

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" NEW DELHI
BEFORE SHRIK. NARASIMHA CHARY, JUDICIAL MEMBER
AND SHRI O. P. MEENA, ACCOUNTANT MEMBER
I.T.A. No. 4708/Del/2015: Assessment Year: 2011-12**

Deputy Commissioner of Income-Tax, Circle - Rohtak	Vs.	M/s. Mahanadi Transport House No. 199, Sector No.14, Rohtak PAN:AAQFM 9726 M
Appellant		Respondent

Assessee by	Shri A.K. Jain, Advocate
Revenue by	Smt. Nain Sojn Kapil, Sr. D.R.
Date of hearing	07.02.2019
Date of pronouncement	07.02.2019

ORDER

PER O. P. MEENA, AM

1. This appeal by the Revenue is directed against the order of learned Commissioner of Income tax (Appeals)-Rohtak (in short "the CIT (A)") dated 09.05.2015 pertaining to Assessment Year 2011-12, which in turn has arisen from the assessment order passed under section 143 (3) dtd. 26.03.2014 of Income Tax Act, 1961 (in short 'the Act') by the Deputy Commissioner of Income Tax, Circle - Rohtak (in short "the AO").

2. Ground no. 1 states that Ld. CIT (A) has erred in deleting disallowance of Rs. 85,78,788 made under section 40(a)(ia) of the Act by interpreting wrongly the provision of section 40(a)(ia) of the Act as the disallowance proportionate amount on which TDS was not deducted.

3. Facts apropos of this ground are that the AO found that the assessee has paid contract payments of Rs. 1,71,57,577 to M/s. Narwal Transport (P) Ltd. by deducting TDS @ 1% as against the tax deduction rate @2% under section 194C of the Act. Accordingly, the AO has worked out short deduction of TDS at Rs.

85,78,788 and disallowed the same by invoking the provisions of section 40(a)(ia) of the Act.

4. Being aggrieved, the assessee filed an appeal before the Id. CIT (A). However, the Id. CIT (A) following the decision of Co-ordinate Bench of tribunal in the case of DCIT v. Chandabhoy & Jassobhoy [I.T.A.No. 20/MUM/2010/A.Y. 06-07 dtd. 08.07.2011 held that applicability of section 40(a)(ia) of the Act is not correct. The genuineness of the payment is not in dispute. The only course of action in such a case was that interest should have been charged on short deduction. The provisions of section 40(a)(ia) applies in the case of non-deduction of tax and not for short deduction of tax. This principle has been confirmed in the case of above decision by Tribunal. Hence, addition /disallowance so made were deleted.

5. Being aggrieved, the Revenue has filed this appeal before the Tribunal. The Id. Sr. D.R. vehemently supported the order of the AO and submitted that provision of section 40(a)(ia) has been rightly applied for propionate amount of non-deduction of tax.

6. Per contra, the learned counsel for the assessee submitted that the issue is covered by decision of Hon`ble Kolkata High Court in the case of CIT V. S. K Tekriwal 361 ITR 432 (Kol), DCIT V. S. K Tekriwal 15 taxmann.com 289 (Kol)-Trib) and DCIT v. Chandabhoy & Jassobhoy 17 taxmann.com 158 (Mum-Trib) and U E Trade Corporation Ltd. v. DCIT 18(1) New Delhi in I.T.A.No. 2303/Del/2011 dtd. 18.05.2012. Hence, Ld. CIT (A) has rightly allowed the deleted the disallowance made by invoking the provision of section 40(a)(ia) as the same are not applicable.

7. We have heard the rival submissions and perused the relevant material on record. We find that the assessee has deducted TDS @1% as against the prescribed rate of TDs at 2% as per provision of section 194C of the Act. We find that provision of section 40(a)(ia) provides the disallowance under section

40(a)(ia) would be made if there is no deduction of tax or after deduction of tax not deposited the said tax in government account. However, these provisions would not apply where TDS has been made even though at lesser rate. For which there is remedy to charge interest as per provision of the Act. This view has been affirmed by the Hon`ble Karnataka High Court in the case of CIT V. S. K Tekriwal 361 ITR 432 (Kol), DCIT V. S. K Tekriwal 15 taxmann.com 289 (Kol)-Trib) and DCIT v. Chandabhoy & Jassobhoy 17 taxmann.com 158 (Mum-Trib) and U E Trade Corporation Ltd. v. DCIT 18(1) New Delhi in I.T.A.No. 2303/Del/2011 dtd. 18.05.2012. Therefore, respectfully following the same, we do not find any infirmity in the order of CIT (A), accordingly, same is upheld. This grounds of appeal of revenue is therefore, dismissed.

8. Ground No. 2 states that Ld. CIT (A) has erred in deleting the disallowance of addition of Rs. 5,29,936 made by the AO on account of incurring expenses in cash/ vouchers and without verification.

9. The AO has noticed that the assessee has incurred expenditure of Rs. 11,50,573 as staff welfare, Rs. 11,17,191 as General expenses and Rs. 3,81,918 as repairs and maintenance which are highly increased from preceding assessment year, and same were incurred in cash and not properly vouched. Hence, the AO has disallowed 20% of same, which worked out to Rs. 5,29,936.

10. In appeal, Ld. CIT (A) has deleted the same by observing that the AO has not pointed out any specific defects or discrepancy in the account books of the assessee. It was further observed that net profit rate is at 2.81 % as compared to last year net profit rate of 2.71 and Gross Profit Rate is 2.91 % as compared to last year of 2.77%, which is higher than last year. The Ld. CIT (A) has also relied in the case of M/s. Goldcrest Export v. ITO 12(2) Mumbai 134 TTJ 355 (Mumbai) and accordingly, deleted the said disallowance of expenses.

11. The Ld. Sr. D.R. relied on the order of the AO, but could not controvert the finding of Ld. CIT (A).

12. We have heard the rival submissions and perused the relevant material on record. We find that the net profit rate ratio shows increase at 2.81% as compared to last year's net profit rate of 2.71%. Therefore, increase in expenditure from last year is justified. Further, the ld. CIT (A) has rightly observed that the AO has not pointed out any defect and discrepancy in the books of accounts of the assessee, whereas books of accounts are audited. In view of this matter, we do not find any infirmity in the order of CIT (A), accordingly, same is upheld. This grounds of appeal is accordingly, dismissed.

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

14. The order pronounced in the open Court on 07.02.2019

Sd/-
(K.NARSIMHA CHARAY)
JUDICIAL MEMBER

Sd/-
(O.P.MEENA)
ACCOUNTANT MEMBER

New Delhi: Dated: 07February 2019/opm

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

Assistant Registrar, New Delhi

Standard preparation & delivery of orders in the ITAT		
1	Date of dictation	07.02.2019
2	Draft placed before the Author	07.02.2019
3	Draft proposed & placed before Second Member	07.02.2019
4	Draft discussed/ approved by Second Member	07.02.2019
5	Approved Draft comes to Sr. PS /PS	07.02.2019
6	Kept for pronouncement on	07.02.2019
7	Date of uploading order on the web site	
8	File sent to Bench Clerk	
9	Date on which the file goes to the A.R. for signature on the order	
10	Date on which file goes to Head Clerk	
11	Date of dispatch of order	