

IN THE INCOME TAX APPELLATE TRIBUNAL, KOLKATA BENCHES
KOLKATA

[Before Hon'ble Shri J.Sudhakar Reddy, AM & Smt. Madhumita Roy, JM]

ITA No.1560/Kol/2018
Assessment Year : **2013-14**

Bishnu Oil Company
Kolkata
(PAN: AAFFB 1627B)
(Appellant)

-versus-

I.T.O., Ward-31(3)
Kolkata
(Respondent)

For the Appellant: Shri Partha De, AR

For the Respondent: Shri Saurabh Kumar, Addl. CIT, Sr.DR

Date of Hearing : 10.09.2018

Date of Pronouncement : 26.09.2018.

ORDER

PER MADHUMITA ROY, JM

The instant appeal has been filed by the assessee company against the order dated 24.05.2018 passed by the Id. CIT(A)-9, Kolkata u/s 250 of the Income Tax Act, 1961 (in short the ' Act ') arising out of the order dated 29.03.2016 passed by the I.T.O., Ward-31(3), Kolkata for A.Y.2013-14.

2. The assessee in this case has challenged the validity of the order of the Id. CIT(A) in denying the admissibility of the expenditure incurred towards cost of tyres and accessories totalling to Rs.32,500/- as business expenditure on the sole ground that no case was made out for admitting additional evidence being the relevant invoices/bills against which payment were made which were produced before the First Appellate Authority but not furnished before the AO during the assessment proceedings. The second ground is against the order of disallowance u/s 40(a)(ia) on the appellant's claim for deduction of interest amount to the tune of Rs.56,250/- and Rs.43,858/- which were paid to two parties without deducting of tax at source.

Ground No.1

3. The assessee has filed its return on 26.09.2013 declaring total income of Rs.8,20,260/- which was processed u/s 143(1) of the Act. Subsequently upon scrutiny notices were issued u/s 143(2) and 142(1) of the Act. It appears that during the previous year under appeal the assessee purchased tyres and accessories costing of Rs.15,000/- and Rs.17,500/- respectively. However the claim of such expenses incurred on business was not accepted by the Id. AO on the ground that no bills/vouchers/receipts were produced in support of such claim neither any explanation was offered by the assessee to that effect. In appeal the Id. CIT(A) confirmed such disallowance on the ground that in spite of several opportunities the assessee has failed to submit these documents before the Id. AO neither any case has been made out before the First Appellate Authority for admitting this additional evidence. He thus dismissed this said ground of appeal.

4. At the time of hearing of the instant appeal the Id. Representative of the assessee submitted before us all the bills/vouchers in respect of the purchases of tyres and accessories to the tune of Rs.15,000/- and Rs.17,500/- which was though paid by cash. These bills as submitted by the Id. Representative were duly furnished before the Id. CIT(A) at the time of hearing of the appeal before the First Appellate Authority which was neither accepted nor considered by him. He thus prayed before us for deletion of the total amount of Rs.32,500/- as made by the Id. AO and confirmed by the Id. CIT(A). The Id. DR, on the other hand, relies on the orders passed by the authorities below.

5. We have heard the Id. Representative of the parties and perused the relevant materials available on records. We find no reason for not accepting the bills/vouchers for purchases of tyres and accessories as submitted by the assessee before us which was already placed before the Id. CIT(A). The bills and vouchers and relevant documents in support of the claim of the assessee which were though placed before the Id. CIT(A) but was not considered by him and confirmation of addition of Rs.32,500/- on such account that no case has been made to admit those additional evidence and also on the ground that these evidences were not placed before the Id.

AO cannot be appreciated by us. We are satisfied with the evidences as submitted before us and on the basis of such documents against which the payment were made, we delete the addition of Rs.32,500/- as made by the authorities below. This ground of appeal is allowed.

Ground No.2

6. During the previous year under appeal the assessee incurred expenditure amounting to Rs.56,250/- on account of interest on unsecured loan taken from one Mr.Pawan Kr. Patni and paid Rs.43,858/- to one Shri R.P,Bajoria and others (HUF) on identified purposes without deducting tax at source. The ld. AO disallowed the entire amount of Rs.1,00,028/- u/s 40(a)(ia) of the Act since TDS was not deducted at source at 194A of the Act. In appeal the ld. CIT(A) confirmed the same. The case of the assessee is this that the assessee is not in default for the purpose of section 40(a)(ia) and thus no disallowance can be made in respect of interest so paid without deduction of tax if the tax is duly paid by the payee.

7. At the time of hearing of the appeal the ld. Representative of the assessee argued that such tax was not deducted on the basis of declaration of recipients of the interest that necessary tax on such interest incomes will be paid by them in the income tax assessment by way of advance tax/self assessment tax as the case may be. The assessee on good faith has not deducted tax at source. Both the payee filed the Income Tax Returns in time disclosing therein the income from interest earned from the assessee. He further submitted before us that the necessary documents have also been submitted before the Revenue authorities. The ld. DR relies upon the orders passed by the authorities below.

8. We have heard the ld. Representative of the parties and perused the relevant materials available on record. We find substance in the arguments advanced by the ld. AR. According to the assessee since the parties have filed their income tax return within the due period and paid necessary taxes thereon section 40(a)(ia) of the Act will not be applicable in this case. The judgement relied upon in the case of Right

Address Ltd vs ITO (TDS) Ward-59(4) is squarely applicable in the present facts and circumstances of the case. . The relevant thereof portion is as follows :

“ If the TDS not deducted by the payer assessee on the interest payment made to the Lender- payee, the payee would not claim any refund from the revenue. In that case the question of payment of interest u/s 244A by the Revenue to the payee does not arise. The said payee is liable to pay tax according to his/their income. But it cannot be said that Government is deprived of its funds or any loss was caused to the government. That means if TDS was paid, the Government enjoy the money for a certain period of time, after that the government have to adjust the TDS with the payee’s assessed tax, if any tax thereon, otherwise the government refund with interest u/s 244A to the payee. But in case of self-assessment tax, the payee have to pay the necessary tax including interest u/s 234A, 234B, 234C as applicable. In the said judgement it is also observed by ITAT that in the case of CIT vs Rishikesh Appartments Co-operative Housing Society Ltd (2002) 253 ITR 310 Gujarat, it held by the honourable High Court, that the entire tax payable by the payee on amount so received from the payer, if paid by the payee as advance tax/self assessment tax, no interest can be levied u/s 201(ia). It thus means that such non deduction of tax by the payer cannot attract the provision of sec 40(a)(ia). In this connection reference can be made to sec. 4 of the Income Tax Act 1961.

That means either government or the payee assessee both are liable to pay refunds or tax with interest.”

9. The following second proviso of section 40(a)(ia) of the Act is also applicable to the case of the assessee.

“[Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.]

Explanation – For the purposes of this sub-clause –

(i) “commission or brokerage” shall have the same meaning as in clause (i) of the Explanation to section 194H;

(ii) “fees for technical services” shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;

(iii) “professional services” shall have the same meaning as in clause (a) of the Explanation to section 194J;

- (iv) “work” shall have the same meaning as in Explanation III to section 194C;*
(v) “rent” shall have the same meaning as in clause (i) to the Explanation to section 194-I;
(vi) “royalty” shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;J”

Therefore, under the present facts and circumstances of the case the assessee cannot be said to be an assessee in default and thus no disallowance u/s 40(a)(ia) can be made.

10. Further that we find that the Id. CIT(A) while confirming the addition observed as follows :

“ 4.2. Ground No.3 & 4 relates to disallowance u/s 40(a)(ia) in respect of interest paid on unsecured loan amounting to Rs. 56,250 and Rs, 43,858 for non-deduction of tax. The AR of the appellant submitted that tax was not deducted as the recipients of interests submitted that they would furnish with the assessee necessary evidences, in support of their submissions regarding inclusion of interest in their return of income. The AR relied on the order of ITAT, Kolkata in the case of the Right Address Ltd. vs. ITO TD5 Ward-59(4), Kolkata. That decision is in respect of Section 201(1 A) and not applicable in the facts and circumstances of this case. The addition made is confirmed and this ground of appeal is dismissed.”

11. It reveals that the assessee has acted bona fide and there was no intention on its part to benefit the recipients of interest by way of not deducting tax from the interest so paid to these two parties. It appears that no reason has been assigned by the Id. CIT(A) while declining to apply the judgment of Right Address Ltd. Vs ITO TDS Ward-59(4) in favour of the assessee. He thus failed to distinguish the judgment on fact and on law while disapplying the same. Taking into consideration of the case made out by the assessee, the judgments as well, we allow the ground of appeal preferred by the assessee by deleting the addition of Rs.1,00,208/- as made by the authorities below.

Since the original ITA No.1560/Kol/2018 is disposed off by us, the stay application being S.A.No.90/Kol/2018 is dismissed as infructuous.

12. In the result the appeal of the assessee is allowed.

Order pronounced in the Court on 26.09.2018.

Sd/-
[J.Sudhakar Reddy]
Accountant Member

Sd/-
[Madhumita Roy]
Judicial Member

Dated : 26.09.2018.

[RG Sr.PS]

Copy of the order forwarded to:

1. Bishnu Oil Company, 60B, Chowringhee Road, 5th Floor, Kolkata-700020.
- 2 . I.T.O., Ward-31(3), Kolkata.
3. C.I.T.(A)-9, Kolkata. 4. C.I.T-6, Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary
DDO/HO, ITAT Kolkata Benches Kolkata