

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री वी. दुर्गराव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.Nos.201 to 206/Vizag/2017
(निर्धारण वर्ष / Assessment Years: 2005-06 to 2010-11)

Arunachalam Manickavel
Guntur
[PAN No.ACFPA3107K]
(अपीलार्थी / Appellant)

CIT(A)-3
Visakhapatnam
(प्रत्यार्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G.V.N. Hari, AR
प्रत्यार्थी की ओर से / Respondent by : Shri S. Ravi Shankar
Narayan, DR
सुनवाई की तारीख / Date of hearing : 03.05.2018
घोषणा की तारीख / Date of Pronouncement : 09.05.2018

आदेश / ORDER

PER Bench:

These appeals filed by the assessee are directed against orders of the Commissioner of Income Tax (Appeals)-3 {CIT(A)}, Visakhapatnam vide ITA Nos.1 to 6/2015-16/CIT(A)-3/VSP/2016-17 dated 19.1.2017 for the assessment years 2005-06 to 2010-11.

2. For the sake of convenience the facts are extracted from the appeal for the AY 2005-06. The assessee filed the return of income in this case on 16.6.2010 declaring total income of ₹ 81,44,010/-. The assessment was completed u/s 143(3) r.w.s. 153A of the Income Tax Act, 1961 (hereinafter called as 'the Act') on 27.12.2011 and the total income was determined at ₹ 97,74,850/-. Subsequently, the CIT(Central), Vijayawada has taken up the case for revision u/s 263 of the Act as the assessing officer did not examine the issue with regard to the tax deduction at source on payments made to packing material and consequent disallowance u/s 40(a)(ia) of the Act, hence, the CIT(C) passed an order u/s 263 of the Act holding that the assessment orders passed u/s 143(3) r.w.s. 153A of the Act were erroneous and prejudicial to the interest of the revenue for the assessment years 2005-06 to 2010-11 and directed the A.O. to cause the enquiries and make the investigation and redo the assessment as per law.

The Ld. A.O. taken up the case for reassessment to give effect to the order of the Ld.CIT(C) and called for the explanation of the assessee, who in turn stated that the entire packing material was purchased by the assessee with proper bills and vouchers and there was no contract. Further, the assessee also stated that Central Excise and VAT also was collected by the vendor and held that there was no

contract involved in this case and relied on CBDT circular No.681 dated 8.3.1994 and argued that it was a contract for sale but not contract for work, hence, the provisions of TDS does not attract in its case and consequent disallowance also does not arise. However, the AO made sample verification of the bills produced by the assessee and on verification of invoice bills, the A.O. found that the packing material was manufactured specifically for packing the assessee's products. The packing material has the assessee's trade name, logo, particulars of product and other information printed on it, making such products specific to the assessee and it cannot be sold to any other party. Thus, it was observed by the AO that certain value of total invoice pertains to packing material and rest of the invoice value pertains to the amount charged for printing work, hence, viewed the amount charged for printing as work contract and estimated the value at 25% of the total expenditure, which attracts TDS and accordingly disallowed the same u/s 40(a)(ia) of the Act.

3. Aggrieved by the order of the A.O., the assessee went on appeal before the CIT(A) and the Ld. CIT(A) observed that material required for manufacturing & packing material was not supplied by the assessee, hence, the same can be called as contract for sale and such contract cannot be called as works contract. However, the Ld. CIT(A) observed

from model boxes that the assessee retained right to return the goods, which is not common in trading. In trading commonly used maxim is goods once sold cannot be taken back, hence, directed the A.O. to disallow 10% on the total value of the goods purchased instead of 25%.

4. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us. Appearing for the assessee, the Ld. A.R. argued that in this case, the assessee has purchased packing material and there was no supply contract involved for purchase of the packing material. The fact that the assessee has not supplied any material shows that there is no works contract but there was only contract for sale and argued that contract for sale does not attract the provisions of TDS u/s 194C of the Act. Merely because the supplier has supplied the material with trade name, logo, particulars of product and other information, the same cannot be treated as works contract. The supplier has supplied the material as required by the assessee. Therefore, argued that the assessee's case is squarely covered by circular No.681 of CBDT dated 8.3.1994 and also the decision of this Tribunal in the case of ACIT, Rajahmundry Vs. Chandana Brothers vide ITA No.59/Vizag/2009 dated 21.12.2010 for the assessment year 2006-07. The Ld. A.R. further relied on the decision of Hon'ble Delhi High court in the case of CIT Vs. Dabur India Limited (283 ITR 0197) and the decision of jurisdictional

High court in the case of Contintental Wines Limited, Vijayawada in ITTA No.335/2013 dated 20.8.2013.

5. On the other hand, the Ld. D.R. argued that contract for customized goods according to the requirements of the assessee with logo, brand name, trade name, particulars of product and other information printed on it cannot be called as contract for sale and the same is works contract. Since the items are specifically printed for the sake of the assessee and cannot be used by others, the same should be treated as works contract. There is an element of works contract involved in the supply of the printed material. Therefore, argued that the Ld.CIT(A) rightly estimated disallowance u/s 40(a)(ia) @ 10% of packing material, hence, no interference is called for. The Ld. D.R. relied on the clarification issued by the Government of India, Income Tax Department circular No.1119, wherein the CBDT clarified that TDS would apply in respect of printed material as per prescribed specifications and supported the orders of the lower authorities.

6. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. In this case, the CIT(C), Vijayawada has taken up the case for revision u/s 263 of the Act and set aside the orders passed u/s 143(3) r.w.s 153A to the

file of the AO to decide the issue of disallowance of expenditure u/s 40(a)(ia). While giving effect to the order of the Ld.CIT(C) the A.O. observed that the assessee has made the payments for printed material specifically designed for the assessee, which involved the printing charges, hence, attracts the provisions of tax deduction at source. Consequent to the order passed u/s 263 of the Act, the A.O. has taken up the case for assessment and estimated 25% of the printed material towards the disallowance u/s 40(a)(ia) of the Act. The CIT(A) scaled down disallowance at 10% of the printed material. The year-wise breakup of the total expenditure, disallowance made by the A.O. and sustained by the CIT(A) is furnished hereunder:

Assessment year	Total expenditure (₹)	Disallowance by A.O. @ 25% (₹)	Sustained by CIT(A) @ 10% (₹)
2005-06	48,00,125	12,00,031	4,80,012
2006-07	48,11,001	12,02,750	4,81,100
2007-08	78,74,868	19,68,717	7,87,487
2008-09	1,95,87,537	48,96,884	19,58,754
2009-10	1,19,64,518	29,91,129	11,96,452
2010-11	1,58,05,283	39,51,321	15,80,528

7. In this case, the assessee's case is that he has purchased the printing material and there was no element of contract involved. Department's case is that though assessee had purchased the printing

material and some part of the packing material involved the works contract, which required to be disallowed u/s 40(a)(ia) of the Act. Both the CIT(A) and the A.O. made the disallowance by estimation. Neither the A.O. nor the CIT(A) quantified the expenditure and specified the element which attracts the provisions of TDS u/s 194C of the Act. As per the provisions of section 40(a)(ia) of the Act, any sum payable to a resident on which tax is deductible at source under chapter XVII-B and such tax has not been deducted or after deduction has not been paid required to be disallowed u/s 40(a)(ia) of the Act. There is no case for estimation of such expenditure. It is obligation on the part of the A.O. to quantify the amount, which attracts the TDS u/s 194C of the Act. Only such an amount required to be disallowed u/s 40(a)(ia) of the Act. In the instant case, the assessee argued that the case is covered by circular No.681 dated 8.3.1994, which reads as under:

"The provisions of section 194C would not cover 'contracts for sale' of goods. It has further stated that, where a contractor undertakes to supply and article or thing fabricated according to the specifications given by the Government or any other specified person, and the property in such article or thing passes to the Government or such person only after such article or thing is delivered, the contract will be a 'contract for sale' and as such would be outside the purview of section 194C."

8. The CIT(A) in his order given a finding that in the absence of supply of raw material, the transaction between the printer and the assessee is contract for sale. However, since the logo, colour, size of

the boxes and cost of material purchased by the assessee lends an element of doubt regarding the supply of packing material and the maxim used by the supplier that right to return the goods also has given suspicion to the Ld.CIT(A) and to tend towards the works contract and directed the A.O. to make the disallowance u/s 40(a)(ia) of the Act @ 10% on estimation. However, Hon'ble ITAT in the case of Chandana Brothers cited (supra) relied up on by the assessee, on similar facts held that buying the packing material with some specifications does not attract the provisions u/s 194C of the Act. For ready reference, we extract relevant part of the ITAT order, which reads as under:

"The learned CIT (A) deleted the addition by holding that the packing material etc., falls in the category of 'Contract for sales' and not under "Work contract" and accordingly held that the said payments fall outside purview of Section 194C of the Act. Accordingly he deleted the impugned addition made in all these cases. The learned CIT (A) relied on the decisions of Hon'ble Bombay High Court in the case of BDA Ltd. vs. ITO (TDS) (2006) 281 ITR 99 and the Hon'ble Delhi High Court decision on the case of CIT vs. Dabur India Ltd. (2006) 283 ITR 197.

5. As pointed out by the learned Authorised Representative, this Tribunal has considered an identical issue in the case of M/s Devi Fisheries Ltd., and also in the case of Shri Bommana Ramachandra Rao, wherein this Tribunal has categorically held that the main purpose in buying the packing material was to obtain goods for the purpose of packing and the fact that incidentally some printing was required to be done by the supplier was of no consequence; therefore, the provisions of sec. 194C are not attracted. While arriving at the said decision, the Tribunal has followed the decision of Hon'ble Delhi High Court in the case of M/s Dabur India Ltd (Supra). We notice that the learned CIT (A) also has decided the impugned issue on similar lines and hence we do not find any reason to interfere with his decision."

9. The Hon'ble ITAT relied on the decision of Hon'ble Delhi High Court in the case of Dabur India Limited cited (supra) where in, it was held that predominant object of contract for supply of corrugated boxes with printed labels was for sale of goods and therefore, the contract was outside the purview of section 194C of the Act. Hon'ble jurisdictional High court in the case of Continental Wines Ltd. cited (supra) followed the order of the Hon'ble Delhi High Court in the case of Dabur India Limited (supra) and held that even if there is some logo of the assessee printed on it, it would not change the nature of transactions to works contract. For ready reference, we extract the relevant part of the order of the jurisdictional High Court as follows:

The Learned Tribunal on fact found that the assessee has incurred advertisement expenditure. The Learned Tribunal further found that the predominant object underlying the transaction of receiving the T-shirts and making the payments is largely for purchase of goods and even if there is some logo of the assessee printed on it, it would not change the nature of the transaction to works contract, so as to attract the provisions of Section 194C of the Income Tax Act. The learned Tribunal has also taken note of the decision of the Delhi High Court in the case of CIT Vs. Dabur India Ltd., (283 ITR 197) and applied the law correctly and as such we do not find any reason to interfere with the same. Thus, we do not want to admit this appeal."

10. In this case though the Ld. D.R. relied on the clarification of the CBDT referred above, the same is not binding on the courts and it is a mere clarification but not the binding circular. The said clarification did

not contain any details. Whereas circular No.681 of CBDT it is very clearly specified that contract for sale would not cover the provisions u/s 194C of the Act. Though the Ld. D.R. referred one of the purchase bills furnished in the paper book and argued that the assessee has not paid any CST or VAT and the same was in the nature of supply contract, the amount of the bill was marginal and all the remaining sample bills enclosed in the paper book proves that the transactions were sale transactions and the assessee has paid CST and sales tax on all the purchase bills. The case was scrutinized twice once at the time assessment u/s 143(3) r.w.s 153A and second time in giving effect to the Ld.CIT (C) order but no other evidence was brought on record to show that the same is works contract. Therefore, we hold that there is no works contract involved in supply of printed material and the assessee's case is squarely covered by the decision of Hon'ble ITAT in the case of Chandana Brothers cited (supra) and the decision of jurisdictional High court cited (supra) and no disallowance is called for u/s 40(a)(ia) of the Act. Accordingly, we set aside the orders of the lower authorities and allow the appeals of the assessee.

11. In the result, the appeals filed by the assessee for the AYs 2005-06 to 2010-11 are allowed.

The above order was pronounced in the open court on 9th May'18.

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 09.05.2018

VG/SPS

Sd/-

(वी. दुर्गराव)

(V. DURGA RAO)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam:

दिनांक /Dated : 09.05.2018

VG/SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. अपीलार्थी / The Appellant – Sri Arunachalam Manickavel, Prop: M/s. Bharathi Soap Works, 1st Lane, Indira Gandhi Nagar, Nallacheruvu, Guntur-522 003.
2. प्रत्यार्थी / The Respondent – The CIT(A)-3, Visakhapatnam
3. आयकर आयुक्त / The Pr. CIT(Central), Visakhapatnam
4. विभागीय प्रतिनिधि, आय कर अपीलीय अधिकरण, विशाखापटणम /
DR, ITAT, Visakhapatnam
5. गार्ड फ़ाईल / Guard file

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Sr. Private Secretary
ITAT, VISAKHAPATNAM