

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

Before **Shri S.S.Godara, Judicial Member** and
Shri, M. Balaganesh, Accountant Member

ITA No.2254/Kol/2016
Assessment Year :2012-13

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| R.J.Mishra & Co. C/o S.L Kochar, Advocate, 86, Canning Street, Kolakta-1 [PAN No.AALFR 1587 J] | V/s. | Income Tax Officer, Ward-43(3), 3, Govt. Palace West, Kolkata- 001 |
| अपीलार्थी /Appellant | .. | प्रत्यर्थी/Respondent |

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| अपीलार्थी की ओर से/By Appellant | Shri Anil Kochar, Advocate |
| प्रत्यर्थी की ओर से/By Respondent | Shri Saurabh Kumar, Adtl. CIT-SR-DR |
| सुनवाई की तारीख/Date of Hearing | 23-05-2018 |
| घोषणा की तारीख/Date of Pronouncement | 06-06-2018 |

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2012-13, arises against the Commissioner of Income Tax (Appeals)-13, Kolkata's order dated 08.08.2016, passed in case no. 1150/CIT(A)-13/Kol/W-43(3)/2014-15, upholding Assessing Officer's action inter alia disallowing / adding an amount of ₹25,000 (wrongly incorporated as 25 lakh) u/s 40(b) and ₹15,25,617/- pertaining to carriage inward charges / loading unloading expenditure; respectively in proceedings u/s 143(3) of the Income Tax Act, 1961; hereinafter 'the Act'.

Heard both the parties. Case file perused.

2. Learned counsel representing assessee states at the outset that it no more wishes to press for its former substantive ground challenging section 40(b) disallowance of ₹25,000/- (wrongly incorporated as ₹25 lakh) keeping in mind smallness of the issue. The same is therefore rejected as not pressed.

3. We advert to assessee's latter substantive ground assailing correctness of both the lower authorities action disallowing inward carriage / loading unloading charges disallowance of ₹15,25,617/- @ 15% involving respective sums of ₹60,94,095/- and ₹40,76,682/- in question. The CIT(A)'s detailed discussion *qua* the instant latter issue reads as under:-

"6.4 Ground of appeal No.8 - This ground relates to the addition of Rs.15,25,617/- on the aground that the appellant has claimed an amount of Rs.60,94,095/- towards carriage Inward charges and. Rs.40,76,682/- towards loading and un-loading Charges. The appellant was asked to submit the details regarding the aforesaid transactions for loading and un-loading charges and carriage Inward charges. The AO observed that as per ledger of carrying charges it was seen that the payments were made for two individuals i.e. (1) Pranab Adhikari and (2) Tinku Pandey and that two for carrying 232 M.T. carriage inward was claimed to have been paid at the uniform rate of Rs.150/- per metric ton and loading & unloading charges was claimed to have been paid at the uniform rate of Rs.100/- per metric ton and claimed to , have been paid to about 700 different persons for the entire year. The appellant was asked to furnish the registration number of the vehicles and name of the vehicle owners for carrying the goods as sample basis for the month of October 2011 and March 2012 and complete postal address to whom payments claimed to have been made was also asked for. As per AO's observation complete details of the vehicles etc. was not made available by the appellant and the persons' address was also not made available. Final show-cause was issued by the AD and appellant replied as under:-

i. Our carrying of goods happens through local lorries, van-cart, etc. and are petty in nature and they are not fixed carrying man for us. We use to carry our goods through strangers and they are petty in nature which is evident from our carriage ledger submitted with you. These people don't Issue bills, only they sign the vouchers, which are given to you.

ii. Our purchase bills are sale bill/s for those parties, which are issued by them only. It is upto them to reflect registration no. or not. The reflection of vehicle number hardly makes any difference in our transportations.

iii. In some of our purchases, carrying charges are borne by the seller party, this depends upon our terms of purchases/sales. The purchases of 15/3/12, some carrying cost was borne by us and some by the seller party.

iv. Payment made for carrying charges and loading & unloading charges are made to local strangers. It is practically impossible for anyone to record the address etc. of strangers with whom you have worked once only. It is also needless.

v. Our loading &, unloading and carriage work is done through local lorries, van, cart, etc. which might be heavy, medium or light depending upon the load they have to carry that day. We again explain that they are not fixed vehicles. These are flying vehicles which work on day to day basis. Keeping of registration number was neither possible nor necessary In our case. "

The AO analyzed reply of the appellant as under:-

"If assessee's reply as above is analyzed, it is understood that assessee has virtually expressed its inability to furnish the details and explanations as called for. First of all the quantum of expenses under the two heads of carriage inward and loading & unloading was so high that It was sought to be checked and verified. For this purpose of the persons which assessee claimed were paid under these two heads were sought to be cross examined. But assessee's Inability to furnish the address of the parties prohibited from doing so. It is very difficult to believe that the assessee was not in touch with any of the about 700 individuals whom it has claimed to have made these payments. It is also very unusual that it will employ different person on each and every day. Even the payments made on a single day were claimed to have been made to different persons. Assessee's claim that all the seven hundred persons were strangers and could not be located at present is also very' difficult to believe. Hence, the assessee failed to establish the identity or these 700 persons. Second, by his own admission, these charges were not mandatorily borne by him. Some time the charges were borne by the sellers themselves. But except for goods purchased on 15/03/12 as discussed above, the expenses appeared to have been borne by assessee himself for each and every purchase since the quantity of goods purchased as per purchase register and quantity of goods for which expenses were incurred towards carriage and loading & unloading were found to be same for each and every day. Third, the payments were entirely claimed to have been made in cash which prohibited verification of the transactions. Fourth, the payments were all claimed just below Rs.20,000/- so as to get away from the provisions of section 40A(3) of the Act Fifth, the payments were made to 700 different

Individuals so that no Individual was paid In excess of Rs.30,000/- on a single day or In excess of Rs.75,000/- In the whole year so as to get away from the TDS provisions u/s 194C of the Act Sixth, although some of the purchase bills did mention the lorry registration number, but it is not at all clear whether the expenses were borne by the assessee of the concerned seller himself. In fact, many of the big and reputed concerns usually arrange their own vehicles and bear the cost of carriage and loading & unloading. Seventh, it is not known whether the payments made to the said persons was for single haul by one truck or for more than one hauls involving one and more trucks. But from the quantity of goods mentioned in the respective ledger, It is clear that the payments were for more than one haul as the quantity for each payment was more or less of about 100 MT or more. No single vehicle has the capacity of carrying such huge load. Eighth, It Is very unusual that a trader will employ different individual for each day when the practice is to employ one's own trusted persons for this purpose. Ninth, the assessee furnished some copies of self made cash payment vouchers trying to establish that the payments were genuine. But it Is matter of common sense that such self made vouchers do not establish anything since it is not at all difficult to prepare these as and when required and to get signature of some sundry persons. As already discussed above, assessee failed to establish the identity of the persons themselves. The conclusion which can be drawn is that the assessee created fictitious names for these two purposes so as to avoid the provisions of section 40A(3) [cash payment in excess of Rs.20,000/- and section 40(a)(ia) read with sec. 194C (disallowance of expenses for non-compliance 'of TDS provisions for payment made exceeding Rs.75,000/- in aggregate during the year). But at the same time, It Is a/so to be kept In mind that the assessee must have Incurred some expenses on these two accounts since its business activity is genuine, However, due to the reasons mentioned above, it is concluded that the expenses of Rs,60,94,095/- towards carriage inward charges and Rs40,76,6,82/- towards loading & unloading charges is vastly inflated and 15% of such expenses or Rs.15,25,617/- is disallowed and added back to total income. "

At the appellate stage, the appellant has argued that AO has made estimation of the expenses whereas the expenses were made for the business purposes only. The appellant's reply has been perused. It is seen that the appellant has not made any attempt to controvert the findings of the AO with material evidences. The appellant has failed to establish the Identity of the 700 persons to whom payments were claimed to be made. Admittedly appellant treated them as strangers.

The payments were entirely claimed to be made in cash which becomes non-verifiable. The payments were all claimed below Rs.20,000/- in order to get away from the provisions of Sec.40A(3) of the Income Tax Act, 1961. The payments were tried to shown to 700 persons in order to ensure that payment does not exceed Rs.30,000/- on single day and Rs.75,000/- for a person in a year. It was beyond probability of common business practice that appellant will deploy daily new persons. Keeping in view all the aforesaid facts, the addition made by the AO is upheld. This ground of appeal is hereby dismissed.”

4. Both the Learned Representatives reiterate their respective pleadings against and in support of the impugned disallowance. We notice in this backdrop of facts that assessee is a partnership firm in wholesale and retail business of iron and steel. Both the lower authorities are fair enough in not rejecting its claim of the impugned expenditure in *toto* as the said business admittedly involves inward carriage as well as loading and unloading of iron and steel stock items. The Assessing Officer as well as CIT(A) take note the fact that the assessee has made payment to more than 700 persons within all the specified limits an attempt to steer itself clear of relevant provision contained u/s. 40A(3) as well as prescribing TDS deduction in Chapter-XVIIIB of the Act. We do not agree to this reasoning in entirety. We repeat the fact that assessee's business of iron and steel dealership and trading requires of such kind of routine business expenditure. Neither the Assessing Officer nor the CIT(A) draws any comparison of the impugned expenditure with corresponding figures in preceding or succeeding assessment year(s) so as to highlight any excessive element therein. The assessee has also not substantiated all of its payees' relevant details for the purpose of carrying out a random verification even. We deem it proper in these peculiar facts and circumstances that a lump sum disallowance @ 6% instead of 15% under challenge would be just and proper. We make it clear that our instant estimation based in these peculiar facts would not be taken as a precedent in any preceding or succeeding assessment year. The Assessing Officer is

accordingly directed to recompute the impugned disallowance @ 6% afresh as per law.

5. This assessee's appeal is partly allowed.

Order pronounced in the open court 06/05/2018

Sd/-
(लेखा सदस्य)
(M.Balaganesh)
(Accountant Member)
Kolkata,
*Dkp, Sr.P.S

दिनांक:- 06/06/2018 कोलकाता ।

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
(Judicial Member)

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

1. अपीलार्थी / Appellant
2. प्रत्यर्थी / Respondent
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
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 ।