

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

BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT AND
SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.5602/Del./2018
Assessment Year 2015-2016

Aamantaran Travel Company Pvt. Ltd., 327, 1 st Floor, Udyog Vihar Phase- IV, Gurgaon (NCR), Haryana PIN 122 016 PAN AALCA8523C	vs.	The DCIT, Circle-1(1), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Ajay Vohra, Sr. Advocate And Shri Neeraj Jain, Advocate
For Revenue :	Shri Sridhar Dora, Sr. D.R.

Date of Hearing :	04.12.2018
Date of Pronouncement :	17.12.2018

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Assessee has been directed against
the Order of the Ld. CIT(A)-1, New Delhi, Dated 11.07.2018,
for the A.Y. 2015-2016, on the following grounds :

1. *That the Commissioner of Income Tax (Appeals) [‘CIT(A)’] erred on facts and in law in upholding disallowance made by the Assessing Officer under section 40(a)(ia) of the Income-tax Act, 1961 (“Act”) in respect of payment of hotel accommodation expenses to the tune of Rs.1,53,09,598.*
2. *That the CIT(A) erred in facts and in law in holding the appellant to be liable to deduct tax at source under section 194-1 out of payments to hotels instead of section 194-C of the Act invoked by the assessing officer.*
3. *That the CIT(A) erred on facts and in law in arbitrarily holding that as in the case of the appellant, as per the rate contract, the hotels will provide a certain number of rooms at a specified rate the payments were covered under section 194-1 of the Act and tax was required to be deducted at source therefrom.*
4. *That the CIT(A) erred on facts and in law in arbitrarily holding that the - “...if a rate contract agreement carries an obligation to provide rooms then it will fall within the term taken on regular basis and therefore covered by section 194-1. ”*
5. *That the CIT(A) erred on facts and in law in arbitrarily observing that The Board is still of the view that where earmarked rooms are let out for a specified rate and*

specified period and where rooms are not earmarked the hotel is under a legal obligation to provide such types of rooms during the currency of the agreement it would be construed to be accommodation made available on regular basis liable for TDS.

- 6. That the CIT(A) erred on facts and in law in not appreciating that the payments made by the appellant as per the rate contracts entered into with hotels, for stay of its clients, was merely a contract for providing specified types of hotel rooms at pre-determined rates during the agreed period and there was no obligation on the hotels to provide a room or specified set of rooms so as to be construed an accommodation taken on regular basis and therefore, even in terms of the Board's Circular no 5 of 2002 dated 30th July 2002, there was no obligation to deduct tax at source form the payments made to hotels under section 194-I of the Act.*
- 7. That the CIT(A) erred on facts and in law in misconstruing the import of the Board's Circular no 5 of 2002 dated 30th July 2002 and not following the same while upholding the disallowance made by the assessing officer under section 40(a)(ia) of the Act in respect of payments made to hotels allegedly holding that the same constitutes payment of "rent" and was covered under section 194-I of the Act.*

8. *That the Ld CIT(A) has erred on facts and in law in holding that the appellant's liability to deduct tax at source falls under section 194-1 of the Act without appreciating the fact that contracts with hotels do not guarantee any provision of rooms but such contracts only ensure room rate.*
9. *Without prejudice, that the CIT(A) erred on facts and in law in upholding estimated disallowance of Rs.4,77,337 on the basis that in 50% of cases where payment is more than Rs.30,000 but less than Rs.1,00,000 for the entire year, payment of Rs.30,000 could have been made in single instance."*

2. Briefly the facts of the case are that the assessee company is engaged in the business of tour operation and travel related services in India. The assessee filed its return of income under section 139(1) of the Income-tax Act, 1961, declaring loss of Rs.2.59 crores. The A.O. passed the assessment order under section 143(3) of the I.T. Act, dated 26.12.2017 assessing the total loss at Rs.6,09,166/- after making the following adjustments/disallowances :

S.No.	Summary of adjustments / disallowances	Amount (in Rs.)
i.	Disallowance of ground arrangement reimbursement	39,86,291
ii.	Disallowance of air fare expenses	60,67,142
iii.	Disallowance of hotel accommodation expenses	1,53,09,598

2. The Ld. CIT(A) deleted the first two additions, however, confirmed the third addition on which assessee is in appeal.

3. The A.O. disallowed an amount of Rs.1,53,09,598/- in respect of hotel accommodation expenses incurred by assessee taking a view that payment to hotel is on regular basis for services obtained from them and thus, payment is covered under section 194C of the I.T. Act for tax deduction. Since no TDS was deducted, the A.O. disallowed the amount in question. The Ld. CIT(A) referred to CBDT Circular No.5 of 2002 Dated 30.07.2002 clarifying the applicability of provisions of Section 194I of the I.T. Act, in respect of payments made to hotel for hiring of rooms. The Ld. CIT(A)

noted that in the case of the assessee as per the rate contract hotels will provide certain number of rooms on regular basis. The Ld. CIT(A) noted that as in the case of the assessee as per the rate contract hotels will provide a certain number of rooms at specific rate the issue is covered under the provisions of Section 194I, therefore, TDS provisions are clearly applicable. The addition was accordingly confirmed.

4. The assessee has filed an application for admission of additional evidences as per Rule 29 of Income Tax (Appellate Tribunal) Rules, 1963. The additional evidence are as below :

S. No.	Particulars	Page No.
5	Stop sale communication and ledger of Casa Baga, Goa	100-101
6	Rate Contract Agreement with Fariyas Hotels, Mumbai dated 15/05/2014 along with ledger extract and sample bills	102-115
7	Stop sale communications from Haathi Mahal and ledger extract	116-120
8	Email communications regarding fixing the rates, stop sale, ledger extract and sample bills in case of bookings with ITC group of hotels	121-134

9	<i>Rate Contract Agreement with Marriott group dated 01/08/2014 along with stop sale communications, ledger extract and sample bills</i>	135-157
10	<i>Confirmation letter, hotel occupancy agreement dated 20/02/2014, stop sale communication, ledger extract and bill in respect of booking with Santiago Beach Resort, Goa</i>	158-163
11	<i>Hotel occupancy agreement entered into with Shikara Beach resort dated 02/09/2014 along with stop sale communications, ledger extract and sample bills</i>	164-170
12	<i>Confirmation letter, stop sale communications, ledger extract and sample bill in respect of booking with Star of the Sea Resort, Goa</i>	171-184
13	<i>Email communications regarding fixing the rates, stop sale, ledger extract and sample bills in case of bookings with Trident group of hotels</i>	185-194

4.1. It is submitted in the application that assessee is a tour operator, engaged in the business of travel related services to its customers travelling to India. In assessee's case for assessment year under appeal, disallowance of the above amount has been made by the A.O. under section 40(a)(ia) of the I.T. Act in respect of payments made as per the rate contract with hotels for providing accommodation/rooms for

stay of customers travelling to India, allegedly holding that the assessee failed to deduct tax at source under section 194C of the I.T. Act from the payment which was in the nature of payment for work.

5. The assessee filed an appeal before the Ld. CIT(A) who has confirmed the addition for non-deduction of TDS under section 194I of the I.T. Act. The Ld. CIT(A) uphold the disallowance merely by holding that rate contract agreements entered into by the assessee with the Hotels carried an obligation to provide rooms and therefore, the payments for accommodation is in the nature of rent for which tax has to be deducted under section 194I of the I.T. Act. In Circular No.715 Dated 08.08.1995 and Circular No.5 of 2002 Dated 30.07.2002 issued by the CBDT, it was clarified that where an agreement is merely in the nature of rate contracts for providing specified type of hotel rooms at pre-determined rates during an agreed period, it cannot be said to be accommodation "taken on regular basis" as there are no

obligation on the part of the Hotel to provide a room or specified set of rooms. The Ld. CIT(A) completely misconstrued the Board circulars. The findings of the Ld. CIT(A) are contrary to the Board circular. The issue as to whether payments made pursuant to rate contract agreement with hotels involve any obligation on the part of the hotel to provide any accommodation on demand was never put-forth to the assessee during the hearing. The aforesaid understanding of the import of the Circulars of the Ld. CIT(A) came to the knowledge of the assessee only after the receipt of the impugned order. Therefore, in order to rebut the findings of the Ld. CIT(A) and in order to clearly establish the nature of the contract with the hotels and in order to establish that there are only rate contracts and do not involve any obligation for providing room or specified set of rooms, assessee prayed for admission of the additional evidences. Some of the documents were already part of the record of the A.O. but in order to demonstrate in detail the nature of such agreements entered into and the business carried on by the assessee and

the correct factual position, the assessee filed these additional evidences. The assessee relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. Text Hundred Pvt. Ltd., 351 ITR 57 in which it was held as under :

*“13. The aforesaid case law clearly lays down a neat principle of law that discretion lies with the Tribunal to admit additional evidence in the interest of justice once the Tribunal affirms the opinion that doing so would be necessary for proper adjudication of the matter. This can be done even when application is filed by one of the parties to the appeal and it need not to be a suo motto action of the Tribunal. **The aforesaid rule is made enabling the Tribunal to admit the additional evidence in its discretion if the Tribunal holds the view that such additional evidence would be necessary to do substantial justice in the matter. It is well settled that the procedure is handmade of justice and justice should not be allowed to be***

choked only because of some inadvertent error or omission on the part of one of the parties to lead evidence at the appropriate stage. Once it is found that the party intending to lead evidence before the Tribunal for the first time was prevented by sufficient cause to lead such an evidence and that this evidence would have material bearing on the issue which needs to be decided by the Tribunal and ends of justice demand admission of such an evidence, the Tribunal can pass an order to that effect.”

5.1. Learned Counsel for the Assessee also relied upon decision of Hon'ble Punjab & Haryana High Court in the case of Atlas Cycle Industries Ltd., vs. CIT 133 ITR 231 and Order of ITAT, Delhi Bench in the case of YMCA of India vs. IAC 29 ITD 620. Learned Counsel for the Assessee, therefore, prayed that additional evidences may be admitted.

6. On the other hand Ld. D.R. relied upon the Orders of the authorities below.

7. After considering the rival submissions, we are of the view that additional evidences since goes to the root of the matter and are relevant for disposal of the appeal, therefore, the same shall have to be admitted for the purpose of disposal of the appeal. The assessee claimed that the above additional evidences clearly establish the nature of the contract with the Hotels and also establish that there are only rate contracts and do not involve any obligation for providing a room or specified set of rooms. Assessee further claimed that since Ld. CIT(A) misunderstood the Circulars issued by the CBDT, therefore, these additional evidences shall have to be considered in order to decide the issue whether provisions of Section 194I would apply in the facts and circumstances of the case. The Hon'ble Supreme Court in the case of Tekram 262 CTR 118 and Hon'ble Punjab & Haryana High Court in the case of Mukta Metal Works 336 ITR 555 admitted additional evidences being relevant and required to be looked into for deciding the matter in issue. Therefore, in order to do substantial justice between the parties and considering that

the additional evidences are relevant and goes to the root of the matter, we are of the view that these additional evidences should be admitted for disposal of the appeal. We, accordingly, admit the additional evidences above for disposal of the appeal. The prayer of the assessee for admission of additional evidences is accordingly allowed.

7.1. Admittedly, the above additional evidences were not before authorities below to decide whether provisions of Section 194I or 194C would apply in the matter. Therefore, interest of justice requires that an opportunity should be given to the A.O. to examine these additional evidences and decide the issue as per Law. In this view of the matter, we set aside the Orders of the authorities below and restore the matter in issue to the file of A.O. with a direction to re-decide the matter in issue in the light of additional evidences so admitted above, strictly in accordance with law. A.O. shall give reasonable, sufficient opportunity of being heard to the assessee. The assessee is directed to file copies of these additional evidences

before A.O. for his consideration. Accordingly, appeal of assessee is allowed for statistical purposes on all grounds.

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

Order pronounced in the open Court.

Sd/-
(G.D. AGARWAL)
VICE PRESIDENT

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 17th December, 2018

VBP/-

Copy to

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

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.