

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Shri S.S. Godara, JM & Shri M.Balaganesh, AM]

I.T.A No. 577/Kol/2018

Assessment Year : 2012-13

Sanjit Ghosh
[PAN: ADUPG 5217 A]
(Appellant)

-vs-

ITO, Ward-47(3), Kolkata
(Respondent)

For the Appellant : None

For the Respondent : Shri Pijush Mukherjee, Addl. CIT

Date of Hearing : 18.06.2018

Date of Pronouncement : 04.07.2018

ORDER

Per M.Balaganesh, AM

1. This appeal by the Assessee arises out of the order of the Learned Commissioner of Income Tax(Appeals)-14, Kolkata [in short the ld CIT(A)] in Appeal No. 04/CIT(A)-14/Wd-47(1)/2015-16 dated 09.01.2017 against the order passed by the ITO, Ward-47(3), Kolkata [in short the ld AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 09.03.2015 for the Assessment Year 2012-13.

2. The first issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in upholding the disallowance made u/s 40a(ia) of the Act in the sum of Rs. 5,87,689/- on account of violation of provision of section 194C of the Act, in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a clearing and forwarding agent of Associated Cement Company Ltd. The ld. AO observed that the assessee had incurred loading and unloading charges in the sum of Rs. 5,87,689/- and had made payment for the same without deduction of tax at source. The ld. AO sought to invoke the provisions of section 40a(ia) of the Act for the same for violation of provisions of section 194C of the Act. The assessee stated that the payment made to various labourers towards loading and unloading charges and that the said payments were made to labourers with whom no contract was entered into by the assessee. Moreover, the payments made to each of the labourers are less than Rs. 50,000/- in a year and hence the provisions of section 194C of the Act are not applicable at all. The assessee stated that no agency or contractor or sub-contractor have been engaged by him for making payments and the payments were directly made to the labourers individually. The ld. AO however did not agree to this contention and proceeded to make disallowance u/s 40a(ia) of the act which was upheld by the Ld. CIT(A) . Aggrieved the assessee is in appeal before us.

4. We have heard ld. DR. The ld. AR filed an adjournment petition and since the issue involved does not warrant the presence of the AR of the assessee, we proceed to dispose off this appeal after hearing the ld. DR. We find that the assessee had claimed that payments were made to individual labourers and that the said payments are below threshold limit of Rs. 50,000/- prescribed in section 194C of the Act. However, this matter requires factual verification on the part of the ld. AO. Hence in the interest of justice and fair play, we deem it fit and appropriate, to remand this issue to the file of the ld. AO for verification of applicability of provisions of section 194C of the Act and accordingly decide this disallowance u/s 40a(ia) of the Act. The assessee is also at liberty to adduce fresh evidences before the ld. AO in support of his contentions. Accordingly, ground nos. 1 and 2 raised by the assessee are allowed for statistical purposes.

5. The next ground to be decided in this appeal is as to whether the Ld. CIT(A) was justified in upholding disallowance u/s 40a(ia) of the Act in respect of interest payments made in the facts and circumstances of the case.

6. The Id. AO observed that the assessee had made interest payment of Rs. 4,06,606/- to 5 parties without deduction of tax at source. The Id. AO disallowed the same by invoking the provision of section 40a(ia) of the act for violation of provisions of section 194A of the Act. Before the Ld. CIT(A), the assessee pleaded that in view of the amendment brought in the second proviso to section 40a(ia) of the Act, which should be treated as retrospective in operation, the assessee should not be treated as an assessee in default inasmuch as the payees have duly disclosed this interest income in their returns. Accordingly, it was pleaded that the disallowance u/s 40a(ia) of the Act should not be made in the hands of the assessee payer. The Ld. CIT(A) held that the assessee was not able to produce any proof of his argument that payees had already disclosed those income in their returns. Accordingly, he upheld the action of the Id. AO. Aggrieved, the assessee is in appeal before us.

7. We have heard Id. DR. We find that the assessee had made a claim that the payees had disclosed the interest income in their returns. This matter requires factual verification. We hold that on verification by the Id. AO, if it is found that the payees had disclosed interest income in their returns, then in view of the second proviso to section 40a(ia) of the Act, no disallowance of interest expenditure should be inflicted in the hands of the assessee payer. It is now well settled that the amendment brought in second proviso to section 40a(ia) of the act have been held to be retrospective in operation by the decision of the Hon'ble Delhi High Court in the case of Ansal Land Mark Township Pvt. Ltd. reported in 377 ITR 635 (Del) and also by the Hon'ble Jurisdictional High

Court in the case of CIT vs. Tirupati Construction in GA No. 2146 of 2016 ITAT No. 287 of 2016 dated 23.08.2016. Accordingly, ground nos. 3 and 4 raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the Court on 04.07.2018

Sd/-

[S.S. Godara]
Judicial Member

Sd/-

[M.Balaganesh]
Accountant Member

Dated : 04.07.2018
SB, Sr. PS

Copy of the order forwarded to:

1. Shri Sanjit Ghosh, C/O, S.N. Ghosh & Associates, Advocates, "Seven Brothers" Lodge, P.O-Buroshibatala, P.S.-Chinsurah, Dist. Hooghly, Pin-712105.
2. ITO, Ward-47(3), Kolkata, Income Tax Office, 3, Govt. Place (West), Kolkata-700001.
- 3..C.I.T.-
4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches