

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

[Before Hon'ble Shri S.S. Godara, JM]

I.T. A No. 651/Kol/2019 A.Y 2008-09

Samiuddin Ahmed
PAN: ACVPA3694F
(Appellant)

Vs.

I.T.O. Ward 28(2), Kolkata
(Respondent)

For the Appellant/Assessee : None

For the Respondent /Department : Shri Zafarul Haq Tanveer, Addl. CIT, Id.Sr.DR

Date of Hearing : 27-08-2019

Date of Pronouncement : 18 -09-2019

ORDER

Shri S.S. Godara, JM:

1. This Assessee's appeal for assessment year 2008-09 arises against the CIT(A), 5, Kolkata's order dated 01-11-2018 passed in case no. 262/CIT(A)-5/Wd-28(2)/18-19/Kol. involving proceedings u/s 143(3) of the Income-tax Act, 1961 (in short 'Act').

Heard learned departmental representative. Case file perused.

2. For the reasons stated in assessee's condonation petition that he had suffered from illness and on account of no objection from the revenue's side, I condone the impugned delay of 35 days in filing this appeal before this tribunal.

3. Coming to merits, I find that assessee's twin substantive grounds seeking to challenge correctness of both the lower authorities' action invoking section 40(a)(ia) disallowance of labour charges amounting to Rs.560970/- on account non deduction of

TDS and latter disallowance of Rs.394850/- arising from original TDS Form 16A on various essential re-conciliation issue(s); require necessary factual verification. Coupled with this, assessee's former grievance of labour expenditure disallowance of Rs.5,60,970/- also requires to be examined under second proviso to section 40(a)(ia) of the Act; that the same does not apply in case an assessee is not the assessee is default in the light of section 201/201A of the Act. Hon'ble Delhi high court's landmark decision in CIT v/s. Ansal Landmark Township P. Ltd, ITA Nos. 160 & 161/2015 dt. 26-08-2015 holds the above proviso to be having retrospective effect since curative in nature. I therefore deem it appropriate to restore the instant case back to the Assessing officer for fresh adjudication of both the issues raised within three effective opportunities of hearings as per law.

4. This Assessee's appeal is allowed for statistical purpose in above terms.

Order pronounced in the Court on 18-09-2019

Sd/-

[S.S.Godara]
Judicial Member

Dated : 18-09-2019

**PRADIP, Sr. PS

Copy of the order forwarded to:

1. Appellant/Assessee: SAMIUDDIN AHMED, 10A, Rajib Ali Lane, Khidderpore, Kolkata-23.
2. Respondent/Department: The I.T.O. Ward 28(2), Gariahat Road (S), Aaykar Bhavan Dakshin, 3rd Fl., Kolkata-68.
- 3..C.I.T(A).- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Assistant Registrar
H.O.O/D.D.O Kolkata