

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,  
IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “D” KOLKATA

Before **Shri Waseem Ahmed, Accountant Member** and  
**Shri S.S.Viswanethra Ravi, Judicial Member**

**ITA No.302/Kol/2015**  
Assessment Year:2010-11

Sri Sutanu Mahanty Prop. of Dreamz Advertising, 148, Regent Estate, Kolkata-92 [PAN No.AKJPM 6950 G]	<u>बनाम/</u> V/s.	JCIT, Rang-53, Aayakar Bhawan Dakshin, 2, Gariahat Road, (S), Kolkata-68
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Subash Agarwal, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Arindam Bhattacharjee, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	31-01-2018
घोषणा की तारीख/Date of Pronouncement	19-02-2018

**आदेश /O R D E R**

**PER Waseem Ahmed, Accountant Member:-**

This appeal by the assessee is against the order of Commissioner of Income Tax (Appeals)-7, Kolkata dated 04.02.2015. Assessment was framed by JCIT, Range-53, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 20.03.2013 for assessment year 2010-11. The grounds raised by the assessee per its appeal are as under:-

*“1) For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the addition of Rs.1,32,25,980/- made by the Ld. AO on account of display rental payments for sites by wrongly invoking the provision of sec. 40(a)(ia).*

*2) That the appellant craves leave to add, alter or delete all or any of the grounds of appeal.”*

Sri Subash Agarwal, Ld. Advocate appeared on behalf of assessee and Shri Arindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue.

2. The only issue raised by the assessee is that Ld. CIT(A) erred in Confirming the addition made by the Assessing Officer for ₹1,32,25,980/- on account of Non Deduction of TDS on Rental payments made to various parties under section 40(a)(ia) of the Act.

3. Briefly stated facts are that assessee is an individual and engaged in the business of providing hoarding sites to the advertising companies. These sites were acquired by the assessee directly from the licensor/ owners and on sub license basis. The assessee is also dealing in the trading of these advertising sites. The AO during the assessment proceedings observed that the assessee has incurred major expenses on display rental charges for Rs.1,77,62,130/- which were paid to the owner of the sites, Government and to the sub licensee. The assessee deducted TDS only on Rs.45,36,150/- and failed to deduct TDS on the balance payment of Rs.1,32,25,980/-. Therefore, The AO disallowed the same on account of non-deduction of TDS under section 40(a)(ia) of the Act and added to the total income of assessee.

4. Aggrieved, assessee preferred an appeal before Ld. CIT(A). The assessee before Ld. CIT(A) submitted that there was the payment of display rental charges to certain parties which was below the limit as specified under section 194C & 194I of the Act. But the AO failed to consider the same during the assessment proceedings.

Similarly the payment of display rental charges was paid to the Government where the assessee was not under the obligation of TDS under section 196 of the Act.

The ld. CIT-A called for the remand report from the AO who, in turn, submitted that the assessee has failed to produce the books of accounts, therefore the payment to the parties was not verified. The AO also in his remand report observed certain discrepancies in the details of display rental charges as per the statement filed by the assessee on 26.09.2014 and statement filed on 14.10.2014. In both the statement there was discrepancies in the amount of expenses i.e. display rental charges claimed by the

assessee. Such discrepancies are recorded on page no. 4 to 5 of the ld. CIT(A) order. The AO during remand proceedings issued notices u/s 133(6) of the Act to the parties for the verification of the expenses. But in many cases the notices were returned back and in some cases there was mismatch in the figures shown by the assessee and the parties.

Accordingly the ld. CIT(A) disregarded the contentions of the assessee and confirmed the order of the AO by observing:-

*“In view of the above facts it can be safely concluded that the statements filed by the assessee are incorrect, baseless and manipulated. This conclusion also derives force from the fact that the assessee has not produced any books of account so as to allow himself the leverage to change his statements as per requirement.*

*The assessee seems to have taken the plea of non applicability of TDS as per sec. 194I and 194C as payment made to the licensor or Licensee to create a firewall which will deflect any claim of chargeability of the TDS from the rentals on payments which have escaped TDS. The assessee has purposefully never produced any books of account so that the statement filed is not verified / ascertained. Since majority of the notice u/s. 133(6) issued to verify the transaction have returned unserved, the transactions with the said parties remain not verified. As already mentioned earlier, discrepancies have been noted when some of the confirmations filed in response to notice u/s. 133(6) are correlated with the statement filed by the assessee.*

*The appellant not file any detail in support of his argument that TDS do not require to deduct on the said payments. The appellant also not produce the books of account before the Assessing Officer to verify the details filed by the appellant. The details filed by the authorized representative of the ape itself contradictory as mentioned by the Assessing Officer in the remand report that detail filed on 26.09.2014 are different from the detail filed on 14.10.2014. therefore, the submission of the appellant has no value.*

*Considering the above observation and remand report of the Assessing Officer, I am of the view that the action of the Assessing Officer to disallow Rs.1,32,25,980/- under section 40(a)(ia) of the Income-tax Act, 1961 is as per law. Therefore, I confirm the addition made by the Assessing Officer of Rs.1,32,25,980/- under section 40(a)(ia) of the Income-tax Act, 1961. This ground is not allowed.”*

Being Aggrieved by the impugned order of Ld CIT(A) the assessee is in appeal before us.

5. The ld. AR before us filed a paper book running from pages 1 to 80 and submitted that books were not produced during remand proceeding as the assessee

was unable to locate them. But the books of accounts were available and produced at the time original assessment proceeding. The Id. A.R. in support of assessee's claims has also filed the affidavit where it was undertaken to produce the books of accounts before the A.O. by the assessee.

The Ld. AR also submitted that there were various parties to whom display rental charges were paid and payment made to them was below the limit as specified u/s 194-I as well as 194-C of the Act. Thus, no disallowance can be made on account of payment to such parties.

Similarly the Id. AR also submitted that in respect of certain payments the TDS was deducted at a rate lower than the rate prescribed under the provision of law. Thus no disallowance can be made in respect of such payment.

The Ld AR also submitted that certain payments were subject to deduction of TDS u/s 194-I of the Act but AO disallowed the entire payments on accounts of non-deduction of TDS u/s 194-C of the Act. Thus, the finding of the AO is based on wrong assumptions of the facts. The Ld AR in support of his claim has filed the details of the payment in respect of display rental charges depicting the following details :

1. Parties to whom the payments was made after deduction of TDS.
2. Parties to whom payment was made at lesser rate of TDS,
3. Details of parties whose payments are not eligible to deduct TDS.

The Chart filed by the assessee is reproduced below:-

*"A. Total display rental on which TDS required to be deducted u/s. 194C (at page 7 & 8 of the paper book)*

<i>(a) TDS deducted on</i>		68,68,932.00
<i>(b) Short Deduction of TDS</i>		55,26,122.00
<i>(c) TDS not deducted</i>	10,74,960.00	
<i>Less : Paid to AD wise India towards Vinyle Mounting Charges Wongly entered in the Statement</i>	<u>92,200.00</u>	<u>9,82,760.00</u>
		1,33,77,814.00

*B. Display rental on which TDS not required to be deducted u/s. 194C* 19,54,464.00 (at page 27 & 28 of the paper book)

<i>C. Display rental on which TDS not required To be deduced u/s. 194I</i>	<i>16,80,264.00 (at page 28 &amp; 29 of the paper book)</i>
<i>D. Display rental on which TDS not required To be deducted u/s.196 (Govt / Govt. body) 29 of the paper book)</i>	<i>7,49,589.00 (at page 29 of the paper book)</i>
<i>Total display rent</i>	<i><u>1,77,62,131.00</u> (at page 2 of the paper book)</i>

In view of above, Ld AR prayed to the bench to restore the matter to the file of AO for fresh adjudication in accordance to the provision of the law.

On the other hand LD DR raised no objection if the matter is restored back to the file of AO for fresh adjudication in accordance to the provision of law.

6. We have heard the rival contention of both parties and perused the material available on records as well as the provisions of Act relied upon. The facts of the case have been elaborately explained in the preceding paragraph, therefore for the sake of brevity we are inclined not to repeat the same. The disallowance on account of non-deduction of TDS was suggested by the AO in the remand report on the ground that Assessee failed to produce books of accounts in supports of his contention. It is undisputed facts that the assessee produced books of accounts during original proceedings as evident from the finding of the AO as reproduced below:-

*“... .. in response to the notices issued Sri Shyamal Das, Accountant of the assessee attended from time to time and produced the books of account and other details called for.”*

However, the assessee failed to produce the same during remand proceedings because he failed to locate the same. It was also submitted that books were not located as these pertain to the earlier year. However in view of above finding of the AO, the possibility of non-existence of books of accounts is ruled out. The disallowance was made by the lower authorities mainly due to non-production of books of accounts. Thus assessee has filed a copy of affidavit undertaking to file the same before the lower authorities. The content of the affidavit are as under:-

*“I, Sutanu Mahantdy, aged about 39 years, by occupation business by nationality Indian, by Religion Hindu, residing at 148, Regent Estate, Kolkata-700092 do hereby solemnly affirm and declare as follows:*

1. That I am in the advertising business and my assessment for A.Y 2010-11 was completed u/s. 143(3) on 20.03.2013.
  2. That I filed an appeal before CIT(A) against the said assessment.
  3. That during the pendency of my appeal before CIT(A)-7, my A/Rs Sri Gopal Kumar and / or Shyamal Das, Accountant appeared before the AO during remand proceedings on 26.09.2014 and on 14.10.14 and filed requisite details.
  4. That the A/Rs could not produce the books of account before the AO since the matter pertained to the earlier year 2009-10 and the complete set of books could not be located at the relevant time.
  5. That the AO issued notices u/s. 133(6) behind the back of the assessee and never did he confront the assessee with the copies of replies received from the parties.
  6. That the complete set of books of account have now been located.
  7. That the assessee now undertakes to produce the books of account before the AO if provided with an opportunity.
- That the statement made in paragraphs 1 to 6 above are true to the best of my knowledge and belief and paragraph is an undertaking given by me.

Deponent,  
Sd/- Sutanu Mahanty”

In view of above facts, we are inclined to give one more opportunity to the assessee to produce books of accounts before the AO. Therefore in interest of justice and fair play we restore the matter back to the file of AO for fresh adjudication in accordance with the provision of law and in light of above stated discussion. Hence, the ground of appeal filed by the assessee is allowed for statistical purposes.

**7. In the result, for statistical purpose, the appeal of assessee is treated as allowed.**

Order pronounced in open court on 19/02/2018

Sd/-  
(न्यायिक सदस्य)  
(S.S.Viswanethra Ravi)  
Judicial Member

Sd/-  
(लेखा सदस्य)  
(Waseem Ahmed)  
Accountant Member

\*Dkp, Sr.P.S

दिनांक:- 19/02/2018 कोलकाता / Kolkata

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. अपीलार्थी/Appellant-Sri Sutanu Mahanty, Prop. of Dreamz Advertising, 148 Regent Estate, Kolkata-92
2. प्रत्यर्थी/Respondent-JCIT, Rang-53, Aayakar Bhawan Dakshin,2 Gariahat

Road, (S), Kolkat-68

3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary  
Head of Office/DDO  
आयकर अपीलीय अधिकरण,  
कोलकाता