

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH : KOLKATA

[Before Hon'ble Shri J. Sudhakar Reddy, AM & Shri S.S. Godara, JM]

I.T.A No. 710/Kol/2017

Assessment Year : 2012-13

ACIT, Circle-40, Kolkata

-vs-

Rahul Saraf (HUF)

[PAN: AADHR 2300 F]

(Appellant)

(Respondent)

For the Appellant : Shri Sourabh Kumar, Addl. CIT Sr. DR

For the Respondent : Shri Soumitra Choudhury, Advocate

Date of Hearing : 03.12.2018

Date of Pronouncement : 28.12.2018

ORDER

Per S.S. Godara, JM

1. This Revenue's appeal for assessment year 2012-13 arises against the CIT(A)-12, Kolkata's order dated 02.01.2017 passed in case no. 54/ CIT(A)-1/Kol/Circle-40/2015-16, involving proceeding u/s 143(3) of the Income Tax Act, 1961 (in short the 'Act').

Heard both the parties. Case file perused.

2. The Revenue's first substantive ground pleads that the CIT(A) has erred in law and on facts in reversing Assessing Officer's action disallowing the sum in question of Rs. 60,665/- relating to other expenses. The CIT(A)'s finding qua this issue read as under:

“6. In regard to the Ground no. 6, relevant observation of the Assessing Officer made in the assessment order dated 31.03.2015 is reproduced below:

"Others:

It is seen that the assessee claimed Rs.60, 665/- on account of 'Others' in its' P&L A/c. During the course of hearing, the assessee was asked to produce the details of such expenditure along with supportive documents and he was also asked to explain the nature of such expenses. In response to this, the assessee has just provided the name to whom such payments are made but failed to produce the supportive documents. Therefore, the same is being added back to the income of the assessee. "

6.1. In regard to the Ground No.6 stated above, the appellant has submitted the following:

"That in Ground No. '6', relate to addition of Rs. 60, 665/- on account of other expenses i.e. tea & tiffin for the employees. The assessee has produced the other expenses details at the time of scrutiny assessment to the tune of Rs. 60, 665/- and the A.O. has nowhere mentioned that there is any element of expenditure which is personal and capital in nature, therefore, the other expenses amounting to Rs. 60, 665/- should be allowed.

6.2. I have considered the facts of the case and the submissions of the appellant. Details of expenses relating to Rs. 60,665/- have been submitted and verified and there is no basis for the disallowance and hence deleted ."

3. We have heard rival contentions. The Revenue's only argument raised during the course of hearing is that the assessee could not prove its main expenditure by way of supportive documents as well as nature thereof. It fails to dispute the CIT(A)'s clinching finding of fact that the CIT(A)'s details of said expenses had been submitted the details as per the lower appellate findings. The revenue has not placed on record even the relevant list of assessee's documents placing para of the guard file. We therefore affirm the CIT(A)'s finding supporting main disallowance.

4. Next comes to revenue's second substantive ground seeking to revive section 40a(ia) disallowance of Rs. 2,55,465/-. The Assessing Officer had included the impugned

disallowance qua the interest paid on unsecured loan on account of non-deduction of TDS. The CIT(A) has deleted the disallowance as follows:

“10. In regard to the ground no. 10, relevant observation of the Assessing Officer made in the assessment order dated 31.03.2015 is reproduced below:

“Unsecured Loan:

It is seen from confirmation of unsecured loan for the year under consideration which was submitted by the AR that the assessee has failed to deduct tax at source against the interest accrued or paid on Unsecured Loan. The assessee has also not produced Form 15G / Form 15H in this regard. The list of these is as follows:

Sl. No.	Name of the Party	Interest paid during the year (in Rs.)	TDS on interest (in Rs.)
1.	Champa Devi Jaiswal	30,062/-	Nil
2.	Chandra Kala Devi Jaiswal	30,062/-	Nil
3.	Dilip Kuimar Kejriwal (HUF)	12,026/-	Nil
4.	Indra Maskra	24,049/-	Nil
5.	Jyoti Agarwal	42,086/-	Nil
6.	Manju Dhar	30,062/-	Nil
7.	Manju Kejriwal	18,037/-	Nil
8.	Prashant Maskara	15,032/-	Nil
9.	Sarawgi & Sons (HUF)	24,049/-	Nil
10.	Subodh Kumar Pachal	30,000/-	Nil
Total		2,55,465/-	

Therefore, claim of interest of Rs. 2,55,465/- in case of non-deduction of tax at source is not allowable claim hence the same expenditure disallowed and added back u/s 40a(ia) of the IT Act.

10.1. In regard to the Ground No. 10 stated above, the appellant has submitted the following:

“That in Ground No. ‘10’ related to disallowance u/s 40a(ia) amounting to Rs. 2,55,465/- as non-deduction of TDS on unsecured loan. In this regard, I am filing herewith Form No. 15G of Prashant Maskara, Dilip Kumar Kejriwal (HUF), Manju Kejriwal, Indira Maskara, Jyoti Agarwal, Chandra Kala Devi Jaiswal, Champa Devi Jaiswalmanju Dhar, Sarawgi & Sons (HUF). So considering the above facts the disallowance u/s 40a(ia) amounting to Rs. 2,55,465/- as non-deduction of TDS u/s 194A should be allowed in full.”

10.2. I have considered the facts of the case and the submissions of the appellant. The Assessing Officer disallowed claim of interest of Rs. 2,55,465/- as no TDS had been deducted. The appellant has submitted that Form No. 15G were filed and hence should be allowed in full. I find force in the contention of the appellant and hence the addition is deleted.”

5. We have heard the rival contentions. Suffice to say, the assessee had discharged its burden in support of non-deduction of TDS by placing on record the payees certificate in the form no. 15G of the Income Tax Rules. No rebuttal thereto is coming from the revenue side qua the same. It is only the case is that the said form 15G related to assessment year 2013-14 are than the impugned assessment year. The revenue has not placed on record the said forms in support of its arguments. We therefore see no reason to affirm the main disallowance in these facts and circumstances. The CIT(A)'s finding recording the second issue are confirmed accordingly.

6. The revenue's third substantive ground pleads that the CIT(A) has erred in law and on facts in deleting rent payment disallowance of Rs. 65,83,460/- on account of non-deduction of TDS u/s 40a(ia) of the Act as under:

“12. In regard to the Ground No.12, relevant observation of the Assessing Officer made in the assessment order dated 31.03.2015 is reproduced below:

Rent:

The assessee has made payment as Rent to different parties which come under the preview of the section 194I of the Act. From the submission, it is found that while making payment as Rent, in the following cases, there is shortfall in deduction of tax at source :

<i>Name of Party</i>	<i>Amount paid/payable during the year</i>	<i>Amount on which Tax deducted at source</i>	<i>Difference</i>
1	2	3	(2-3)
<i>Dalmia Education Trust</i>	16,29,444	2,71,574	13,57,870
<i>Dalmia</i>	68,19,720	22,73,240	45,46,480

<i>Manav Seva Trust</i>			
<i>Northern Benevolent Fund</i>	8,14,932	1,35,822	6,79,110
Total			65,83,460

Therefore, claim of interest of Rs. 65,83,460/- in case of non-deduction of tax at source is not allowable claim and hence the same expenditure is disallowed and added back to the income of the assessee u/s 40a(ia) of the Act.

12.1 In regard to the ground no..12 stated above, the appellant has submitted the following:

“That in ground no. 12, relate to disallowance u/s 40a(ia) amounting to Rs. 65,83,460/- as non-deduction of TDS on Rent. In this regard, I am filing herewith Form No. 16A issued to name of the deductee viz. Dalmia Education Trust, Dalmia Manav Sava Trust, 1971 certificate dated 26.07.2011 & 05.07.2011 in regard Northern Benevolent Fund, detail statement of rent paid during the year. During the course of assessment proceedings the assessee produced the same but the A.O. passed the order without application of mind and not judicial view. So considering the above facts the disallowance u/s 40a(ia) amounting to Rs. 65,83,460/- as non-deduction of TDS should be allowed in full.”

12.2 I have considered the facts of the case and the submissions of the appellant. The Assessing Officer has disallowed an amount of Rs. 65,83,460/- as no TDS was deducted on rent paid to three parties. The appellant has submitted that “I am filing herewith Form No. 16A issued to name of the deductee viz. Dalmia Education Trust, Dalmia Manav Seva Trust, 197 certificate dated 26.07.2011 & 05.07.2011 in regard Northern Benevolent Fund, detail statement of rent paid during the year.”The disallowance has thus no basis and is deleted in full.”

7. We have heard the rival contentions. Suffice to say, that it has come on record that the assessee has filed form no. 16A in the name of payee/deductee M/s Dalmia Education Trust, Dalmia Manav Seva Trust during the course of assessment. The Assessing Officer nowhere considered the same in assessment order before making the impugned disallowance. We therefore find no reason to interfere with Ld. CIT(A)’s conclusion the impugned disallowance as the assessee / deductor had sufficiently discharged its onus. The revenue fails in its third grievance as well therefore.

8. This leaves us with revenue's last substantive ground seeking to revive unexplained expenditure an addition of Rs. 2,08,001/- made by the Assessing Officer u/s 69C of the Act. The relevant lower appellate discussion to this effect pleads as under:

"13. In regard to the Ground No.13, relevant observation of the A.O. made in the assessment order dated 31-03-2015 is reproduced below.-

"Unexplained Expenditure:

It is found from the submission made during the assessment proceedings, that the assessee has deducted tax at source on payment to NIS Management Pvt. Ltd. of Rs.14,20,372/- under the head of 'Housekeeping Charges '. However, the assessee has debited expenditure of &.12,12,371/- in its 'P&LA/c. against NIS Management Pvt. Ltd. Thus, there is a difference of &.2,08,001/- which is unexplained expenditure. Therefore, as per provisions of section 69C of the Act, Rs.2, 08,001/- is being added back to the income of the assessee."

13.1. In regard to the Ground No. 13 stated above, the appellant has submitted the following:

"That Ground No. '13', relates to addition on account of unexplained expenditure amounting to Rs.2,08,001/- The said addition is completely wrong as there was no bogus expenditure and the books of accounts have not been rejected, moreover, the assessee paid Rs.14,20,372/- to NIS Management Pvt. Ltd. as Housekeeping charges and deducted TDS u/s. 194C, therefore, no addition u/s. 69C should be made on unexplained expenditure. I am filing herewith the TDS certificate towards Housekeeping charges."

13.2. I have considered the facts of the case and the submissions of the appellant. The submission of the appellant has been considered and I find force in it as no unexplained expenditure has been made out as the assessee paid Rs.14,20,372/-; to NIS Management Pvt. Ltd. as Housekeeping charges and deducted TDS u/s, 194C. The disallowance has thus no basis and is deleted in full."

9. We have considered the rival contentions. The revenue's endeavour in the instant issue is to treat the assessee's expenditure hence can be explained investment whereas the said payment had been made to M/s NIS management Pvt. Ltd. after deducting TDS. All the relevant source thereof stand explained in assessee's regularly maintained books of accounts. We therefore conclude that the Assessing Officer had erred in

treating the same to be unexplained investments u/s 69C of the Act. The revenue fails in its last substantive ground as well.

10. This revenue's appeal is dismissed.

Order pronounced in the Court on 28.12.2018

Sd/-

[J. Sudhakar Reddy]
Accountant Member

Sd/-

[S.S.Godara]
Judicial Member

Dated : 28.12.2018
SB, Sr. PS

Copy of the order forwarded to:

1. ACIT, Circle-40, Kolkata, 2nd Floor, 3, Govt. Place (W), Kolkata-700001..
2. Rahul Saraf (HUF), 4/1, Red Cross Place, Kolkata-700001.
- 3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar
ITAT, Kolkata Benches