

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D", NEW DELHI**

**BEFORE SH. G.D. AGRAWAL, PRESIDENT
AND
SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.2391/Del/2015
(Assessment Year: 2010-11)**

Prem Service Station J.B. Tito Marg. Andrews Ganj New Delhi	Vs.	ACIT Circle-32(1) New Delhi
PAN : AAAFP6998C		
(Appellant)		(Respondent)

Assessee by : Sh. Sandeep Sapra, Adv.
Revenue by : Sh. Amit Jain, Sr.DR
Date of hearing : 24.04.2018
Date of pronouncement : 28.06.2018

ORDER

PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER :

This appeal has been preferred by the assessee against order dated 12.02.2015 passed by the Ld. CIT (Appeals)-XVIII, New Delhi for assessment year 2010-11.

2. The brief facts of the case are that the assessee firm is having a dealership of Bharat Petroleum Corporation Limited (BPCL) and is engaged in trading of petroleum products and also runs an auto

workshop. The return of income was filed declaring an income of Rs. 53,81,190/- . The return was initially processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter called the 'Act') and subsequently the case was selected for scrutiny. During the course of assessment proceedings the AO noticed that as against the gross sales of Rs. 48,85,11,966/-, the assessee had paid license fees to BPCL amounting to Rs. 13,87,436/-. The AO was of the opinion that tax was to be deducted at source by the assessee on the payment of license fee. It was the assessee's submission before the AO that license fee forms part of purchase and the same is charged on the bills issued by the BPCL for purchase of petrol/diesel and, therefore, the same was not covered under the provisions of section 40(a)(ia). However, the AO was of the view that tax was required to be deducted at source. The AO proceeded to disallow the entire amount of Rs. 13,87,436/- paid by the assessee as license fees. Further, the AO also noted that the assessee had incurred expenses on travelling amounting to Rs. 2,96,602/-. The AO asked the assessee to furnish details and evidences of the foreign and domestic travel. However, the assessee could not produce the same

before the AO. The AO proceeded to disallow the entire amount of Rs. 2,96,602/- pertaining to travel.

2.1 Aggrieved, the assessee approached the Ld. First Appellate Authority who upheld these two additions. Now, the assessee has approached the ITAT and has challenged the action of the Ld. CIT (Appeals) in upholding the confirmation by raising the following grounds of appeal.

“1. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in not deleting the disallowance of Rs. 13,87,436/- fully as made by Ld. AO u/s 40(a)(ia) on account of License free recovery and the impugned addition has been made without appreciating the facts and circumstances of the case and by recording incorrect facts and findings.

2. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in not deleting the disallowance of Rs. 2,96,602/- fully as made by Ld. AO on account of foreign travelling expenses and the impugned addition has been made without appreciating the facts and circumstances of the case and by recording incorrect facts and findings.

3. That in any case and in any view of the matter action of Ld. CIT(A) in not reversing the action of Ld. AO in making the impugned disallowance and framing the impugned assessment order, as the same is not sustainable on various legal and factual grounds and more so as the same has been passed by recording incorrect facts and finding and without giving adequate opportunity of hearing to the assessee.”

3. The Ld. Authorised Representative submitted that the assessee purchases diesel and petrol from BPCL and the license fee is part of the purchase price being charged by the BPCL. He drew our attention to a copy of invoice issued by BPCL and placed at page 16 of the paper book. It was submitted that this invoice dated 09.11.2009 was also filed as a specimen before the AO and the Ld. CIT (A). The Ld. Authorised Representative while referring to this invoice submitted that VAT has been charged on diesel and petrol but no VAT has been charged on the license fee which is a part and parcel of the sales invoice. It was also submitted that the assessee had debited diesel and petrol under the head 'purchases' and the licence fee was booked under the head 'BPCL LFAR' and was debited to the trading account. Our attention was also drawn to a copy of the trading account placed at page 9 of the paper book. It was also submitted that account 'BPCL LFAR' was part of account head 'purchase' under the account group head 'purchases' and further there was no difference in the purchases shown in the VAT returns and purchases debited to the trading account. The Ld. Authorised

Representative submitted that the licence fee was in the nature of direct expenditure i.e. for making purchase and that is not covered by the provisions of section 30 to 38 of the Act but rather fell under section 28(1) of the Act and, therefore, provisions of Section 40(a)(ia) were not attracted in this case. It was also submitted that this payment did not fall in the nature of commission or brokerage and, therefore, the liability of deducting tax u/s 194H of the Act did not get attracted. It was also submitted that no such disallowance had been made in earlier years. It was submitted that assessments for assessment years 2008-09 and 2009-10 had been completed u/s 143(3) of the Act wherein no such disallowance had been made. The Ld. Authorised Representative drew our attention to the copies of the two assessment orders in for 2008-09 and 2009-10 as afore mentioned and which were forming part of the paper book.

3.1 Coming to the second issue being challenged by the assessee with respect to disallowance of travelling expenses, the Ld. Authorised Representative submitted that out of total amount of Rs. 2,96,602/-, an amount of Rs. 1,93,691/- pertained to foreign travel whereas the remaining amount of Rs. 1,02,911/-

was towards domestic travelling expenses. It was submitted that foreign travel was undertaken to keep pace with the latest marketing techniques and to find new products of market. It was submitted that the assessee is one of the highest selling dealers of BPCL in the country having won many awards and in order to maintain the leadership, the assessee had to upgrade techniques and products with respect to the convenience store named 'In and Out'. It was further submitted foreign travel was under taken in order to achieve the business objects of the assessee and the payments were made through account payee cheques and the names of the partners and the purpose of place of travel was duly disclosed during the assessment proceedings. It was also submitted that the AO had disallowed the entire domestic as well as foreign travel expenditure without bringing any adverse material on record.

4. In response, the Ld. Sr. Departmental Representative placed reliance on the concurrent findings of both the lower authorities and vehemently argued that the additions had been rightly made and that the same deserved to be upheld.

5. We have heard the rival submission and have also perused the material on record. As far as ground no. 1 of the assessee's appeal is concerned, the question to be considered by us is whether the expenditure incurred by the assessee towards licence fee recovered by the BPCL is in the nature of direct expenditure allowable u/s 28(1) of the Act or an expenditure coming under provisions of section 30 to 38 of the Act. A perusal of the invoice filed before us shows that licence fee is recovered from the assessee on each and every purchase of diesel and petrol and it necessarily forms part of the invoice which is issued by BPCL. Thus, it necessarily forms part of the purchases of the assessee which falls within the ambit of section 28 of the Act itself. The Ld. CIT (A) has upheld the disallowance on the ground that licence fee was covered by section 194H of the Act but she has failed to demonstrate how this conclusion has been arrived at. We are unable to agree with the findings of the lower authorities in this regard. It is settled law that section 194H is attracted when there is a principle and agent relationship between two parties whereas in the instant case no such relationship can be said to exist and, therefore, the provisions of

section 194H do not get attracted. Therefore, in view of the facts of the case, it is our considered opinion that licence fee recovered by BPCL forms part and parcel of the purchase cost of the assessee and the same does not attract deduction of tax at source. Accordingly, we set aside the order of the Ld. CIT (A) on this issue and direct the AO to delete this addition. Accordingly, ground no. 1 stands allowed.

5.1 Coming to ground no. 2 of the assessee's appeal which challenges the upholding of disallowance of Rs. 2,96,602/- with respect to travelling expenditure, it is seen that the AO had made disallowance of the entire amount of travelling expenses on the ground that the assessee did not furnish copies of bills/evidences for expenses incurred on foreign/domestic travel. Before the AO, the assessee submitted that the travel had been undertaken for the purpose of business. However, the AO was of the opinion that each and every visit by the partners of the assessee cannot be accepted to have been made for the purpose of business simply because the person travelling was a partner of the assessee firm. The Ld. CIT (A) upheld the disallowance by accepting the contentions of the AO in this regard and a perusal

of the impugned order shows that the Ld. CIT(A) has simply reproduced the observations of the AO in this regard and has not arrived at any independent finding on her own. We also note that the assessee did not produce any bills or vouchers in support of the travelling expenses even when specifically required by the AO. However, the assessee did furnish details of travelling before the AO. We also note that the books of accounts of the assessee are audited and apart from the inference drawn by the lower authorities that the entire travelling expenses would not pertain wholly for business purposes, no other adverse inference has been drawn. Accordingly, on the facts of the case and also keeping in mind the failure of the assessee to furnish evidences before the AO in this regard, it is our considered opinion that interest of justice would be served if this disallowance is restricted to 25% of the entire travelling expenses. Accordingly, the ground no. 2 of the assessee stands partly allowed.

5.2 Ground nos. 3 and 4 are general in nature and are not being adjudicated upon.

6. In the final result, the appeal of the assessee stands partly allowed.

(Order pronounced in the open court on 28th June, 2018).

Sd/-

(G.D.AGARWAL)
PRESIDENT

Sd/-

(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Date: 28th .06.2018

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Copy of order to: -

- 1) The Appellant;
 - 2) The Respondent;
 - 3) The CIT;
 - 4) The CIT(A)-, New Delhi;
 - 5) The DR, I.T.A.T., New Delhi;
- True Copy

By Order

ITAT, New Delhi