

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

सुश्री सुषमा चावला, न्यायिक सदस्य, एवं श्री अनिल चतुर्वेदी, लेखा सदस्य, के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM

आयकर अपील सं. / ITA No. 154/PUN/2016

निर्धारण वर्ष / Assessment Year : 2009-10

Shri Avinash Ramkrishna Sabnis,
Prop. N.R. Industries,
303, Gajilaxmi, Senapati Bapat
Road, Pune-411016.
PAN : ABZPS0853K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
Central Circle-8,
Pune.

.....प्रत्यर्थी / Respondent

Appellant by : None
Respondent by : Smt. Shailaja Rai

सुनवाई की तारीख / Date of Hearing : 26.04.2018	घोषणा की तारीख / Date of Pronouncement : 31.05.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM

The appeal filed by the assessee is against the order of Commissioner of Income Tax (Appeals)-1, Pune dated 24.11.2015 relating to assessment year 2009-10 against order passed under section 143(3) of the Income Tax Act, 1961 (in short 'the Act')

2. The assessee has raised following grounds of appeal:-

“ 1. On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in confirming the disallowance of labour-charges effectively paid during the year under appeal by A.O invoking the provisions of S. 40A(2)(b) of the Act. The disallowance made of Rs. 2,75,000/- be deleted.

2. On the facts and circumstances of the case and in law the levy of interest u/s.234A, 234B and 234C is not justified.

3. The appellant craves to leave, add/ amend or alter any of the above grounds of appeal.”

3. Despite service of notice, none appeared on behalf of the assessee and hence, appeal was heard ex-parte the assessee.

4. The Ld. DR for the Revenue strongly placed reliance on the orders of Authorities below.

5. The issue arising in the present appeal is against disallowance of labour-charges of Rs.2,75,000/- by invoking provisions of section 40A (2)(b) of the Act.

6. Briefly in the facts of the case, the assessee was engaged in the business of manufacturing of auto components. The case of the assessee was picked up for scrutiny. The Assessing Officer noted that assessee had claimed labour charges of Rs.27,80,188/- which included payment made to the persons specified under section 40A(2)(b) of the Act. The Assessing Officer further noted that assessee had claimed labour charges in the name of M/s. Linex Industries amounting to Rs.19,03,668/- and in the name of M/s.Gaurav Auto Parts manufacturing Pvt. Ltd. amounting to Rs.13,65,898/-. Both concerns were sister concerns of the assessee. On further verification Assessing Officer noticed that an amount of Rs.5,50,049/- was booked in the month of March out of the total labour charges of Rs.13,65,898/- in the case of M/s. Gaurav Auto Parts Manufacturing Pvt. Ltd. Similarly, an amount of Rs.6,24,552/- was booked in the month of March out of the total labour charges of Rs.19,03,668/- in

the case of M/s. Linex Industries. The assessee was specifically asked to justify the claim made and also to produce copy of delivery challan, gate pass, vehicle details, loading and unloading details, date of dispatch, quantity dispatched, date of received back etc. In reply, the assessee pointed that both group concerns were exclusively working for manufacturing parts to the assessee only. Further, assessee had made payment through cheques and TDS was also deducted as per law. In respect of making claim in the month of March, 2009, the assessee submitted that both the concerns were small and did not have trained and skilled man-power to handle documentation work. He also explained that some of the items were manufactured during the year, however, the bill was raised at the end of the year i.e. March 2009 being sister concern. The Assessing Officer observed as under:

“4. The submission of the assessee was carefully considered and noticed that bills relating to two items namely Assy bearing tube and Break Chamber were raised in the month of March 2009 aggregating to Rs. 2,45,080/- in the case of Gaurav Auto Parts Manufacturing Pvt. Ltd. If the argument is considered and set off this amount out of total claim made in March 2009, the balance claim comes to Rs. 3,04,969/-. However, the said claim is excessive in comparison to other months claim. It was noticed that average claim in other months were not more than Rs.1,00,000/-. If the claim of March 2009 is considered 1.5 times in comparison to other months, through the claim made in the month of March 2009 was yet excessive.

In view of above discussion, it is clear that assessee has claimed excessive labour charges in the name of persons specified u/s. 40A(2)(b) of the I.T Act specially when assessee has failed to produce copy of delivery Challan, gate pass, vehicles details, loading and unloading details, date of dispatch, quantity dispatched, date of received back etc. accordingly, an amount of Rs.1,50,000/- is treated excessive in the case of Gaurav Auto Parts Manufacturing Pvt.Ltd.

5. Similarly, in the case of Linex Industries, it was noticed that the assessee has claimed Rs.6,24,552/- in the month of March 2009. On asking, the assessee explained that some of the items were manufactured during the year, however, the bill was raised at the end of the year i.e. March 2009 being sister concern. The same submission was carefully considered and noticed that bill's relating to items namely Fan Shroud ring ,Assy wire rope, Assy SWC and Assy Pancard were raised in the month of March, 2009 aggregating to Rs.1,91,658/- in the case of Linex Industries. If the argument is considered and set-off this amount out of total claim made in March 2009, the balance claim comes to Rs.4,32,894/-. However, the said claim is excessive in comparison to other months claim. It was noticed that average claim in other months were not more than Rs.2,00,000/-. If the claim of March, 2009 is considered 1.5 times in comparison to other months, though the claim made in the month of March, 2009 was yet excessive. Accordingly, disallowance of Rs.1,25,000/- is made on account of excess claim to the person specified u/s.40A(2)(b) of the I T Act specially when assessee has failed to produce copy of delivery Challan, gate pass, vehicle details, loading and

unloading details, date of dispatch, quantity dispatched, date of received back etc.”

7. The CIT(A) upheld the order of Assessing Officer by holding as under:

“7. I have carefully considered the facts of the case as well as reply of the appellant. In this case, the appellant is running a proprietary business in the name of M/s N. R. Industries and doing work for Tata Motors Ltd. The appellant claims to have got the job done through its sister concerns namely M/s Linex Industries and M/s Gaurav Auto Parts Pvt. Ltd. The AO in his assessment order has examined payment of March 2009 and found that the claim made in the month of March was quite high. The appellant was confronted on this issue and was asked to produce copy of the delivery Challan, gate pass, vehicle details, loading and unloading details, date of dispatch, quantity dispatched etc. to substantiate the claim of payment made in the month of March 2009. In reply the appellant merely submitted that the work was done in earlier months and the same was not recorded in the books of account due to lack of trained and skilled manpower to handle documentation work and therefore, claim was made in the March 2009. The appellant has not submitted the details of work done in earlier months either before the AO or before the undersigned which proves that the job done in earlier months could not be billed by these concerns. In fact the reply of the appellant appears to be general in nature and therefore, the same cannot be accepted. Considering the totality of the fact, I do not find any mistake in the order of the AO in disallowing Rs.2,75,000/- u/s 40A(2)(b) of the I.T.Act, 1961. Accordingly, the action of the AO is upheld and ground NO.2 and 3 are dismissed.

(1)

8. On perusal of the record, we find that the issue raised in the present appeal is in relation to the expenditure being hit by the provisions of section 40A(2)(b) of the Act i.e. payment being made to related concerns. Under the provisions of section 40A(2)(a) of the Act, it is provided that where the assessee incurs any expenditure in respect of which payment has been made to any person referred to in clause (b) of that section and where the Assessing Officer is of the opinion that such expenditure is excessive or unreasonable having regard to the fair market value of the goods, services or facilities for which the payment is made or the legitimate needs of the business or profession of the assessee, then so much of the expenditure as is so considered by him to be excessive or unreasonable shall not be allowed as deduction. Clause (b) there under provides list of the persons which are covered under clause (a) of the 40A(2) of the Act. Under the said section, the Assessing Officer has to come to an opinion that expenditure incurred by assessee was

excessive or unreasonable, having regard to the fair market value of the goods, services or facilities against which payment is being made. Hence, excessive or unreasonableness of the expenditure is to be measured against fair market value of the goods, services or facilities and in case the same is excessive or unreasonable, then such part of expenditure is not to be allowed in the hands of the assessee.

9. Now coming to the facts of the present appeal, the Assessing Officer disallowed Rs.5,50,049/- booked in the month of March, 2009 out of total labour charges of Rs.13,65,898/- in the case of M/s. Gaurav Auto Parts Manufacturing Pvt. Ltd. and in the case of M/s. Linex Industries an amount of Rs.6,24,552/- booked in the month of March out of total labour charges of Rs.19,03,668/-. The case of the Assessing Officer is that there was no justification for the said claim of expenditure booked in the month of March, 2009 being payment made to two sister concerns. The explanation of the assessee in this regard was that the sister concerns were only providing services to the assessee and because of unavailability of trained persons, the bills were submitted in March, 2009; however, work was done during the year. But the assessee could not furnish requisite details in this regard. The assessee further pointed that he made payment through cheque and TDS was also deducted from the labour charges payments. The Assessing Officer disallowed Rs.1,50,000/- in the case of M/s. Gaurav Autoparts Manufacturing Pvt. Ltd. and Rs.1,25,000/- in the case of M/s. Linex Industries, aggregating to Rs.2,75,000/- under section 40A(2)(b) of the Act. The Assessing Officer has failed to invoke the provision of section 40A(2)(a) of the Act. No doubt, parties to whom payment had been made, were related parties as per the provision of sections 40A(2)(b) of the Act; but as per clause (a) of Section 40A(2) of the Act, Assessing Officer has to come to a findings that expenditure booked by assessee was excessive or unreasonable, having regard to the fair market value of the goods, services or facilities. The Assessing Officer failed to record such findings in the present case. In absence of the same, there is no merit in the disallowance made by Assessing Officer which has been confirmed by CIT(A).

Accordingly, we reverse the findings of CIT(A) and direct the Assessing Officer to allow the expenditure of Rs.2,75,000/-. Thus, ground No. 1 raised in appeal by assessee is allowed.

10. The issue raised in ground No.2, against charging of interest under section 234A, 234B and 234C is consequential and hence, dismissed.

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

Order pronounced on this 31st day of May, 2018.

Sd/-

(ANIL CHATURVEDI)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(SUSHMA CHOWLA)

न्यायिक सदस्य/JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 31st May, 2018

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-1, Pune.
4. The Pr. CIT-V, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव /Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.