

IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH (SMC), KOLKATA

[Before Shri P.M. Jagtap, AM]

I.T.A. No. 332/Kol/2017  
Assessment Year : 2008-09

*Sales Emporium (ULG).....Appellant*  
*85-D, Bidhan Nagar Road,*  
*Kolkata - 700 067*  
*[PAN : AAKFS 8098 N]*

*Income Tax Officer.....Respondent*  
*Ward 44(2) Kolkata,*  
*3, Govt. Place West,*  
*Kolkata - 700 001*

**Appearances by:**

*Shri Vigyaneshwar Nath Datta, Advocate appearing on behalf of the Assessee.*  
*Shri Sanjay Mukherjee, Addl. CIT(DR) appearing on behalf of the Revenue.*

Date of concluding the hearing : November 29, 2017

Date of pronouncing the order : January 10, 2018

**ORDER**

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) -13, Kolkata dated 11.11.2016.

2. In ground no 1 and 2, the assessee has challenged the validity of the assessment made by the A.O. under section 143(3). At the time of hearing, the learned counsel for the assessee however has not pressed the said grounds. Ground no 1 & 2 of the assessee's appeal are accordingly dismissed as not pressed.

3. The issue involved in ground no 3 relates to the disallowance of Rs, 15,69,950/- made by the A.O. and confirmed by the Ld. CIT(A) on account of sales promotion and advertisement expenses by treating the same as unproved / bogus.

4. The assessee in the present case is a partnership firm which is engaged in the business of trading in electronic goods. The return of income for the year under consideration was filed by it on 27.09.2008 declaring a total income of Rs. 1,31,440/-. In the said return, deduction was claimed by the assessee on account of payments of Rs. 11,25,000/- and Rs. 4,44,950/- made to M/s. Latest Publicity House towards hoarding charges and gift articles. The claim of the assessee for the said amounts claimed under the head advertisement and sales promotion expenses was examined by the A.O. during the course of assessment proceedings. In this regard, a letter sent by him to M/s. Latest Publicity House at the address given by the assessee was returned unserved by the postal authority with the comments 'Not Known'. The Income Tax Inspector deputed by the A.O. to make enquiry with the said party also found that there was no such party at the address given by the assessee. Even the assessee failed to produce the said party for verification before the A.O. He however filed the photocopies of bills raised by M/s. Latest Publicity House for hoardings and further submitted that tax at source was also deducted by it from the payments made to M/s. Latest Publicity House. He also pointed out that the said party was regularly assessed to tax and relevant documentary evidence in this regard was also filed by the assessee. The enquiry sought to be made by the A.O. at the telephone numbers printed on the bills of Latest Publicity House filed by the assessee however revealed that the said telephone numbers belonged to some third parties. The A.O., therefore, held that there was no verification possible of the claim of the assessee of having paid the amount of Rs. 15,69,950/- to M/s. Latest Publicity House towards hoarding charges and gift articles in the absence of correct business

address or telephone number. He, therefore, concluded that the claim of the assessee on this count was bogus/unverifiable and the deduction claimed by the assessee amounting to Rs. 15,69,950/- on account of advertisement and sales promotion expenses was disallowed by him in the assessment under section 143(3) vide an order dated 2<sup>nd</sup> December, 2010.

5. Against the order of the A.O. passed under section 143(3), an appeal was preferred by the assessee before the Ld. CIT(A) and the submissions made before the Assessing Officer on this issue were reiterated on behalf of the assessee before the Ld. CIT(A). Attention of the Ld. CIT(A) was drawn by the assessee to the documentary evidence already filed before the A.O. in the form of bills of M/s. Latest Publicity House for hoarding charges, income tax particulars of the said party as well as photographs of the concerned hoardings in support of its case on this issue. It was also pointed out by the assessee that all the relevant payments were made to M/s. Latest Publicity House by account payee cheques and tax at source was also deducted from the said payments. The Ld. CIT(A) did not find merit in these submissions of the assessee. According to him, documentary evidence filed by the assessee was not sufficient to establish that services were actually rendered by M/s. Latest Publicity House. He also took note of the fact that there was failure on the part of the assessee to produce the said party for verification despite specific opportunity given by the A.O. He accordingly confirmed the disallowance of Rs. 15,69,950/- made by the A.O. on account of advertisement and sales promotion expenses.

6. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that copies of bills raised by Latest Publicity House for hoarding charges (copies at page no 1, 2 & 3 of the assessee's Paper Book no. 3) were filed by the assessee before the authorities below. As claimed by the assessee before the authorities below as well as before the Tribunal, payments against the said bills were made by account payee cheques after deduction of tax at source. A confirmation letter of M/s. Latest Publicity House (copy at page 44 of Paper Book no 1) was also filed by the assessee before the A.O. giving permanent account number of the said party as well as other income tax particulars including the copy of acknowledgement of IT return for the year under consideration. Having regard to this documentary evidence placed on record, I find merit in the contention of the learned counsel for the assessee that the claim of the assessee for deduction of at least the hoarding charges of Rs. 11,25,000/- paid to M/s. Latest Publicity House was duly supported and substantiated by the relevant documentary evidence and the authorities below were not justified in disallowing the same merely on the ground that the same was not verifiable in the absence of correct address of the said party given by the assessee. In my opinion, when the permanent account number as well as other particulars of the income tax assessment of the said party were placed on record before the A.O., he could have easily verified the claim of the assessee directly with the said party instead of harping on the failure of the assessee to give the correct address or produce the said party for verification. As regards the claim of the assessee for deduction of Rs. 4,44,950/- paid to M/s. Latest Publicity House for supply of gift articles, I however find that it is not supported by any

relevant documentary evidence such as bills, delivery challans, vouchers etc and in the absence of the same, the claim of the assessee for the said expenses cannot be allowed. I, therefore, modify the impugned order of the Ld. CIT(A) on this issue and sustain the disallowance of Rs. 15,69,950/- made by the A.O. on account of advertisement and sales promotion expenses to the extent of Rs. 4,44,950/-. Ground no 3 of the assessee's appeal is thus partly allowed.

7. The issue raised in ground no 4 relates to the disallowance of Rs. 2,31,120/- made by the A.O. under section 40(a)(ia) and confirmed by the Ld. CIT(A).

8. During the year under consideration, a total sum of Rs. 2,31,120/- was paid by the assessee to 3 persons on monthly basis as retainership. During the course of assessment proceedings, it was submitted by the assessee that the said persons were computer experts and accountants and the amounts in question was paid to them for performing accountancy job and computer consultancy. It was also submitted that the said persons were not professionals and therefore, tax at source was not required to be deducted from the payments made to them as per section 194J. It was further submitted that there was no contract entered into by the assessee with the said persons and therefore, the provisions of section 194C were not applicable. These submissions of the assessee were not found acceptable by the A.O. According to him, the amount in question having been paid by the assessee at the rate fixed on monthly basis, there was oral contract between the assessee and the said persons

and the amount in question having been paid to them for contractual work, the assessee was required to deduct tax at source as per the provisions of section 194C. Since there was failure on the part of the assessee to comply with the said requirement, the A.O. invoked the provisions of section 40(a)(ia) and made a disallowance of Rs. 2,31,120/-. On appeal the Ld. CIT(A) confirmed the said disallowance made by the A.O. for the same reasons as given by the A.O.

9. I have heard the arguments of both the sides and also perused the relevant material available on record. The learned counsel for the assessee has raised the same contention as raised before the authorities below that in the absence of any contract entered into between the assessee and the concerned 3 persons, the provision of section 194C was not applicable and there was no question of deduction of tax at source. I am unable to accept this contention of the learned counsel for the assessee. As rightly held by the authorities below, when the amount in question was paid by the assessee to the concerned 3 persons at the fixed rate on monthly basis for the specified services rendered by them, there was bound to be an oral contract on the basis which the services were agreed to be rendered on retainership basis. The assessee, therefore, was liable to deduct tax at source in terms of section 194C and having failed to do so, the amount in question was liable to be disallowed under section 40(a)(ia). I, therefore, find no infirmity in the impugned order of the Ld. CIT(A) confirming the disallowance made by the A.O. under section 40(a)(ia) and upholding the same, I dismiss ground no 4 of the assessee's appeal.

10. The issue involved in ground no 5 relates to the disallowance of Rs. 2,68,689/- made by the A.O. of installation and delivery expenses which is sustained by the Ld. CIT(A) to the extent of 50%.

11. In the P & L A/c, a sum of Rs. 2,68,689/- was debited by the assessee on account of installation and delivery expenses. On verification of the said expenses, it was found by the A.O. that a sum of Rs. 1,000/- was paid by the assessee for matador hire charges towards each trip. Although the assessee produced vouchers in support of its claim for installation and delivery charges, the A.O. found that the address of the owners as well as the registration numbers of the vehicles were not given in the said vouchers. In the absence of the said details, Assessing Officer held that the claim of the assessee for installation and delivery charges was not verifiable from the self made vouchers and proceeded to disallow the entire installation and delivery charges claimed by the assessee. On appeal the Ld. CIT(A) restricted the said disallowance made by the A.O. to 50% after taking into consideration the nature of the assessee's business which warranted incurring of expenditure on installation and delivery charges in the regular course.

12. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that even though the claim of the assessee for installation and delivery charges was not fully verifiable from the self made vouchers produced by the assessee in the absence of relevant details, the disallowance made by the A.O. for such expenses entirely was not justifiable keeping in view the nature of the assessee's business of dealing in electronic goods

which very much required incurring of expenditure on installation and delivery charges on regular basis. In these circumstances, the entire expenses claimed by the assessee on installation and delivery charges could not be entirely disallowed and such disallowance should be made to some fair and reasonable extent. In my opinion, even the disallowance of 25% made by the Ld. CIT(A) vide his impugned order is excessive and unreasonable and having regard to all the facts of the case including especially the nature of assessee's business as well as the quantum of expenditure claimed, it would be fair and reasonable to make a disallowance of 50% out of installation and delivery charges. I accordingly modify the impugned order of the Ld. CIT(A) on this issue and restrict the disallowance out of installation and delivery charges to 25%. Ground no 5 is thus partly allowed.

13. As regards the issues involved in ground no 6 relating to disallowance under section 40A(3) amounting to Rs. 34,992/-, car expenses amounting to Rs. 27,393/- and telephone expenses of Rs. 8,700/-, learned counsel for the assessee at the time of hearing before us has not raised any material contention to support and substantiate the assessee's case. A perusal of the relevant portion of the order of authorities below also shows that a very fair and reasonable view has been taken by them while making this disallowances. I, therefore, find no merit in ground no 6 of the assessee's appeal and dismiss the same.

14. As noted from the record, although the assessee has filed an application seeking admission of the additional ground on the issue of

disallowance of bad debts amounting to Rs. 1,59,980/-, no arguments were raised by the learned counsel for the assessee at the time of hearing for admission of the said additional ground or even on the merits of the issue raised therein.

**15. In the result, the appeal of the assessee is partly allowed.**

Order Pronounced in the Open Court on 10<sup>th</sup> January, 2018.

Sd/-  
(P.M. Jagtap)  
ACCOUNTANT MEMBER

**Dated: 10/01/2018**

Biswajit, Sr. PS

Copy of order forwarded to:

1. Sales Emporium (ULG), 85-D, Bidhan Nagar Road, Kolkata – 700 067.
2. ITO, Ward 44(2), 3, Govt. Place West, Kolkata – 700 001.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.  
ITAT, Kolkata