1 and 2 in Revenue's appeal being ITA no.11/Nag./2014, therefore, the

cross objection filed by the assessee is hereby dismissed in view of the above stated terms.

7. In the result, Revenue's appeal is dismissed and assessee's cross objection is hereby dismissed being infructuous.

Order pronounced in the open Court on 29.06.2017

**Sd/-
P.K. BANSAL
VICE PRESIDENT**

**Sd/-
AMARJIT SINGH
JUDICIAL MEMBER**

NAGPUR, DATED: 29.06.2017

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Nagpur City concerned;*
- (5) *The DR, ITAT, Nagpur;*
- (6) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

(Dy./Asstt.Registrar)
ITAT, Nagpur