

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

[Before Hon'ble Shri P.M. Jagtap]

I.T.A. No. 2172/Kol/2017
Assessment Year : 2007-08

Shri Goverdhan Sharma.....*Appellant*
9, Peary Mohan Lane,
Kolkata - 700 007
[Pan : ATBPS 8082 JJ]

Income Tax Officer.....*Respondent*
Ward No. 45(2), Kolkata,
3, Govt. Place,
Kolkata - 700 001

Appearances by:

Shri Ashok Barnwal, CA appearing on behalf of the Assessee.

Shri S.M. Das, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : January 10, 2018

Date of pronouncing the order : January 17, 2018

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) - 13, Kolkata dated 22.06.2017 and the solitary issue involved therein relates to the addition of Rs. 4,04,667/- made by the A.O. and confirmed by the Ld. CIT(A) on account of alleged unexplained purchases.

2. The assessee in the present case is an individual who is engaged in the business of trading in sarees. In the assessment originally completed in his case under section 143(3) vide an order dated 18.12.2009, disallowance inter alia was made by the A.O. on account of job work charges amounting to Rs. 2,71,673/-. The records of the said assessment came to be examined by the Ld. CIT(A) and on such examination, he found that there were following two errors in the order dated 18.12.2009 passed by the A.O.:

1. *The assessing Officer failed to invoke the provisions of section 40(a)(ia) in respect of payment of job work charges to the tune of Rs. 6,80,400/-.*
2. *The Assessing Officer disallowed a sum of Rs. 4,04,667/- out of Rs. 6,36,340/- whereas the entire amount of Rs. 6,36,340/- was required to be disallowed.*

3. The Ld. CIT accordingly issued a notice under section 263 to the assessee and after considering the submissions made by the assessee, he set aside the order passed by the A.O. under section 143(3) vide his order passed under section 263 with the direction to the A.O. to examine the relevant issues raised by him during the course of proceedings under section 263 thoroughly and recompute the total income of the assessee.

4. In pursuance of the direction given by the Ld. CIT(A) in his order under section 263, fresh assessment proceedings were initiated by the A.O. During the course of the said proceedings, the assessee could not produce the details of the recipients of the job work charges and also could not produce any evidence to establish their identity as well as the genuineness of the relevant transactions. The A.O., therefore, made a disallowance on account of job work charges to the extent of Rs. 4,04,667/- (Rs. 6,36,340/- - Rs. 2,05,673/- - Rs. 26,000/-) treating the same as unexplained expenditure.

5. The disallowance of Rs. 4,04,667/- made by the A.O. on account of job work charges was challenged by the assessee in the appeal filed before the Ld. CIT(A) and since the submissions made by the assessee in support of his case on this issue were not found acceptable by him,

the Ld. CIT(A) proceeded to confirm the said disallowance made by the A.O. for the following reasons given in his impugned order:

"I have perused the submission made by the appellant. Perusal of submission shows that appellant has taken argument that the appellant maintains audited books of accounts. Therefore, there should have been no addition. The aforesaid argument of the appellant has no basis as the auditor verifies only the arithmetical tallies and the legal aspects of any claim. The auditor does not scrutinize the details submitted by the partners or proprietors. The genuineness of the expenses is never judged. The appellant has relied on the decision of Hon'ble ITAT, Jaipur Bench decision. The Jaipur Bench of ITAT ruling in 31 DTR 456 in case of M/s. Nisraj Real Estate it is held that unverified purchases made by the assessee could not be treated as unexplained expense u/s 69C and no addition can be made thereof u/s 69C proviso there under as once sales were made by assessee, purchases were obviously made.

In this case perusal of submissions made during the appellate proceedings shows that the appellant has raw material purchase and job work is done and the sale is made. Nowhere the appellant has made any attempt to justify the quantitative details of the items along with its rate of job work and corresponding sale. The appellant never proved that the quantitative stock of raw material has been maintained and corresponding job work payments worked out as the prevailing rate. In this case the appellant has not been able to submit any proof of its payment and quantitative details of raw material and job work charges paid as per quantitative rate on the aforesaid expenditure claimed; at assessment stage also the appellant did not submit any factual details. Only the pretext of Hon'ble Courts decision has been taken. Once the appellant fails to substantiate the fact that job work payment has been actually made and the quantitative sale and quantitative payments of job work charges has been as per prevailing market rate, then the decision of Hon'ble Court is of no help. Keeping in view the aforesaid fact, the addition made by the A.O. is upheld and the grounds of appeal raised by the appellant is hereby dismissed."

Aggrieved by the order of the Ld. CIT(A), the assessee has preferred this appeal before the Tribunal.

6. I have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that although two issues were raised by the Ld. CIT in the notice issued under section 263, the explanation offered by the assessee as regards the first issue relating to disallowance under section 40(a)(ia) was accepted by the Ld. CIT(A). The assessment originally passed by the A.O. under section 143(3) accordingly was set aside by the Ld. CIT vide his order under section 263 only on the one issue relating to the disallowance on account of job work charges which, according to the Ld. CIT, were wrongly disallowed by the A.O. only to the extent of Rs. 4,30,467/- instead of Rs. 6,36,340/-. In pursuance of the order of the Ld. CIT passed under section 263, this issue was examined by the A.O. and since he found that the job work charges claimed by the assessee were not verifiable, he made a further disallowance of Rs. 4,04,367/- in addition to the disallowance of Rs. 2,71,673/- made in the original assessment (wrongly mentioned by the Ld. CIT as Rs. 4,30,667/- in the order under section 263) by treating the same as unexplained expenditure. As rightly contended by the learned counsel for the assessee in this regard, the Assessing Officer went wrong in treating the alleged unverifiable job work charges as unexplained in as much as the said expenses having been shown by the assessee in the books of accounts regularly maintained, the same could not be treated as unexplained. Moreover, the books of accounts maintained by the assessee were duly audited and the nature of the job work charges was satisfactorily explained by the assessee by submitting that the sarees purchased by the assessee during the course of his regular business were subjected to certain job work done by the karigars

before sale. Since these karigars operate in an unorganised sector, the relevant details could not be fully maintained by the assessee. However, the fact that remains to be seen is that the expenses on job work were required to be incurred by the assessee in the regular course of his business of trading in sarees and the failure of the assessee to maintain full details of the same, in our opinion, would justify some disallowance but not the disallowance of the entire job work charges as done by the A.O. In my opinion, the disallowance of Rs. 2,71,673/- as made by the A.O. out of job work charges in the assessment originally completed which was more than 40% of the relevant expenses was fair and reasonable and the additional disallowance made by him in the assessment completed under section 143(3)/263 was not justified. I, therefore, set aside the impugned order of the Ld. CIT(A) confirming the said disallowance made by the A.O. and allow this appeal of the assessee.

7. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 17th January, 2018.

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

Dated: 17/01/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Shri Goverdhan Sharma, 9, Peary Mohan Lane, Kolkata – 700 007.

2. I.T.O. Ward 45(2), 3, Govt. Place, Kolkata – 700 001.

3. The CIT(A)

4. The CIT

5. DR

True Copy,

By order,

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