

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH : KOLKATA

[Before Hon'ble Shri Aby. T. Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No. 1132/Kol/2015

Assessment Year : 2011-12

ACIT, Circle-35, Kolkata

-vs- Shri Kulathinethu Ram Krishnakurup Sadasivan Nair
[PAN: ACYPN 5657 N]

(Appellant)

(Respondent)

C.O. No. 48/Kol/2015

(Arising out of I.T.A No. 1132/Kol/2015)

Assessment Year : 2011-12

Shri Kulathinethu Ram Krishnakurup Sadasivan Nair
[PAN: ACYPN 5657 N]

-vs- ACIT, Circle-35, Kolkata

(Appellant)

(Respondent)

For the Appellant : Shri Sallong Yaden, Addl. CIT

For the Respondent : None

Date of Hearing : 13.02.2018

Date of Pronouncement : 19.02.2018

ORDER

Per M.Balaganesh, AM

1. . This appeal by the Revenue and the Cross Objection by the Assessee arise out of the order of the Learned Commissioner of Income Tax(Appeals)-10, Kolkata [in short the Id CIT(A)] in Appeal No.60/CIT(A)-10/R-35/14-15/Kol dated 15.06/2015 against the order passed by the JCIT, Range-35, Kolkata [in short the Id AO] under section 143(3) of the Income Tax Act, 1961 (in short "the Act") dated 26.03.2014 for the Assessment Year 2011-12.

2. None appeared on behalf of the assessee. The assessee had filed written submissions in respect of grounds raised in revenue appeal. The registry had already served the notice of hearing to the assessee and accordingly we proceed to dispose of this appeal on hearing the Id DR and by taking into account the written submissions of the assessee that is already on record.

3. The first issue to be decided in this appeal is as to whether the Id CITA was justified in deleting the addition towards difference in contractual receipt reported in the return with that reflected in Form 26AS , in the facts and circumstances of the case.

3.1. The brief facts of this issue is that the assessee is an individual engaged in labour contract works. The assessee is following mercantile system of accounting. The assessee had filed his return of income for the Asst Year 2011-12 on 27.2.2012 declaring total income of Rs 1,94,45,094/- and agricultural income of Rs 78,750/-. The Id AO observed that the contractual receipt as per Form 26AS was Rs 45,65,33,422/- whereas the assessee disclosed Rs 43,25,40,321/- in his profit and loss account. The difference of Rs 2,39,93,101/- was added to the total income of the assessee in the assessment. Before the Id CITA, the assessee mentioned that the assessment order failed to even mention as to how the 26AS figure comes to Rs 45,65,33,422/-. The entire details were filed before the Id AO. Even the confirmation from L&T Ltd was filed before the Id AO explaining the entire gamut of contract work carried out together with the financials and the ledger copies as appearing in their books. None of these papers were even discussed by the Id AO in his assessment order and the Id AO made an addition in an arbitrary manner without recording any finding in his order. The Id CITA observed that the contractual receipt as per 26AS as taken by the Id AO consists of the following:-

L&T – Rs 42,57,25,282/-
 Rs 98,427/-
 Rs 3,14,97,822/-

 Rs 45,73,21,526/-
 Rs 7,88,104/-

 Rs 45,65,33,422/-

3.2. The copy of Form 26AS updated till 21.3.14 and contained in the assessment folder does confirm the contract receipt from L&T and Tarapur Company as above. It was explained that L&T construction by mistake had made excess provision of contract receipt in Form 26AS of about Rs 28,47,30,353/- and the Id AO did consider the mistake and reduced the mismatch for the purpose of addition of Rs 2,39,93,101/-. In the course of appellate proceedings, the assessee submitted further copy of Form 26AS evidencing contract receipts from L&T and Tarapur & Co as under:-

<u>Sl No.</u>	<u>Particulars</u>	<u>Gross Amount</u>
3	L&T	Rs 39,09,94,779/-
4	L&T	Rs 98,422/-
5	Tarapur & Co	Rs 3,14,97,822/-
		----- Rs 42,25,91,023/-

3.3. The copy of Form 26AS updated till 22.5.2015 and produced in the course of appellate proceedings indicated the gross contract amounts against L&T and Tarapur & Co as listed above. The Id CITA found that the assessee had reported contract receipts in his profit and loss account of Rs 43,25,40,321/- which was more than contract receipt as listed above in the sum of Rs 42,25,91,023/- and hence there is no

scope for making any addition towards differential contract receipts not offered to tax by the assessee. Accordingly, the Id CITA observed that the addition therefore cannot be sustained as updated Form 26AS gives no basis for sustaining any part of addition made by the Id AO in his order. However, the Id CITA further directed the Id AO to verify from the updated Form 26AS vis a vis the disclosed contract receipt of the assessee. Aggrieved, the revenue is in appeal before us.

3.4. We have heard the Id DR. We find that the Id CITA had only looked into the updated Form 26AS and had arrived at a conclusion that the assessee had reported more contract receipts than that was disclosed in updated Form 26AS and accordingly held that there is no case for sustenance of the addition made by the Id AO on account of concealment of contract receipts. Moreover, we find that the Form 26AS is within the knowledge of the income tax department and is generated from the website of the income tax department. As and when necessary corrections were carried out by the payer (i.e L&T etc) to the account of the assessee payee, then the Form 26AS would undergo frequent changes. It is not in dispute that L&T had carried out rectifications in the account of the assessee and had accordingly updated its TDS returns which consequently had resulted in lesser contract receipts in the updated Form 26AS. The reliance placed on the updated Form 26AS by the assessee and filed before the Id CITA cannot be considered as an additional evidence filed before Id CITA as it is the document within the domain of the income tax department. Moreover, the Id CITA had only directed the Id AO to verify the said transactions with updated Form 26AS, which in our considered opinion, is fair and reasonable. The revenue cannot ask for any more opportunity than this. The interest of the revenue had been properly taken care by the Id CITA while directing the Id AO as above. Hence we do not find any infirmity in the order of the Id CITA in this regard. Accordingly, the Ground No.1 raised by the revenue is dismissed.

4. The next ground to be decided in this appeal is as to whether the Id CITA was justified in deleting the addition of Rs 7,88,104/- in the facts and circumstances of the case.

4.1. The brief facts of this issue is that the assessee was in receipt of machinery hire charges from L&T Ltd in the sum of Rs 7,88,104/- which was already reflected in the gross contract receipts in profit and loss account and is also duly reflected in Form 26AS. The Id AO considered the same as rental income and made a separate addition towards undisclosed rental income in the assessment on the ground that the assessee had not disclosed any rental income in the return. It is the case of the assessee that the subject mentioned machinery hire charges were included in the gross contract receipts by the assessee as already stated above in the break up of gross contract receipts supra. Hence the assessee had duly accounted for the same already in his books and there is no need to make any separate addition towards the same in the assessment. It was submitted that the rentals in effect has been shown in the contract receipts. This fact was duly appreciated by the Id CITA and accordingly he deleted the addition. Aggrieved, the revenue is in appeal before us on the following ground:-

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2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deciding that receipt of Rs. 7,88,104/- was in the nature of contractual receipt and not a rental income.

4.2. We have heard the Id DR. We find that the assessee had actually shown the machinery hire charges from L&T Ltd in the sum of Rs 7,88,104/- and included the same in the gross contract receipts and hence there is no scope of making any separate

addition towards the same as rental income. This has been rightly considered by the Id CITA and accordingly we do not find any infirmity in his order. Accordingly, the ground no. 2 raised by the revenue is dismissed.

5. The last ground to be decided in this appeal of the revenue is as to whether the Id CITA was justified in deleting the addition of Rs 4,00,000/- in the facts and circumstances of the case.

5.1. The brief facts of this issue is that the assessee derived interest income of Rs 31,475/- and disclosed the same in the return of income. The Id AO backworked the interest by imputing rate of interest at 8% p.a. and arrived at the principal amount of Rs 4,00,000/- on an approximate basis and made an addition of Rs 4,00,000/- by treating the principal portion as to have been given out of undisclosed sources of the assessee. The Id CITA deleted the addition as it was merely made based on projection by the Id AO. Aggrieved, the revenue is in appeal before us on the following ground:-

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3. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of the Principal amount of Rs. 4,00,000/- from which the interest of Rs. 31,475/- was earned [which has been confirmed by the Ld. CIT(A)].

5.2. We have heard the Id DR. We find that the Id AO had merely back worked the interest amount and assumed an interest rate of 8% p.a. and arrived at the principal portion at Rs 4,00,000/- . This is absolutely without any basis. We find that the entire addition has been made only based on surmise and conjecture which has been rightly

deleted by the Id CITA. Accordingly, we do not find any infirmity in his order. Accordingly, the ground no. 3 raised by the revenue is dismissed.

6. Now let us come to the cross objections of the assessee. The assessee had not filed any written submissions in respect of grounds raised in his cross objections. As stated earlier, the assessee was not present at the time of hearing before us despite the fact of service of notice. We find that the Id CITA with regard to disallowance of wages of Rs 1,67,394/- had observed that the Id AO treated the expenditure of January 2011 on wages account for TISCO site at Jamshedpur as expenditure not recorded in the books of account. The assessee had claimed that the muster roll does show wages of 59 workers of TISCO site and wages register may have omission in respect of this one site for January wages. It was claimed that payments are always made from one source i.e receipt from main contractor L&T Ltd. Mere omission of expenditure from the wages register is claimed as no good ground when the original muster roll shows the payment of Rs 1,67,495/- to the workers. The Id CITA observed that this submission of the assessee was not supported by any evidences and hence upheld the disallowance of the Id AO. We find that the Id CITA had rightly upheld the disallowance in the facts and circumstances of the case and does not deem it necessary to interfere with the said order in this regard. Accordingly, the Ground No.2 of assessee's cross objections is dismissed.

6.1. With regard to disallowance u/s 40(a)(ia) of the Act, the assessee pleaded that it had made payment of car hire charges to 12 parties in the sum of Rs 14,29,105/- without deduction of tax at source. The Id AO disallowed the same u/s 40(a)(ia) of the Act in the assessment. The assessee pleaded that there was no contractual relation between the assessee and the payee and moreover the entire hire charges were duly paid before the end of the previous year and no amounts were payable at the end of the

year. Accordingly, the assessee pleaded that the provisions of section 40(a)(ia) of the Act read with section 194C of the Act were not applicable to the facts of the instant case. However, we find that no evidences were submitted by the assessee to prove that the provisions of section 194C of the Act are not applicable to him in the instant case. Accordingly, we hold that the disallowance was rightly made by the Id AO u/s 40(a)(ia) of the Act. With regard to the other claim of the assessee that the amounts were duly paid before the end of the previous year and accordingly, the provisions of section 40(a)(ia) of the Act would be applicable only for amounts payable at the end of the year is concerned, we find that the said issue is now settled by the decision of the Hon'ble Supreme Court in the case of Palam Gas Service vs CIT reported in 394 ITR 300 (SC) wherein it was held that section 40(a)(ia) covers even the amounts paid before the end of the previous year. Hence respectfully following the said decision of the Hon'ble Apex Court, we hold that the disallowance has been rightly confirmed by the Id CITA. Accordingly, the Ground No.1 of assessee's cross objections is dismissed.

7. In the result, the appeal of the revenue is dismissed and cross objection of the assessee is dismissed.

Order pronounced in the Court on 19.02.2018

Sd/-
[A.T. Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 19.02.2018

SB, Sr. PS

Copy of the order forwarded to:

1. ACIT, Circle-35, Kolkata, Aayakar Bhawan Poorva, 8th Floor, 110, Shantipally, Kolkata-700107.
2. Shri Kulathinethu Ram Krishnakurup Sadasivan Nair, 8/2, K.S. Roy Road, 1st Floor, Room No. 5 & 6, Kolkata-700001
3. C.I.T(A)- , Kolkata 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

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