

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH; AMRITSAR.**

BEFORE SH. T. S. KAPOOR, ACCOUNTANT MEMBER  
AND SH. N. K. CHOUDHRY, JUDICIAL MEMBER

**I.T.A. No. 170/(Asr)/2015**

Assessment Year: 2011-12

PAN: AAJPL8560B

Income Tax Officer,  
Ward-1(2), Bathinda.

Vs. Sh. Mohan Lal Prop.  
M/s Ramji Dass BKO,  
Vill. Bhagiwander, Tehsil  
Talwandi Sabo, Distt. Bathinda.

**(Appellant)**

**(Respondent)**

Appellant by : Sh. S. S. Kanwal (D. R.)

Respondent by: Sh. P. N. Arora (Adv.)

Date of Hearing: 05.10.2017

Date of Pronouncement: 03.01.2018

**ORDER**

**PER T. S. KAPOOR (AM):**

This is an appeal filed by revenue against the order of Ld. CIT(A), Bathinda, dated 12.01.2015 for Asst. Year: 2011-12.

2. The grounds of appeal taken by revenue are reproduced below:

*"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing the appeal of the assessee and deleting the addition of Rs.33,73,963/- and Rs.8,70,016/- by observing that "nikasi" also includes "chunai and kerī" and there cannot be a "nikasi" without "chunai and kerī". The observation made by the Ld. CIT(A), Bathinda does not appear to be correct as the assessee has nowhere taken this plea during the course of assessment proceedings. However, the plea taken by the assessee at the stage of appellate proceedings is nothing but after thought. Thus the order of the Ld. CIT(A), Bathinda is perverse to the facts of the case and documents impounded during the course of survey.*

*2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing the appeal of the assessee and deleting the addition of Rs.3,10,754/- by observing that the jamadars namely S/Sh. Bikkar Singh & Chama Singh were employees of the assessee and the individual labour payments made through them are not covered under the provisions of section 194C and consequently*

*immune from the operation of section 40(a)(ia). During the course of assessment proceedings, it was admitted by the assessee that no tax was deducted on these payments and when confronted in this regard, it was argued that although the payments made for Bharai, Nikasi etc. were made to the above persons, yet they further engage labourers for this work and disburse the payments; hence there was not TDS liability. Further, during the course of assessment proceedings, it was never contended by the assessee that the above persons were his regular employees and they make the payments to labourers on his behalf. Moreover, the assessee has not produced any documentary evidence in the shape of mustard rolls to substantiate his claim.*

*3. The appellant craves the leave to add, amend, alter or withdraw any ground of appeal before the same is finally heard.”*

3. At the outset, the Ld. DR submitted that the case under consideration relates to a brick kiln owner who is into the business of manufacturing bricks. During the year under consideration, a survey u/s 133A(1) of the Act had taken place and some important documents were impounded. The Ld. DR submitted that a document showing payment to Charna Singh, Jamadaar amounting to Rs.2,58,000/- for Nikasi was impounded whereas the amount recorded in the books of account was Rs.234024/-, and therefore the Assessing Officer had made an addition of Rs.23976/-. The Ld. DR further submitted that on the basis of payment of Rs. 2,58,000/- made to Charna Singh on account of Nikasi, the Assessing Officer worked out the manufacture of bricks to the tune of 3582354/- whereas the assessee had shown Nikasi of bricks at 2184535/- and therefore the Ld. Assessing Officer had rightly made the additions for unrecorded sales. The Ld. DR further submitted that the other additions made by assessee relates to gross profit at the rate of 20.50% on the unrecorded manufacture and sale of bricks which was also wrongly deleted by Ld. CIT(A). The Ld. DR further submitted that

assessee had violated provisions of section 40(A)(3) of the act in making payments exceeding Rs. 50,000 to various contractors and therefore Assessing Officer had rightly made the additions, it was submitted that Ld. CIT(A) has wrongly deleted these additions and therefore the order of the Assessing Officer be upheld.

4. The Ld. AR on the other hand submitted that Assessing Officer had made the additions on the basis of assumptions and surmises as he had concluded the number of bricks manufactured on the basis of payment made to Charna Singh employee who had deposed during the course of survey proceedings and in his statement, he had confirmed that he was paid at the rate of Rs. 67 for Nikasi of 1,000/- bricks. The Ld. AR submitted that on the basis of the statement, the Assessing Officer worked out the bricks manufactured and compared with the bricks declared by the assessee and difference of which was added u/s 69C of the Act further addition of 20.5% on so called unaccounted sales to the tune of Rs.9,23,752/- was made on account of profit earned on such sales. The Ld. AR submitted that Assessing Officer did not appreciate that the assessee had followed Govt. approved rates of Nikasi and Govt. rates for Chunai wala was Rs.21.23 per 1000 bricks and rate of Kairi was Rs.17.89 per 1000 bricks. It was pointed out to the Ld. CIT(A) that Nikasi without Chunai and kairi cannot be done and the aggregate of these three worked out to Rs.101 per thousand bricks and thus Rs.101 per thousand bricks included the payment made to the Chunai wala, Kairiwala and Nikasiwala. It was submitted that on the basis of amount

debited in the P & L account, the average rate works out to be Rs.108 per 1000 bricks which is very well comparable with Rs. 101 and therefore the Ld. CIT(A) has rightly deleted the additions as these rates are fixed by the Govt. and it is not possible for Brick Kiln owner to make the payment less than those prescribed by the Govt.

As regards the additions on account of non deduction of TDS u/s 40(a)(ia) of the Act, the Ld. AR submitted that the provisions of section 40a(ia) were not attracted at all as none of these payments made to individual workers exceeded Rs.20,000/- at a time and aggregated to Rs.50,000/- in a year. It was submitted that the business of BKO is a labour intensive one and the Govt. has regulated the payment of wages to labour by fixing the rates for each of the processes involved in the manufacture of bricks like Bhari, Nikasi etc. it was submitted that payments made to these persons were to be distributed to other labourers and these Jamadars distributed such payments to labourers and record was made in "Rokdi Kharcha" and therefore in view of these facts and circumstances, the Ld. CIT(A) has rightly deleted the additions.

5. We have heard the rival parties and have gone through the material placed on record. We find that during survey a document was impounded which reflected a payment of Rs.2,58,000/- for Nikasi to Charna Singh Jamadar. The statement of Charna Singh was also recorded and where he had deposed that he had received payment for Nikasi at the rate of Rs.67 per bricks and in view of the above statement

the Assessing Officer calculated Nikasi of bricks which differed from that declared by the assessee and therefore the Assessing Officer calculated the additions by calculating the sale of bricks which in his opinion, the assessee had not recorded. The Assessing Officer further made additions on account of GP on these unrecorded sales. The Assessing Officer further found that assessee had made payments exceeding Rs.50,000/- to Jamadars and therefore was liable to deduct TDS and which he has not deducted and therefore he disallowed the payment in accordance with the provisions of section 40a(ia) of the Act. Before the Ld. CIT(A) detailed submissions were made and Ld. CIT(A) deleted the additions by holding as under:

*“10. The issue in dispute has been considered. It is axiomatic that if “nikasi” is to be paid, chunai” and “keri” has to be paid of the purposes of bricks coming out of the kiln. It has also been proved that these rates are fixed and it would not be possible for a brick kiln owner to make payment of labour of any amount less than that prescribed by the Govt. Besides, the Assessing Officer could not point out the debit of these expenditure by the appellant anywhere else in the books. Nor has he been able to adduce any other evidence to show that bricks manufactured by the appellant were more than that as declared in the books of accounts. It therefore follows that the Assessing Officer’s calculation of unaccounted bricks based on only the rate of “nikasi”, without considering the rates of “chunai” and “keri” was predicated on inappropriate appreciation of facts and the actual practice in the trade of brick kiln. In this view of the matter, it is held that the Assessing Officer’s action in making addition of purported unaccounted manufacture of bricks under the provisions of section 69C and calculation of profit on sale of such unaccounted bricks was based on presumption which, needless to say, cannot be upheld. The Assessing Officer is directed to delete both the aforesaid additions.*

*11. Apropos the ground of appeal as at serial (b) above, it is noticed that the Assessing Officer has made a disallowance of Rs. 3,10,754/-, which amount represented payment of Job-Work of “bharai” and “nikasi” without subjecting the same to TDS as per the provisions of section 194C of the Act, which attracted the mischief of the provisions of section 40(a)(ia) of the Act. The appellant contests this disallowance on the ground that these represented labour charges for job work of “bharai” and “nikasi” which were disbursed through the appellant’s employee jamadars, Sri Bikkar*

*Singh and Sri Charna Singh and that none of these payments to individual workers exceeded Rs. 20,000/- at a time or aggregated to Rs.50,000/- in a year. It was thus averred that neither the provisions of section 194C, nor section 40(a)(ia) are applicable in the circumstances.*

*12. The matter has been considered. It is undeniable that the business of brick kiln is a labour intensive one and the Government has regulated the payment of wages to labour by fixing the rates for each of the processes involved in the manufacture of bricks like "bharai" "nikasi" etc. Besides, the appellant as a brick kiln owner is also expected to engage the services of employee Jamadar or Munshi to handle labour payments at the brick kiln site. Sri Bikkar Singh and Sri Charan Singh were undoubtedly employees of the appellant in as much as they loosely recorded the expenses on behalf of the appellant which has been impounded during the survey operation. The impounded documents also betray the fact that individual labours were paid through the two jamadars who maintained a loose account "Rokdi Kharcha". The A/R referred to page 20 of document No. 1 to demonstrate this fact. This page shows that Bikkar Singh made daily small payments to one Bansa "Baildar" and obtained his signature. Considering these facts, it is held that the appellant was not obligated to subject such individual labour payments made through employee Jamadars to the provisions of section 194C and consequently immune from the operation of section 40(a)(ia) of the Ac in respect of such payments. The A.O. is thus directed to delete this addition.*

*13. The last cause of grievances of the appellant is on account of addition of Rs. 23,956/- made under section 69C of the Act. The A.O. on his examination of page 25 and 1 of the impounded documents 2 and 6 respectively concluded that an amount of Rs. 2,58,000/- was paid to Sh. Charana Singh Jamadar as against Rs. 2,34,024/- recorded in the regular books of accounts and proceeded to add the difference of Rs. 23,956/- as undisclosed income. During the appellate proceedings, the said documents were reappraised in the presence of the A.O. and the appellant's A/R. On pages 25 and 26 of document 2, Charna Singh is seen to have received a running payment of Rs. 1,66,000/- till 15-02-2011. On page No. 1 of Document No. 6, three figures are recorded in respect of Sh. Charana Singh Jamadar*

<i>Rs.84,000/-</i>	<i>-</i>	<i>20-02-2011</i>	<i>- "Rokad Tutat"</i>
<i>Rs. 2,000/-</i>	<i>-</i>	<i>25-02-2011</i>	<i>- "Rokad Kharcha"</i>
<i>Rs. 6,000/-</i>	<i>-</i>	<i>02-03-2011</i>	<i>- "Rokad Kharcha"</i>

*14. The A.O. appears to have totaled up the aforesaid three figures and aggregated it with Rs. 1,66,000/- to arrive at the figure of Rs. 2,58,000/- which was purported to have been paid to charna Singh. Here, the A.O. has apparently overlooked the narration in respect of the figure of Rs. 84,000/- recorded on 20-02-2011. The narration is "Rokar Tutat" which on translation would mean balance remaining with Charna Singh as on 20-02-2011. There cannot be any other inference of this narration. If the said amount of Rs. 84,000/- is excluded, Charna Singh is seen to have been paid Rs. 1,66,000/- plus Rs. 8,000/- as per the impounded documents, which is way less than Rs. 2,34,024/- recorded in the books. The*

*Assessing Officer present during the appellate proceedings could not dispel the aforesaid conclusion based on impounded documents. The A.O. is thus directed to delete this addition of Rs.23,976/-. The appellant succeeds on all grounds of appeal.”*

We find that Ld. CIT(A) has passed a speaking and well reasoned order and has rightly held that Assessing Officer had made the additions on the basis of assumptions only and we do not find any infirmity in the order of Ld. CIT(A).

6. In view of the above, the appeal filed by revenue is dismissed.

Order pronounced in the open court on 03.01.2018

Sd/-  
(N. K. CHOUDHRY)  
JUDICIAL MEMBER

Sd/-  
(T. S. KAPOOR)  
ACCOUNTANT MEMBER

Dated: 03.01.2018.  
/GP/Sr. Ps.

Copy of the order forwarded to:

- (1) The Assessee:
- (2) The
- (3) The CIT(A),
- (4) The CIT,
- (5) The SR DR, I.T.A.T.,

True copy

By Order