

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC', NEW DELHI
BEFORE SH. H.S. SIDHU, JUDICIAL MEMBER

ITA No. 5314/Del/2018
Assessment Year: 2013-14

ARVIND KUMAR,
C/O KAPIL GOEL, ADVOCATE,
F-26/124, SECTOR-7,
ROHINI,
DELHI - 110 085
(PAN: ALNPK8589L)

VS.

ITO, WARD-1,
REWARI

(APPELLANT)

(RESPONDENT)

Assessee by : Sh. Kapil Goel, Adv.
Revenue by : Sh. SL Anuragi, Sr. DR.

ORDER

The Assessee has filed the Appeal against the Order dated 10.10.2017 and Corrigendum Order dated 26.6.2018 of the Ld. CIT(A), Rohtak pertaining to assessment year 2013-14 on the following grounds:-

- i) That arbitrary addition amounting to Rs. 864,221/- made u/s. 40(a)(ia) by AO as sustained in order of Ld. CIT(A) dated 26.6.2018 is incorrect as no tax withholding liability is attracted on subject payments u/s. 194C and otherwise also same is direct cost u/s. 28 which does not fall in provisions of section 30 to 37 limitedly covered

u/s. 40(a)(ia) and in worst case as per recent amendment only 30% of the expenditure can be considered for disallowance in worst case, which also would enhance deduction / benefit u/s. 80JJA of the Act which claimed was raised before CIT(A) in grounds no. 6 & 7 specifically.

- ii) That specific claim of assessee before CIT(A) in grounds no. 6 & 7 specifically to enhance deduction and benefit u/s. 80JJA on additions sustained has been perfunctorily adjudicated in order dated 26.6.2018 which is impugned here.

Humble prayer:-

- (i) To delete the addition of Rs. 864,221/- u/s. 40(a)(ia); alternatively allow deduction and benefit u/s. 80JJA;
- (ii) To allow benefit u/s. 80JJA on additions etc. sustained.
- (iii) To restore returned income.
- (iv) Any other appropriate relief.

2. The brief facts of the case are that assessee filed his return of income on 28.9.2013, declaring income of Rs.NIL. The assessee is running an industry of manufacturing of bio-fuel briquettes. The case of the assessee was picked up for complete scrutiny under CASS. Statutory notices and questionnaires were issued. The AR of the assessee

attended the proceedings from time to time and filed the written replies filed during the course of assessment proceedings. Thereafter, the AO made the additions of Rs. 15,90,947/- under different heads from para no. 2 to 6 of his order and assessed the income at Rs. 15,90,950/- u/s. 143(3) of the Act vide order dated 04.03.2016. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his original impugned order dated 10.10.2017 and also vide Corrigendum order dated 26.6.2018 has partly allowed the appeal of the assessee. Aggrieved with the impugned order, assessee is in appeal before the Tribunal.

3. During the hearing, Ld. counsel for the assessee has stated that addition amounting to Rs. 864,221/- made u/s. 40(a)(ia) by AO as sustained in order of Ld. CIT(A) dated 26.6.2018 is incorrect as no tax withholding liability is attracted on subject payments u/s. 194C and otherwise also same is direct cost u/s. 28 which does not fall in provisions of section 30 to 37 limitedly covered u/s. 40(a)(ia) and in worst case as per recent amendment only 30% of the expenditure can be considered for disallowance in worst case, which also would enhance deduction / benefit u/s. 80JJA of the Act which claimed was raised before CIT(A) in grounds no. 6 & 7 specifically. He further submitted that the specific claim of assessee before Ld. CIT(A) in grounds no. 6 & 7 specifically to enhance deduction and benefit u/s. 80JJA on additions sustained has been perfunctorily adjudicated in order dated 26.6.2018. Accordingly, he requested to delete the addition of Rs. 864,221/- u/s. 40(a)(ia);

alternatively allow deduction and allow benefit u/s. 80JJA on additions etc. sustained.

4. On the other hand, Ld. DR relied upon the order of the Ld. CIT(A) and stated that he has passed a well reasoned order dated 26.6.2018 which does not need any interference.

5. I have heard both the parties and perused the records especially the impugned order. I find that the AO has rightly made the addition as there was contravention of provision of section 194C and 40(a)(ia) of the Income Tax Act, 1961 in this case. From the details submitted by the assessee, it is seen that the labour payment was made on contract basis to Mr. Sagir Kahn and during the year all the payments for labour work have been given to him. However, no deduction of tax was made on the payment of Rs. 8,64,221/-. This action of the AO is in accordance with the provisions of the Act and requires no interference. The assessee's submission that this was an arrangement and details of payments made to various employees has been furnished, remains unsubstantiated and is not acceptable. Hence, the addition of Rs. 8,64,221/- was rightly confirmed by the Ld. CIT(A), which does not need any interference on our part, therefore, I uphold the order of the Ld. CIT(A) on this issue and reject the grounds raised by the Assessee. Since the addition made by the AO has been rightly sustained by the Ld. CIT(A) and I affirmed the action of the Ld. CIT(A), as aforesaid, hence, the other grounds raised by the assessee have become academic and need not be adjudicated.

6. In the result, the Appeal of the Assessee is dismissed.

Order pronounced on 12-02-2019.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date:12/02/2019

SRBhatnagar

Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4.CIT (A) 5. DR, ITAT

By Order,

Assistant Registrar, ITAT, Delhi Benches