

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI L.P. SAHU, A.M.

ITA.No.2809/Del./2015
Assessment Year 2011-2012

The DCIT, Circle-14(2), New Delhi.	vs.	M/s. K.S. Hotels (P) Ltd., B-25, Connaught Place, New Delhi – 110 001. PAN AAACK4557B
(Appellant)		(Respondent)

For Revenue :	Smt. Naina Soin Kapil, Sr.DR
For Assessee :	Shri Salil Aggarwal, Advocate And Shri Shailesh Gupta, CA

Date of Hearing :	29.10.2018
Date of Pronouncement :	01.11.2018

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-V, New Delhi, Dated 24.02.2015, for the A.Y. 2011-2012.

2. We have heard the Learned Representatives of both the parties and perused the findings of the authorities below.

3. On ground No.1, Revenue challenged the Order of the Ld. CIT(A) in deleting the disallowance made under section 40(a)(ia) of the I.T. Act, 1961, at Rs.2,33,50,158/-.

4. The assessee submitted before the A.O. that the assessee-company has purchased Chinese food of Rs.2,33,50,158/- from M/s Zen Chinese Food during the assessment year under appeal. The assessee-company sells those Chinese foods to its customers and charges the VAT thereon. Similarly M/s Zen Chinese Food is also charging VA T on its sale to the company and depositing VAT collected thereon. The assessee-company is also claiming VAT input and adjusting the same before depositing the VAT. Thus, all the transactions between the two concerns are of purchase and sale in nature. It was submitted that in various cases it was held that where there is a contract of supply of material/food, it cannot be termed to be a contract for work and labour and is not amenable to the provisions of the Section 194C of Income Tax Act, 1961. The A.O. however, held

that since no tax was deducted, therefore, amount is disallowable under section 40 (a) (ia) of I.T. Act as provisions of Section 194C would apply in this case.

4.1. Ld. CIT(A) considering the various decisions cited by the assessee-company before him and considering the Explanation-III to Section 194C of the I.T. Act noted that the transactions relate to sale of material which cannot be termed as contract for work and labour. Hence, Section 194C is not applicable in assessee's case. Ld. CIT(A) also noted that since assessee had paid VAT on sale of goods to its customers, Section 194C of the Act is not applicable. Therefore, provisions of section 40(a)(ia) applied by the A.O. is not justified. Entire addition have been deleted.

5. Learned Counsel for the Assessee, at the outset, submitted that in preceding A.Ys. 2006-2007 and 2007-2008, ITAT, Delhi Bench in the case of assessee dismissed the departmental appeals on the same ground vide Orders dated 13.08.2018 and 17.10.2018 in which it was held that on the

above transactions Section 194C is not applicable. He has, therefore, submitted that the issue is covered in favour of the assessee. Copies of the above orders are placed on record which are supplied to the Ld. D.R. who have also stated that identical issue have been decided in favour of the assessee by the Tribunal in earlier years.

6. Considering the facts of the case in the light of Orders of the Tribunal Dated 13.08.2018 and 17.10.2018 in which it was held that in the aforesaid transactions Section 194C is not applicable, therefore, there is no need to deduct the TDS. The issue is covered in favour of the assessee by the decision of the Tribunal. We, therefore, do not find any merit in the departmental appeal on this ground. Ground No.1 is accordingly dismissed.

7. On ground No.2, Revenue challenged the deletion of addition of Rs.68,288/- under section 14A of the I.T. Act, 1961.

7.1. The Ld. CIT(A) noted that A.O. made addition of Rs.1,76,829/- under section 14A of the I.T. Act. Assessee submitted that there is no borrowed funds utilised by the assessee for purchase of investment in shares. Hence, disallowance of interest under sub-rule 2(ii) of Rule 8D is not applicable in assessee's case. The Ld. CIT(A), accordingly, deleted the addition of Rs.68,288/-. Part of this ground was allowed.

8. After considering the rival submissions, we do not find any merit in this ground of appeal of Revenue. Learned Counsel for the Assessee relied upon decision of Hon'ble Punjab and Haryana High Court in the case of CIT vs. Metalman Auto (P) Ltd., (2011) 336 ITR 434 (P&H) in which it was held that *"in the absence of any expenditure shown for earning dividend income, disallowance under section 14A was not justified"*. The assessee contended that no borrowed funds have been used for purchase of investment have not been rebutted by the Revenue through any evidence or material on

record. The Hon'ble Punjab and Haryana High Court in the case of Abhishek Industries Ltd., 380 ITR 652 held that "*onus is upon A.O. to record satisfaction that interest bearing funds have been used for investment to earn tax free income*". Since no borrowed funds have been used by assessee to make investment, therefore, Ld. CIT(A) correctly deleted the addition. Ground No.2 of appeal of Revenue is dismissed.

9. In the result, appeal of Revenue is dismissed.

Order pronounced in the open Court.

Sd/-
(LP SAHU)

ACCOUNTANT MEMBER

Delhi, Dated 01st November, 2018

VBP/-

Copy to

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'D' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches : Delhi