

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
 (समक्ष)श्री पी. एम.जगताप, उपाध्यक्ष एवं श्री ए.टी. वर्की, न्यायिक सदस्य  
 [Before Shri P.M. Jagtap, Vice President & Shri A. T. Varkey, JM]

**I.T.A. No. 1962/Kol/2014**  
**Assessment Year: 2010-11**

Assistant Commissioner of Income-tax, Circle-50, Kolkata.	Vs.	Smt. Subhra Ghosh Dastidar (PAN: AKLPD0089M)
Appellant		Respondent
Date of Hearing	17.01.2019	
Date of Pronouncement	28.02.2019	
For the Appellant	Shri C. J. Singh, JCIT, Sr. DR	
For the Respondent	Sh. S. L. Kochar & Sh. Anil Kochar, Advocates	

**ORDER**

**Per Shri A.T.Varkey, JM**

This is an appeal preferred by the revenue against the order of Ld. CIT(A)-XXXII, Kolkata dated 25.07.2014 for AY 2010-11.

2. The sole issue involved in this appeal of revenue is against the action of Ld. CIT(A) in deleting an amount of Rs.2,80,52,691/- being cash payment for machinery hire charges which was added by AO u/s 40A(3) of the Income-tax Act, 1963 (hereinafter referred to as the “Act”); while on the same ground the cash payment of Rs.2,73,882/- which was added by AO u/s 40A(3) of the Act was confirmed by the Ld CIT(A).

3. Briefly stated the facts are that the assessee is an individual and engaged in the business of executing construction contracts under the name and style of her proprietary concern M/s. Associated Engineers. According to AO, on verification of statement of machinery hire charges and bank statement filed by the Ld. AR of the assessee during the course of hearing, he found that the assessee paid in cash on account of hire charges of machinery Rs.2,80,52,691/- in contravention to section 194I of the Act and according to

AO it is in violation of section 40A(3) of the Act. So, the AO added the said amount for non deduction of TDS on hire charges payment u/s. 194I of the Act and disallowed u/s. 40(a)(ia) of the Act. Aggrieved, assessee preferred an appeal before the Ld. CIT(A) who allowed the assessee's grounds of appeal. Aggrieved, revenue is before us.

4. The Ld. DR assailing the decision of the Ld. CIT(A), supported the action of the AO and want us to reverse the order of the Ld. CIT(A) and restore the order of the AO. Per contra, the Ld. AR supported the action of the Ld. CIT(A) and does not want us to interfere with the order of the Ld. CIT(A).

5. We have heard rival submissions of the parties and perused the material available on record. We note that the Ld. CIT(A) has taken note of the fact that the entire payment was made at village Umlaper, Jaintia Hills, Meghalaya where there was no banking facility. It was brought to our notice that the said village also is not accessible by train and does not have proper facilities like schools etc. The site of construction was again further away from the village. So, as per rule 6DD(g) of Income-tax Rules, 1962 (hereinafter referred to as the "Rules") no disallowance u/s. 40A(3) ought to have been made where the cash payments are made in remote village which on the date of such payment there is no service by any bank. The Ld. CIT(A) has taken note that there is no banks operating in the village and the nearest bank from village is 27kms away. This fact has been corroborated by a certificate of Headman of Moosiang Lamare (New) Village, Elaka-Rymbai, East Jaintia Hills District and the Ld CIT(A) have searched the web-sites of major banks to cross-check this fact of no banking facility on the date of such payment. In the aforesaid facts and circumstances of the case and taking note that the payments were made to Schedule Caste and Schedule Tribe persons from the scheduled area who are exempt from tax on income earned there, the Ld. CIT(A) has deleted the addition, which on facts as discussed above could not be controverted by Revenue, and we note that there is no violation of Rule 46A as contented by Revenue in the additional grounds of appeal, since Ld CIT(A) has taken note of facts which are available in the public domain and no new evidence were furnished before him, so we confirm the action of Ld CIT(A).

6. Coming to the contention of revenue regarding the payment of Rs.2,73,882/- which assessee made and the AO found that assessee had made certain machinery hire charges were made to some persons and the payments were made in cash in excess of Rs.20,000/- and the AO made the disallowance u/s. 40A(3) which we find has not been contested by the assessee before the Ld. CIT(A) so it was dismissed. The revenue's case is that since the Ld. CIT(A) has dismissed this ground of appeal of the assessee, on the very same reasoning the Ld CIT(A) ought to have disallowed Rs. 2.80 cr., which, according to us, is a contention bereft of any merits because the assessee did not press this ground before the Ld. CIT(A), so he dismissed it. So that action of Ld. CIT(A) cannot come to the aid of revenue to find fault with the action of Ld. CIT(A) to delete Rs.2.80 cr. as discussed above. So the revenue's contention is devoid of merits and, therefore, we dismiss the ground of appeal of revenue.

7. In the result, appeal of revenue is dismissed.

Order is pronounced in the open court on 28th February, 2019.

Sd/-  
(P. M. Jagtap)  
Vice President

Sd/-  
(Aby. T. Varkey)  
Judicial Member

Dated : 28th February, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ACIT, Circle-50, Kolkata.
2. Respondent – Smt. Subhra Ghosh Dastidar, 391, Rabindra Pally, Nabapally, Barasat, 24 Parganas (North), Pin-700 126..
3. CIT(A)-XXXII, Kolkata (sent through e-mail)
4. CIT- , Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar