

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

Before **Shri J. Sudhakar Reddy, Accountant Member** and
Shri, S.S. Godara, Judicial Member

ITA No.399/Kol/2017
Assessment Year :2013-14

Teesta Valley Exports Ltd. 3, Netaji Subhas Road, Kolkata – 700 001. [PAN No AAAC 9980 D]	V/s.	DCIT, Circle – 4(2) Aayakar Bhawan, 4 th Floor, P-7, Chowringhee Square, Kolkata-700 069
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Sanjay Bhattacharya, AR
प्रत्यर्थी की ओर से/By Respondent	Shri Saurabh Kumar, Addl. CIT, Sr. DR
सुनवाई की तारीख/Date of Hearing	04-07-2018
घोषणा की तारीख/Date of Pronouncement	18-07-2018

आदेश /ORDER

PER S.S.Godara, Judicial Member:-

This assessee's appeal for assessment year 2013-14 arises against Commissioner of Income Tax (Appeals)-2, Kolkata's order dated 07.12.2016 passed in case No.369/CIT(A)-2/16-17, upholding Assessing Officer's action inter alia disallowing its warehousing charges of ₹10,38,944/- under section 40(a)(ia) on account of non-deduction of TDS, section 14A read with Rule 8D disallowance / addition of ₹1,38,705/- and travelling expenses of ₹34,48,553/-, respectively in assessment order dated 23.03.2016, in proceedings u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard both the parties. Case file perused.

2. We come to the first issue of warehousing charges disallowance amounting to ₹10,38,944/- on account of non-deduction of TDS under section 40(a)(ia) of the Act. The assessee claimed to have paid two individuals namely Proloy Neogy and

Bannya Neogy for having incurred the impugned warehousing charges on its behalf ultimately paid to third party payees. The Assessing Officer disallowed the same on account of its failure in deducting TDS thereupon under section 40(a)(ia) of the Act. The CIT(A) upholds the Assessing Officer's action as follows:

"Under the Accounting head 'Other Misc. Expenses' there were "Warehousing charges" aggregating to Rs.11,96,869. On being asked by the Assessing Officer, the appellant submitted the details of "Warehousing Charges" which included two payments of Rs.9,07,209 to Proloy Neogi and Rs.1,31,735 to Bannya Neogi, aggregating to Rs.10,38,944. It was explained by the appellant that blending of tea was used to be made at the appellant's premises as well as through one outside contractor, viz; Tara Tea Blending Co. (TTBC) The said TTBC were also rendering other incidental services in relation to the export of Tea by the appellant. During the year the appellant paid an aggregate amount of Rs. 27,45,455 to TTBC for Blending Charges, Sampling Charges, Packing Charges, Tea Shipment expenses and also towards Warehousing Charges. The above-mentioned aggregate amount of Rs.27,45,455 included Rs.49,952 paid towards Warehousing Charges. Some portion of the appellant's tea was being kept at TTBC's warehouse for which Rs.49,952 was paid to TTBC as Warehousing Charges. Besides TTBC's warehouse the appellant had to store some portion of Tea in different other Warehouses and the said storing was used to be made through two persons, viz., Proloy Neogi and Bannya Neogi who had been acting on behalf of TTBC. The appellant did not have any Contract or Agreement with the above-named Proloy Neogi and Bannya Neogi. On the basis of the arrangements for storage of tea made at various Warehouses by Proloy Neogi and Bannya Neogi, the appellant used to reimburse those two persons towards the warehousing charges of various warehouses. No work used to be performed by either Proloy Neogi or Bannya Neogi for the appellant other than making arrangement for Warehouses. So, there did not arise any liability on part of the appellant to deduct any Tax at Source u/s 194C in relation to the reimbursements of Rs.9,07,209 paid to Proloy Neogi and Rs.1,31,735 paid to Bannya Neogi. Though this matter had duly been explained by the appellant to the Assessing Officer and it was clarified that there had not been any requirement of TDS u/s 194C,yet the Assessing Officer assumed such payments to have allegedly been attracting TDS u/s 194C and he disallowed the said two amounts of Rs.9,07,209 and Rs.1,31,735 aggregating to Rs.10,38,944 u/s 40(a)(ia) from composite payments to Tara Tea Blending Co., the assessee was also liable to deduct tax at source u/s.19.4Cfrom reimbursements to the said two parties, and on the basis of such misconceived allegations he further erred in disallowing Warehousing Charges of RS.10,38,944/- u/s.40(a)(ia)." -

The appellant submits that since there had not occurred any case of payment in pursuance of any contract requiring TDS vis 194C, the Assessing Officer's action

in making disallowance u/s 40(a)(ia) should be held to be unjustified and such disallowance of Rs.1 0,38,944 may kindly be deleted. "

I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings. The AR has stated that liability did not arise on part of the appellant to deduct any Tax at Source u/s 194C in relation to the reimbursements of Rs.9,07,209 paid to Prolby Neogi and Rs.1,31,735 paid to Bannya Neogi. It clearly indicated that these two persons made payments on behalf of the assessee. In case this amount was directly paid by the assessee then he was liable to deduct the TDS. So the liability of TDS arises on the nature of payment. The assessee has avoided the TDS liability by making payment through middleman credited by him. The only ground as taken by the assessee is that the amount was paid to these two persons were reimbursed. In view of above, the order of the AO is upheld and this ground of appeal is dismissed.

3. Learned Authorised Representative vehemently contends during the course of hearing that section 40(a)(ia) of the Act does not apply in case of mere reimbursement of warehousing expenditure. He terms the two payees S/Shri Proloy Neogi and Bannya Neogi to be assessee's agents only who had been reimbursed the relevant warehousing charges incurred on its behalf. We find no substance in assessee's instant argument. The instant taxpayer appears to have adopted an indirect method of involving the two individuals payees for the purpose of incurring the impugned warehousing charges. There is no evidence on record indicating the relevant factual backdrop as to how the two payees assumed its agent's role in this entire scheme of payment. We, therefore, see no reasons to interfere with the lower appellate findings just because the assessee has made its warehousing charges payment through the so-called two individuals payees in absence of any such agreement or contract on record. This warehousing charges disallowance of ₹10,38,944/- is accordingly confirmed.

4. The assessee's next substantive ground challenges correctness of both the lower authorities' action invoking section 14A disallowance of ₹1,38,705/- in relation to its exempt dividend income of ₹64,375/-. The Assessing Officer admittedly invoke Rule 8D of the Income Tax Rules to disallow proportionate interest and administrative expenditure of ₹1,25,655/- and ₹13,050/-; respectively totaling to the disallowance amount in question. There can be no dispute about the settled law that

the impugned disallowance as to be computed as per Rule 8D w.e.f. AY 2008-2009. Learned counsel takes as to page 82 of the paper book comprising all details of the relevant investments right from the date of acquisition to the relevant previous year; scriptwise, sufficiently indicating its interest free funds in the accounting periods of acquisition i.e. 31.03.1991 to 31.03.1992, 31.03.1994 to 31.03.1995, 31.03.2003, 31.03.2005 and 31.03.2007 as against the relevant paid up capital and reserves and surplus figure. We find that its exempt investments therein are much less than its non-interest bearing funds. We accordingly quote hon'ble jurisdictional high court decision in PCIT vs Rasoi Ltd. GA No. 633/2016, ITAT 109/2016 dated 15.02.2017 holding that the presumption in such a case is that of utilization of non-interest bearing fund only for the purpose of deriving exempt income. We thus delete the former component of interest expenditure disallowance amounting to ₹1,25,655/-.

4.1 Coming to latter component of administrative expenditure, there is no evidence on record indicating in representing correctness thereof in principle. We however find that the Assessing Officer has not taken into consideration assessee's exempt income investment only for the purpose of computation as per Hon'ble Jurisdiction High Court Judgement in PCIT vs REI Agro Ltd. ITAT 220 of 2013 dated 09.04.2014. We, therefore, leave it open for the Assessing Officer to finalise consequential computation of administrative expenditure disallowance. This 2nd substantive ground is treated as partly accepted in above terms.

5. This leaves us 3rd issue of correctness of both the lower authorities action in disallowing assessee's travelling expenses of ₹4,48,558/- as discussed in CIT(A)'s order reading as follows:

This ground of appeal as raised by the assessee against the order of the assessing officer is as under:

That, on the facts and in the circumstances of the case, the Assessing Officer erred in alleging that the assessee's representative, during discussion on 17.03.2016, had accepted that some part of the "Travelling Expenses" were incurred for non-business purposes and on the basis of such unfounded allegation he further erred in disallowing an amount of Rs. 34,48,553/- out of the "Travelling Expenses".

The AR of the appellant during the appellate proceedings furnished written submissions as under:

During the assessment proceedings the Assessing Officer asked the appellant for details in regard to the Foreign Travel Expenses aggregating to Rs. 34,48,553/- incurred for the appellant's Managing Director's Foreign visits. The appellant submits that since it had been engaged in the exports of Indian Tea and the country earned considerable Foreign exchange from export of Indian Tea, the Managing Director of the appellant visited countries abroad for negotiating with some of the prospective buyers of Tea. The appellant submitted before the Assessing Officer that since the Foreign Tours of the Managing Director had been for the purpose of the business carried on by the appellant the said Travelling expenses should be considered as deductible u/s 37(1). It was also brought to the attention of the Assessing Officer that out of the Payment of Rs.8,53,754 for purchase of GBP Card/Travellers Cheque, the appellant was subsequently refunded Rs.4,75,903 and the said sum of Rs.4,75,903 had been credited to the Account of Travelling expenses. It was submitted by the appellant that after considering the Refund of Rs.4,75,903 the aggregate of Foreign Travel expenses would be reduced from Rs.34,48,553 to Rs.29,72,650. The Assessing Officer stated in his Order that there had allegedly been no evidence to show that the Foreign Travel expenses had been incurred wholly and exclusively for the purpose of the appellant's business and on the basis of his such observation he disallowed the entire sum of Rs.34,48,553.

The appellant submits that in view of the fact that the entire Travel expenses of the Managing Director of the appellant had been incurred for the purpose of the Tea Export of the appellant, the Assessing Officer's action in disallowing the same should be held to be unjustified and therefore the appellant submits that the disallowance of Rs.34,48,557 may kindly be deleted.

Without prejudice to the above-mentioned submissions, the appellant also submits that even if it is held that the Foreign Travel expenses would not be considered as allowable u/s 37(1), in view of the fact of the Refund of Rs.4,75,903 the allegedly disallowable expenses, would have to be reduced from Rs.34,48,553 to Rs.29,72,650”.

I have considered the submissions of the authorized representative of the appellant as well as the assessment order framed in the light of the materials available on record before the assessing officer during the assessment proceedings. The AO has disallowed foreign travelling expenses of Rs.34,48,553/- stating that these expenses were not incurred wholly and exclusively for the business. The AR during the appellate proceeding also did not substantiate his claim by filing the details of his tour expenses such as any message from client for meeting, any details for holding meeting with clients or prospective client, any agenda of meeting, seminar etc. any communication either through post or email. In absence of above details it cannot be held that these expenses were incurred for the purpose of the business. Keeping in view of above, the order of the AO is upheld and this ground of appeal is dismissed.”

6. Learned counsel vehemently contends that the assessee had to incur impugned travelling expenditure on account of its business promotion. He fails to dispute that there is not even an email exchange regarding its

targeted customer or corresponding markets much less all the relevant documentary evidence for proving such a claim to have been incurred wholly and exclusively for the purpose of its business. We thus affirm the CIT(A) findings rejecting assessee's corresponding substantive ground in principle holding the impugned travelling expenditure as not allowable.

6.1 Learned counsel raises an alternative plea at this stage that the CIT(A) has not considered the fact that a sum of ₹4,75,903/- out of the impugned travelling expenditure of ₹34,48,553/- stood refunded back to the taxpayer. He seeks part relief to this extent. The Revenue on the other hand submits that it is essentially a reconciliation exercise requiring factual verification. We therefore restore the instant issue to the extent of ₹4,75,903/- only back to the Assessing Officer for necessary verification as per law. This last substantive ground is taken as partly accepted in above terms.

7. This assessee's appeal is partly allowed.

Order pronounced in the open court 18/07/2018

Sd/-

Sd/-

(लेखा सदस्य)

(न्यायिक सदस्य)

(J. Sudhakar Reddy)
(Accountant Member)

(S.S.Godara)
(Judicial Member)

Kolkata,
Biswajit, Sr.P.S

दिनांक:- 18/07/2018 कोलकाता ।

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

1. अपीलार्थी/Appellant-Teesta Valley Exports Ltd., 3, Netaji Subhas Road, Kolkata-700 001.
2. प्रत्यर्थी/Respondent-DCIT, Circle-4(2), P-7, Chowringhee Square, 4th Floor, Kolkata-700 069.
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata (sent through e-mail)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata (sent through e-mail)
6. गार्ड फाइल / Guard file.

By order/आदेश से,

Sr. Private Secretary, Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता ।