

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM ]

I.T.A No. 845/Kol/2016

Assessment Year : 2010-11

Global Enterprises  
Pvt. Ltd., Kolkata  
[PAN : AAFFG 0012 M]  
(Appellant)

-vs.- J.C.I.T., Range-34,  
Kolkata

(Respondent)

For the Appellant : Shri Soumitra Choudhury, Advocate  
For the Respondent : Smt. Ranu Biswas, Addl DIT

Date of Hearing : 24.01.2018.

Date of Pronouncement : 02.02.2018.

**ORDER**

This is an appeal by the assessee against the order dated 03.02.2016 of CIT(A)-10, Kolkata relating to A.Y.2010-11.

2. Ground Nos. 1 and 6 raised by the assessee are general in nature and calls for no adjudication.

3. Ground No.2 raised by the assessee reads as follows :-

*“2. For that on the facts and in the circumstances of the case the learned C.I.T (A) as well as the Assessing Officer has erred in assuming expenses incurred in cash in excess of Rs.20000/- u/s 40A(3) for Rs.444527/- is added to the income of the assessee which is untoward & liable to be deleted. “*

4. The Assessee is a partnership firm. The assessee acts as Del Credre agent in supplying cement of M/s. J.K.Lakshmi Cement Limited. In the course of assessment proceedings the AO noticed that the assessee had made several cash payments in excess of Rs..20,000/-. As per the provision of section 40A(3) of the Income Tax Act, 1961 (Act) where the assessee incurs any expenditure in respect of which a payment or aggregate of payment made to a person in a day otherwise than by way of account payee cheque is in excess of rupees twenty thousand, no deduction shall be allowed in respect

of such expenditure. The assessee had incurred a sum of Rs.4,44,527/- as expenses on account of lorry expenses which were paid in cash.

5. Before the AO the assessee submitted that each of the payments in a day did not exceed Rs.20,000/- and that each payments were below Rs.20,000/- evidenced by cash memos. The assessee also submitted that the recipients did not have banking facilities and hence payments were made by cash. Another stand taken by the assessee was that the payments also include cost of petrol and diesel and such payments in any event will be outside the purview of section 40A(3) of the Act.

6. The AO noticed that the lorry expenses were incurred by the assessee for purchase of spare parts of truck from a single person M/s Khalsa Motor Stores, Jaipur. The remaining expenses were on account of purchase of fuel for trucks which was again incurred by making payments made to a single person M/s Kalra Bus Service, Jaipur. The AO found that none of the circumstances mentioned by the assessee for making payment in cash will fall within the ambit of exception from the application of the provision of section 40A(3) of the Act. The AO accordingly disallowed a sum of Rs.4,44,525/- . On appeal by the assessee the CIT(A) confirmed the order of AO.

7. Before me the ld. Counsel for the assessee filed copy of the confirmation from M/s. Kalra Bus Service, Jaipur with regard to supply of diesel. This confirmation states that diesel were supplied in drums. As per this confirmation none of the payments in a day exceed Rs.20,000/-. The confirmation filed by the assessee is admitted as an additional evidence for the purpose of adjudicating the issue involved in the appeal. The AO did not have the benefit of looking at the additional evidence. The addition confirmed by the CIT(A) is set aside and the issue is remanded to the AO for fresh consideration. We may also add that before the AO and CIT(A) the expenditure of Rs.4,44,527/- was stated to be for purchase of spare parts of the truck. Now a different

stand is taken by the assessee. This aspect may also be taken note of by the AO in the set aside proceedings.

8. Grounds No.3 raised by the assessee reads as follows :-

*“3. For that on the fact and in the circumstance of the case Rs.11 0000/- was paid for wages was disallowed and added-to-the total income ofthe assessee is liable to be deleted.”*

9. The AO disallowed a sum of Rs.1,10,000/- being payments made to M/s. Kathat Freight Services towards supply of labour on the ground that the assessee failed to deduct tax at source on the payment u/s 194C of the Act. The AO made disallowance as per the provision of section 40(a)(ia) of the Act which lays down that if TDS is not made on an expenditure claimed as a deduction, then the expenditure cannot be allowed as deduction in computing income from business. The CIT(A) confirmed the order of the AO.

10. Before me the limited prayer of the Id. Counsel for the assessee was to set aside the order of CIT(A) and remand the issue to the AO to enable the assessee to show before the AO that M/s. Kathat Freight Services had shown receipts from the assessee in the return of income filed for the relevant assessment year. The prayer of the Id. Counsel for the assessee is based on the second proviso to section 40(a)(ia) of the Act which provides that if the payee has shown the receipts from the assessee in his return of income and paid tax on such receipts and has furnished in the return of income then no disallowance can be made u/s 40(a)(ia) of the Act should be made. This proviso was inserted by the Finance Act, 2012 w.e.f. 01.04.2013. This amendment was held to be applicable retrospectively by the Hon'ble Delhi Court in the case of Ansal Land mark Township (P)Ltd (2016) 61 Taxmann.com 45 (Delhi). I am of the view that in the light of the aforesaid submission, the addition confirmed by the CIT(A) should be set aside and the issue remanded to the AO for fresh consideration in the light of the submissions made by the assessee before me.

11. Ground No.4 was not pressed and hence dismissed as not pressed.

12. Ground No.5 raised by the assessee reads as follows :-

*“5. For that on the fact and in the circumstance of the case Rs.100000/- was disallowed of wages is liable to be deleted. “*

13. The AO made an addition of Rs.2,50,000/- by way of disallowance of wages on the following grounds :-

“7.1. On verification of relevant documents produced by the Authorised Representative of the assessee, it was observed that all the expenses relating to wages were paid in cash through self made vouchers, which are beyond the scope of verification. Further, payments to transporters have also been made in cash. Therefore a lump sum of Rs.2,50,000/- is disallowed and added back to the total income of the assessee for the assessment year 2010-11. Similar additions have been made in earlier years for which the assessee has not preferred any appeal.

[ Addition : Rs.2,50,000/-]

14. On appeal by the assessee the CIT(A) was of the view that non verifiability of vouchers does not call for disallowance of a sum of Rs.2,50,000/-. He was of the view that such quantum of disallowance is excessive. He also found that no specific instances of unverifiable nature of vouchers was pointed out by the AO and no show cause notice was issued to the assessee in this regard. The CIT(A) therefore restricted the addition to a sum of Rs.1,00,000/-.

15. Before me the submissions of the Id. Counsel for the assessee was that the addition is based on estimation and therefore should be deleted. I am of the view that the addition sustained by the CIT(A) deserves to be deleted because the books of accounts have been produced along with the vouchers by the assessee before the AO. Specific instances of unverifiable vouchers was not pointed out by the AO. Thirdly, the AO did not even call upon the assessee to show cause as to why disallowance should

not be made before making the disallowance. For these reasons the addition sustained by the CIT(A) is directed to be deleted.

16. In the result the appeal of the assessee is partly allowed.

**Order pronounced in the Court 02.02.2018.**

Sd/-  
[ N.V.Vasudevan ]  
Judicial Member

Dated : 02.02.2018.  
[RG Sr.PS]

Copy of the order forwarded to:

1. Global Enterprises, K.K.Poddar & Associates, 135A, B.R.B.Basu Road, 2<sup>nd</sup> Floor, Kolkata-700001.
2. J.C.I.T., Range-34, Kolkata.
3. CIT(A)-10, Kolkata      4. C.I.T-12, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary  
Head Of Office/ D.D.O., ITAT Kolkata Benches