

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
 (समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 1154/Kol/2016
Assessment Year: 2010-11

Prithish Das (PAN: AFCPD0550P)	Vs.	Income-tax Officer, Wd-33(3), Kolkata
Appellant		Respondent

Date of Hearing	17.01.2018
Date of Pronouncement	28.03.2018
For the Appellant	Shri R. Choudhury, FCA
For the Respondent	Shri Arindam Bhattacharjee, Addl. CIT

ORDER

Per Shri A.T.Varkey, JM

The appeal filed by the assessee is against the order of Ld. CIT(A)-9, Kolkata dated 15.03.2016 for AY 2010-11.

2. At the outset itself, the Ld. Counsel for the assessee drew our attention to ground no. 3A which the assessee has preferred as additional ground vide letter no. 19.12.2017 and he submitted that he is pressing only this ground for adjudication and he is not pressing original ground nos. 1 to 3 filed along with the appeal, therefore, ground nos. 1 to 3 originally raised grounds of appeal stand dismissed.

3. The additional ground of appeal preferred by the assessee is as under:

“3A. That on the fact and circumstances of the case the additional of 4,74,742 being labour charges out of total addition of Rs.50,97,955 is bad in law as well as on facts of the case.”

4. Brief facts of the case are that the assessee is a government contractor and sole proprietor of the firm M/s. Das Enterprise and Shri Das under the banner M/s. Das Enterprise. During scrutiny assessment, the AO found that the assessee has made payment of Rs.50,97,955/- as labour charges to six contractors and since tax has not been deducted at source he applied sec. 40(a)(ia) of the Income-tax Act, 1961 (hereinafter referred to as the

“Act”) and disallowed the said sum of Rs. 50,97,955/-. Aggrieved by the order of the AO, assessee preferred an appeal before the Ld. CIT(A), who confirmed the action of AO and dismissed the ground of appeal of assessee. Aggrieved, assessee preferred this ground of appeal before us.

5. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the assessee is a govt. contractor who has realized an amount of Rs.1,74,79,931/- from the contract work with the Govt. The assessee in its P&L Account has clearly shown the labour charges disbursed by him at Rs.46,23,213/- whereas the AO has disallowed Rs.50,97,955/-. We note that Rs.46,23,213/- which was given on account of labour charges to six contractors. The details of the amount debited in the P&L Account actually disallowed by the AO is given in a chart at page 2 of the Ld. CIT(A), which is as under:

Sl. No.	Name of the contractor	Labour charge bill raised as per books	Amount of addition
1.	M/s. Bikas Das	Rs.5,85,490/-	Rs.5,85,490/-
2.	M/s. Jiten Das & Co	Rs.12,80,030/-	Rs.13,76,825/-
3.	M/s. Ratis Das	Rs.7,41,756/-	Rs.8,65,965/-
4.	Sanjay Halder	Rs.7,03,177/-	Rs.9,56,915/-
5.	Khagen Mondal	Rs.5,87,770/-	Rs.5,87,770/-
6.	M/s. Biswajit Roy	Rs.7,24,990/-	Rs.7,24,990/-
	Total	<u>Rs.46,23,213/-</u>	<u>Rs.50,97,955/-</u>

6. From a perusal of the aforesaid chart it is clear that the labour charges given by the assessee to the aforesaid contractors are to the tune of Rs.46,23,213/-. The amount disbursed for purchase of material to the aforesaid contractors three in numbers is as given below:

(i)	M/s. Jiten Das & Co.	Rs. 96,795/-
(ii)	M/s. Ratis Das	Rs.1,24,202/-
(iii)	Sanjay Halder	Rs.2,53,738/-

which works out to Rs.4,74,735/-. In the light of the aforesaid facts, we note that the AO erred in disallowing Rs.50,97,955/- which includes Rs.4,74,735/- which is the cost of the material. Therefore, we find force in the contention of the Ld. AR that Rs.4,74,735/- was erroneously added by the AO for disallowing the same as labour payment to contractors for

violation of non-deduction of tax at source. Therefore, we allow this ground of appeal of the assessee.

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

Order is pronounced in the open court on 28.03.2018

Sd/-
(Dr. A. L. Saini)
Accountant Member

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated :28th March, 2018

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Prithish Das, Prop. Das Enterprise, Shop No. 8, Nabanir Apartment, Mahisgote, Dhalipara, Rajarhat, Kol-700102. .
- 2 Respondent – ITO, Ward-33(3), Kolkata.
3. The CIT(A) Kolkata.
4. CIT Kolkata
5. DR, ITAT, Kolkata.

/True Copy,

By order,

Sr. Pvt. Secretary