

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI T. S. KAPOOR, ACCOUNTANT MEMBER
AND MS. SUCHITRA KAMLE, JUDICIAL MEMBER**

ITA No.2294/Del/2016
Assessment Year:2008-09

Shri Sandeep Bansal, Prop M/s Bansal Steel Traders, B-612-613, Nehru Ground, NIT Faridabad. PAN:ADZPB 6372 N	Vs.	A.C.I.T., Circle-II, Faridabad.
(Appellant)		(Respondent)

Appellant by	Shri Vijay Kumar Gupta, Advocate
Respondent by	Shri N. K. Bansal, Sr. D.R.
Date of hearing	09/04/2019
Date of pronouncement	12/04/2019

ORDER

PER T. S. KAPOOR, A.M.

This is an appeal filed by the assessee against the order of Learned CIT(A), Faridabad dated 16/02/2016 pertaining to assessment year 2008-2009. In this appeal the assessee has raised the following grounds:

"1. THAT the appellant made payment of freight Rs.65,295=00 to two parties [Rs.14,978=00 and Rs.45,917=00], therefore, the provisions of section 40 [a] [ia] of the I.T. Act for disallowance of these expenses have been wrongly applied in the present case.

2. THAT in the assessment order it has been found that the appellant has made payments of freight exceeding Rs.20,000=00 in a day to one person [total Rs.4,00,237=00] . Such a finding is incorrect as no payment exceeding Rs.20,000=00 has been made in a day to one person, as such, the provisions of section 43A[3] of I.T. Act have been wrongly applied in the present case.

3. *THAT the expenses Rs.14,000=00 on account of replacement of batteries in inverter used for the purposes of business premises have been disallowed on whimsical ground that the said inverter was not part of assets in the Balance Sheet.*

4. *THAT on appeal the Ld. CIT [A] has decided issues involved in appeal in a unique way and that also even without application of his mind as under :*

"The submissions of the Ld. AR on this issue during the course of appellate proceedings are identical to the submissions made by the appellant before the AO. No fresh evidences / arguments have been made by the appellant during the appellate proceedings. Since all the arguments and evidences during the course of appellate proceedings are part of the assessment order and have been considered by the AO in his assessment order, I find no reason to interfere with the order of the AO and this addition made by the AO is also confirmed."

The decision on issues involved in appeal in this manner is against all settled principles of law on the subject."

2. At the outset, Learned A.R. submitted that Assessing Officer had wrongly made a disallowance of Rs.65,295/- by holding that the tax was required to be deducted. Learned A.R. in this respect submitted that in fact the payment of freight was made to two parties namely M/s Balaji Transport Co. Hissar and M/s Balaji Transport Co. Kala-AMB. In this respect Learned A.R. invited our attention to the copy of ledger account of these two companies appearing at pages 1 and 3 of the paper book wherein the amount of Rs.45,917/- and Rs.14,978/- has been credited separately in two accounts. Learned A.R. also took us to pages 2 and 4 of the paper book where the GRs issued by the two parties was placed. Learned A.R. submitted that these were two different parties and authorities below have wrongly held to be one party and therefore, have held that TDS was required to be deducted as the amount of freight exceeded Rs.50,000/-.

3. Arguing next ground of appeal, Learned A.R. submitted that the Assessing Officer has made disallowance u/s 40A(3) of the Act by holding that the payments made by the assessee to particular person exceeded Rs.20,000/- whereas the fact remains that none of the payments exceeded Rs.20,000/- and in this respect our attention was invited to pages 8 to 13 of the paper book where copy of account of these transporters was placed. Learned A.R. submitted that authorities below have assumed that assessee must have paid payments exceeding Rs.20,000/- and in the accounts had shown the same by splitting the same into two or more. Learned A.R. submitted that the provisions of section 40A(3) were amended with effect from 01/04/2009 whereby the aggregate of payment exceeding Rs.20,000/- in a day has to be considered and before amendment of this section, the disallowance was only if the individual payment exceeded Rs.20,000/-.

4. Learned D.R., on the other hand, submitted that no evidence of these two separate entities was filed with the authorities below. He submitted that if the office of a transport company is situated at more than one place, that does not mean that two parties are different. He submitted that in the FR there was no mention of PAN and Service Tax Number and therefore, authorities below have rightly held the payment to be a single party instead of two.

4.1 As regards the other issue u/s 40A(3), Learned D.R. submitted that it is not possible for a transporter to get the payment of freight on more than one occasion as on the delivery of goods a truck operator immediately requires his payment and does not wait for another day for collection of the remaining amount. It was argued that assessee had deliberately split the payments making a single payment less than Rs.20,000/- whereas in fact the payment exceeded Rs.20,000/- which the assessee had wrongly recorded in the books of account.

5. We have heard the rival parties and have gone through the material placed on record. We find that the assessee had made payments of Rs.14,978/- and Rs.45,917/- on account of payment of freight to two different parties, the name of which happens to be same however, the assessee is maintaining separate ledger accounts of two parties which is evident from pages 3 & 5 of the paper book. Moreover, we find that there is considerable difference between the GRs submitted by M/s Balaji Transport Co. Hissar and M/s Balaji Transport Co. Kala-AMB. Moreover the address on the two FRs are different and rather latter GR contains PAN of the transporter also. Therefore, findings of the authorities below that the payments were made to a single party are not correct and therefore, ground No. 1 of the appeal is allowed.

6. Now coming to ground No. 2, we find that Assessing Officer had made addition on account of violation of section 40A(3) for payment to six parties, the copy of ledger account of which are placed at pages 8 to 13 of the paper book. The examination of ledger accounts of these parties clearly demonstrates that none of the payments exceeded Rs.20,000/- except payment of Rs.20,432/- and Rs.21,236/- to Pandey Trailer Service, the payment of which has been made through cheques. Therefore, we reverse the findings of Learned CIT(A) on this issue and allow ground No. 2 of the assessee.

7. Ground No. 3 of the appeal was not argued by Learned A.R. therefore, the same is dismissed as not pressed.

8. In the result, the appeal of the assessee stands partly allowed.

(Order pronounced in the open court on 12/04/2019)

Sd/.
(SUCHITRA KAMLE)
Judicial Member

Sd/.
(T. S. KAPOOR)
Accountant Member

Dated:12/04/2019

*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. The CIT(A)
5. D.R., I.T.A.T.,