

**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH
MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM
&
SHRI RAM LAL NEGI, JM**

**ITA No.4222/Mum/2014
(Assessment Year :2007-08)**

Smt. Hansa P Patel 402, Chandraraj Apartments, Chincholi Bunder Road Malad (W), Mumbai – 400 064	Vs.	The ACIT- 24(1) BKC, Bandra (E) Mumbai
PAN/GIR No.AGTPP1017F		
(Appellant)	..	(Respondent)

Assessee by	Shri Vishwas V Mehendale
Revenue by	Shri Manoj Kumar Singh
Date of Hearing	03/09/2019
Date of Pronouncement	18/09/2019

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.4222/Mum/2014 for A.Y.2007-08 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-34, Mumbai in appeal No.CIT(A)-34/IT-155/2012-13 dated 26/03/2014 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) read with u/s.263 of the of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 16/12/2009 by the Id. Asst. Commissioner of Income Tax-24(1), Mumbai (hereinafter referred to as Id. AO).

2. The first ground raised by the assessee was stated to be not pressed by the Id AR at the time of hearing for which necessary endorsement was also made in our file. The same is reckoned as a statement made from the Bar and accordingly the Ground No.i) raised by the assessee is dismissed as not pressed.

3. The issue to be decided in this appeal is as to whether the Id CITA was justified in upholding the disallowance made u/s 40A(3) of the Act in the sum of Rs 3,19,000/- in the facts and circumstances of the case. The inter connected issue to be decided therein is as to whether the Id CITA was justified in confirming the disallowance of Rs 25,01,263/- u/s 40(a)(ia) of the Act in the facts and circumstances of the case.

4. We have heard the rival submissions and perused the materials available on record. It would be pertinent to address the primary facts which remain undisputed before us as under:-

a) The return of income for the Asst Year 2007-08 was filed by the assessee individual on 29.10.2007 declaring total income of Rs 30,14,877/-.

b) The assessee is engaged in the business of trading in building materials and supply thereon. The assessee is a proprietor of M/s Neha Traders.

c) There was a survey action u/s 133A of the Act carried out in the premises of the assessee on 8th and 9th November 2006.

d) During the course of survey, the assessee has voluntarily disclosed Rs 20 lakhs as her additional income over and above the regular income for the Asst Year 2007-08. The assessee even gave the basis of her declaration by stating that Rs 17 lakhs is offered to cover up the

unaccounted cash receipts for the assessee found during the course of survey **and the remaining Rs 3 lakhs is voluntarily offered to cover any other discrepancy that may be subsequently observed during the course of assessment.** (emphasis supplied by us).

e) In the computation of income, the assessee showed Rs 16,66,666/- as undisclosed income. From the perusal of the statement recorded during the course of survey, especially reply to Question No. 7 posed thereon, we find that the sum of Rs 17 lakhs was offered to tax on an approximate basis in order to buy peace of mind by the assessee.

f) The assessee did not retract from the statement given during the course of survey and had offered a sum of Rs 16,66,666/- on actual basis as against Rs 17 lakhs offered during the course of survey. The Id AO did not agree with the contentions of the assessee and resorted to add the difference sum of Rs 3,33,334/- (20,00,000 – 16,66,666) in the assessment in view of the fact that the assessee had made the disclosure during survey which was never retracted by her till the time of completion of assessment.

g) The assessment was completed u/s 143(3) of the Act on 16.12.2009 determining total income at Rs 33,48,211/-.

h) Later this assessment was sought to be revised by the Id Administrative CIT u/s 263 of the Act on two grounds :-

(i) Disallowance u/s 40A(3) of the Act to be made for Rs 3,19,000/- in respect of cash payments made by the assessee to 9 parties totaling to Rs 15,99,402/-.

(ii) Disallowance u/s 40(a)(ia) of the Act in respect of total payments made to S R Transport to the tune of Rs 46,36,516/-, wherein the assessee had deducted tax at source only for Rs 21,35,253/- only. Accordingly, the remaining sum of Rs 25,01,263/- on which tax was not deducted required to be disallowed u/s 40(a)(ia) of the Act.

As non-disallowance of these two issues by the Id AO in the original assessment framed u/s 143(3) of the Act dated 16.12.2009 was considered to be erroneous and prejudicial to the interest of the revenue, the Id CIT passed an order u/s 263 of the Act dated 17.11.2011 setting aside the order of the Id AO to this limited extent of making aforesaid two disallowances.

4.1. We are not aware of the fact as to whether any appeal was preferred by the assessee before this tribunal against the said order passed by the Id CIT u/s 263 of the Act. The impugned assessment is framed u/s 143(3) read with section 263 of the Act dated 26.11.2012 pursuant to the directions of the Id CIT u/s 263 of the Act making the same disallowances as directed in the order of the Id CIT u/s 263 of the Act. The Id CIT upheld the action of the Id AO.

4.2. At the outset, we find that the assessee had already given disclosure of Rs 3 lakhs at the time of survey and the assessee though not offering the said sum of Rs 3 lakhs in the return of income, but the Id AO had resorted to make an independent addition of Rs 3,33,334/- in the original assessment completed u/s 143(3) of the Act dated 16.12.2009. We find that this addition was made merely on the basis of survey statement by the assessee. But this is not in dispute before us. Since this sum was originally disclosed by the assessee during survey to cover up any future discrepancy that may arise in the assessment, the Id AO while framing the impugned assessment, ought not to have made any independent disallowance / addition towards section 40A(3) of the Act in the sum of Rs 3,19,000/- as the same would get telescoped with the amount already added in the original assessment. We find that this crucial fact has been ignored by the Id CIT while passing the revision order u/s 263 of the Act

as well as by the Id CITA in the impugned appellate order. Hence we direct the Id AO to delete the disallowance made u/s 40A(3) of the Act in the sum of Rs 3,19,000/-. Accordingly, the Ground No. ii) raised by the assessee is allowed.

4.3. With regard to disallowance made u/s 40(a)(ia) of the Act, we find from the ledger account of M/s S R Transport as appearing in the books of the assessee for the period 1.4.2006 to 31.3.2007 enclosed in page 29 of the paper book, there was an opening balance of Rs 49,88,205/- payable by the assessee to the said party. During the year, the transactions in respect of expenditure were to the tune of Rs 21,35,253/- only, for which tax was duly deducted at source to the extent of Rs 47,916/-. . During the year, the assessee had made payments to the said party to the tune of Rs 34,46,662/- and after reducing the same, the closing balance as on 31.3.2007 in respect of the said party was Rs 36,76,796/-. We find from the party wise details of tax deducted and remitted for the period 1.4.2006 to 31.3.2007 and the quarterly TDS returns filed by the assessee in the prescribed form which are enclosed in pages 30 to 37 of the paper book filed before us, that the total transactions for the year in respect of S R Transport was only Rs 21,35,253/- on which the assessee had duly deducted the tax at source and remitted the same. We hold that the assessee could be expected to deduct tax at source only in respect of expenditure transactions during the year and not otherwise. These facts were not appreciated by the lower authorities. Since the evidences are staring on us, we do not have any hesitation in deleting the disallowance made u/s 40(a)(ia) of the Act in the sum of Rs 25,01,263/- by the Id AO. Accordingly, the Ground No. iii) raised by the assessee is allowed.

5. The Ground No. iv) raised by the assessee is general in nature and does not require any specific adjudication.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 18/09/2019

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Mumbai; Dated 18/09/2019
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai