

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'C' KOLKATA

[Before Hon'ble Shri S.S.Godara, JM & Dr.A.L.Saini, AM]

ITA No.767/Kol/2016
Assessment Year : 2011-12

Dipak Parui
Kolkata
(PAN: AOGPP 5076 F)
(Appellant)

-versus-

J.C.I.T., Range-53,
Kolkata

(Respondent)

For the Appellant: Shri Manoj Tiwari, AR
For the Respondent: Shri Saurabh Kumar, Addl. CIT, Sr.DR

Date of Hearing : 11.07..2018.
Date of Pronouncement : 20.07.2018

ORDER

PER S.S.GODARA, JM:

This assessee's appeal for A.Y.2011-12 arises against the CIT(A)-7, Kolkata's order dated 23.02.2016 passed in Appeal No.556/CIT(A)-7/Kol/R-26/14-15 upholding the Assessing Officer's action adding its customer's advances of Rs.9,77,500/- as well as disallowance of expenditure claimed of Rs.1,79,800/- u/s 40(a)(ia) on account of non deduction of TDS; respectively involving proceedings u/s 143(3) of the Income Tax Act, 1961 (Act).

Heard both the parties. Case file perused.

2. We come to the former issue of section 68 unexplained cash credits of Rs.9,77,500/-. It emerges that the Assessing Officer had added assessee's customer's advances of Rs.51,76,237/- by terming the same to be both non genuine as well as suppressed revenue receipts cessation of liability u/s 41(1) of the Act. The assessee preferred appeal. It filed additional submissions during the course of lower appellate proceedings. The CIT(A) sought for remand report. The Assessing Officer submitted the same. It transpires therefrom that an amount of Rs.41,98,737/- represented opening balance of assessee's customer's advances. The CIT(A) therefore concludes that the said addition of outstanding advance could not be made in the impugned

assessment year. Coming to the latter component of Rs.9,77,500/- of advance received during the year, he has invoked section 68 to treat the sum as unexplained cash credits liable to be added.

3. We have heard both the parties reiterating their respective stands against and in favour of the impugned addition. There is no dispute that the assessing authority had nowhere invoked section 68 of the Act so far as the impugned customer's advance of Rs.51,76,237/- are concerned in particular. He had made this addition by holding that corresponding liability towards the customers had ceased to exist in the impugned assessment year. It is therefore clear that the CIT(A) has applied section 68 of the Act qua the remaining advances which could not be explained in the remand proceedings. The assessee has nowhere been put to notice before invoking section 68 of the Act during course of lower appellate proceedings. There is no further issue that section 41(1) of the Act applies in the case of outstanding advances carried forward from the preceding assessment years which are either remitted as a case of cessation of liability in the impugned assessment year. We therefore find no merit in the impugned addition of Rs.9,77,500/- converted from cessation of liability to unexplained cash credits for this assessment year. The same stands deleted accordingly.

5. Latter issue before us is that of correctness of section 40 (a)(ia) disallowance of Rs.1,79,800/- out of assessee's total claim of Rs.,3,05,364/-. His only argument before us is that section 40(a)(ia) as amended by Finance Act 2014 w.e.f. 01.04.2015 prescribing such disallowance to be restricted to 30% only than the entire amount of Rs.1,79,800/-; applies with retrospective effect. Learned Departmental Representative vehemently opposes this legal plea. He pleads that the said proviso does not carry any retrospective effect. We find no force in Revenue's instant arguments as a coordinate bench of this tribunal in Shri Rajendra Yadav in ITA No.895/JP/2012 decided on 29.01.2016 already concludes the above amendment w.e.f. 01.04.2015 to be retrospective effect being curative in nature. We therefore direct the Assessing Officer to restrict the impugned disallowance to 30% only to be followed by necessary

computation as per law. This latter substantive ground is treated as partly accepted in above terms.

6. This assessee's appeal is allowed for statistical purposes.

Order pronounced in the Court on 20.07.2018.

Sd/-
[Dr.A.L.Saini]
Accountant Member

Sd/-
[S.S.Godara]
Judicial Member

Dated : 20.07.2018.

[RG Sr.PS]

Copy of the order forwarded to:

1.Dipak Parui, 129, Udyan Pally, Rakshit Para Road, Green Park, Sarsuna, Behala, Kolkata-700061.

2. J.C.I.T., Range-53, Kolkata.

3. C.I.T.(A)-7, Kolkata 4. C.I.T-9, Kolkata

5. CIT(DR), Kolkata Benches, Kolkata.
True Copy

By order,

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

