

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.143/Viz/2018
(निर्धारण वर्ष/Assessment Year : 2010-11)**

M/s Udaya Bhaskara Constructions
D.No.4-77, Gandhkotavari Street
Undrajavaram
West Godavari Dist.

Vs. Income Tax Officer
Ward-2
Tanuku

[PAN :AAZFS5244F]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri GVN Hari, AR
: Smt Suman Malik, DR

सुनवाई की तारीख / Date of Hearing

: 01.08.2019

घोषणा की तारीख/Date of Pronouncement

: 27.09.2019


आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-12, Hyderabad vide Appeal No.10239/2017-18 dated 09.02.2018 for the Assessment Year (A.Y.) 2010-11.

2. The assessee has raised three grounds in this appeal. Ground No.1 and 3 are general in nature which does not require specific adjudication.

3. Ground No.2 is related to the addition made by the Assessing Officer (AO) representing the rents debited to the Profit & Loss account which was confirmed by the Ld.CIT(A). The assessee is engaged in the contract works and filed the return of income originally on 31.03.2012 admitting taxable income of Rs.9,31,610/-. The assessment was completed u/s 143(3) on total income of Rs.12,83,160/-. Subsequently, it has come to the notice of the AO that the assessee has debited the sum of Rs.3,54,834/- without deduction of tax at source u/s 194-I of the Act. Hence, viewed that the said expenditure required to be disallowed u/s 40(a)(ia) of the Act, but omitted to make the disallowance, therefore, having reason to believe that the income chargeable to tax had escaped assessment, the AO reopened the assessment by issue of notice u/s 148 of the Act. During the assessment proceedings, the AO observed that the assessee has made the payment of Rs.3,15,934/- towards the rent to V.Chalpathi Rao. As per the details given below:

I.T.A. No.143/Viz/2018, A.Y.2010-11
M/s Udaya Bhaskara Constructions, Undrajavaram 

Date	As mentioned in Ledger 'Rents'	Amount	Date	As per vouchers submitted	Amount
	Particulars			Particulars	
02.04.2009	A.B.S.O.D. 101, Ch.No.752392 Koll Satish Water Tank Rent	15,000	02.04.2009	Voucher not submitted	
07.05.2009	A.B.S.O.D. 101, Ch.No.411410 Tractor Yearly Rent / Koduri Satyanaryana	1,00,000	07.05.2009	To Koduri Satyanarayana Rent for tractor etc.	1,00,000
03.08.2009	H.D.F.C. Ch.No.0152036 M Srinu rent for oil engine	60,000	03.08.2009	To M. Srinu for filling of water to tank	60,000
09.06.2009	A.B.S.O.D. 101, Ch.No.411611 Ayyanna rent for Miller	15,394	09.06.2009	Voucher not submitted	
15.06.2009	H.D.F.C. Ch.No.0152039 V Chalapathi Rao rent paid Kudapa Subba Rao	1,25,000	15.06.2009	To V.Chalapathi Rao Rent for proclainer	1,25,000

3.1. The assessing officer verified the bank account and found that the amounts were reflected in the bank account in the name Shri V.Chalapathi Rao as under:

Date	As per Bank account details	Chq.No.	Amount
	Particulars		
02.04.2009	V.Chalapathi Rao	752392	15,000
07.05.2009	V.Chalapathi Rao	411410	1,00,000
03.08.2009	V.Chalapathi Rao	0152036	60,000
09.06.2009	V.Chalapathi Rao	411611	15,934
15.06.2009	V.Chalapathi Rao	0152039	1,25,000
Total			3,15,934

3.2. The AO issued the notices/summons u/s 131 to Shri Chalapathi Rao which were returned unserved. When the AO has asked the explanation, the assessee filed explanation stating that the rents paid to Shri K.Subba Rao amounting to Rs.1,25,000/- towards the office rent was wrongly shown as procainer rent to Chalapathi Rao. Similarly in respect of other payments mentioned in the details given above there was no explanation from the assessee. Therefore, the AO held that the entire payment was made to Shri Chalapathi Rao towards the rent without deduction of tax at source. Similarly in respect of the amount of Rs.1,25,000/- paid to Shri K.Subba Rao was held to be paid separately over and above the amount debited to the Profit and Loss account. Hence, the AO made the disallowance for non deduction of tax at source u/s 40(a)(ia) of the Act for Rs.3,15,934 and separately made the addition of Rs.1,25,000/- paid to Shri K.Subba Rao. The aggregate disallowance made by the AO on account of the payments of rent was Rs.4,40,934/-.

4. Against the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal of the assessee and confirmed the addition made by the AO, against which the assessee is in appeal before this Tribunal.

5. During the appeal hearing, the Ld.AR submitted that the assessment was reopened for the purpose of omission to make disallowance relating to the payments debited to the Profit & Loss account under the head 'rents' amounting to Rs.3,54,834/- as evidenced from page No.2 of the assessment order. Against which the AO made disallowance of Rs.4,40,934/- which is in excess of the amounts debited to Profit & Loss account. The Ld.AR has taken our attention to page No.15 of the paper book relating to P&L account of the assessee and submitted that the rents debited to P&L account was only Rs.3,54,834/- which can be disallowed but not over and above the sum of Rs.3,54,834/-, against which the AO made the disallowance of Rs.4,40,934/- which is unjustified. The Ld.AR further submitted that as evidenced from the assessment order, the sum of Rs.3,54,834/- was paid without deduction of tax at source and the balance remained was only Rs.38,990/- which is within the threshold limit for non deduction of tax at source. Therefore, requested to confirm the addition of Rs.3,54,834/- and delete the balance addition.

6. On the other hand, the Ld.DR argued that as per the assessment order, it is clear that the assessee has made the payment of Rs.4,40,934/- as

discussed by the AO in page No.3 and 6 of the assessment order without deduction of tax at source. Hence, requested to confirm the addition.

7. We have heard both the parties and perused the material placed on record. As per the Profit & Loss account, the rent debited to P&L account was Rs.3,54,834/-. There is no dispute that the assessee has not deducted the TDS on the said sum. The entire sum was paid to Shri V.Chalapathi Rao on various dates through cheque as mentioned in the assessment order. Though the assessee stated that a sum of Rs.1,25,000/- was paid to Shri K.Subba Rao vide letter dated 02.07.2015, the assessee has clarified that the rent paid to K.Subba Rao was wrongly shown as rent for proclainer rent instead of office rent. Since the total amount debited to P&L account was Rs.3,54,934/-, there is no reason to make the disallowance over and above the amount debited to P&L account. As discussed earlier, the actual amount debited to P&L account was Rs.3,54,934/- out of which the sum of Rs.3,15,934/- was paid to Shri Chalapathi Rao without deduction of tax at source. Therefore, we confirm the addition of Rs.3,15,934/- u/s 40(a)(ia) of the Act, in respect of the payment made to Shri V.Chalapathi Rao. Since the balance amount of Rs.38,990/- is below the threshold limit to apply the

TDS provisions, the same does not attract the provisions of section 40(a)(ia) of the Act.

8. The next issue is payment of rent to K.Subba Rao. It was stated during the assessment proceedings that the amount paid for office rent was wrongly classified as proclainer rent and we do not find any reason to disbelieve the submission of the assessee. The assessee has furnished the copy of income tax return of K.Subba Rao, wherein, he had admitted the income of Rs.1,25,000/- received from the assessee in the return of income. The assessing officer was of the view that the amount of Rs.1,25,000/- is over and above the amount debited to the P&L account. He was of the opinion that the assessee has made the unaccounted payment without passing the entry through P&L account. However, as seen from the assessment order a sum of Rs.1,25,000/- was paid through HDFC Bank cheque on 15.06.2009 in the name of Shri V.Chalapathi Rao. Before the CIT(A) also the assessee submitted that the assessee has made the payments to various persons through Chalapathi Rao. One of the payment was Rs.1,25,000/- to K.Subba Rao on 15.06.2009. Therefore, prima facie it appears that the payment of Rs. 1,25,000/- was included in the disallowance made u/s 40(a)(ia) of the Act in the amount of Rs.3,15,934/-

in respect of payment made to Shri V.Chalapathi Rao. Hence we, are of the opinion that no separate addition required to be made on account of payment made to Shri K.Subba Rao. However in the interest of justice, we, remit the matter back to the file of the AO for a limited purpose of verification, whether the payment made to Shri K.Subba Rao was included in the disallowance of Rs.3,15,934/- or not. If the same is included, no separate addition is warranted. Therefore we, direct the AO to verify the payments made to K.Subba Rao and decide the issue afresh on merits. The AO should give sufficient opportunity to the assessee to submit the required information. Accordingly we, set aside the issue to the file of the AO and allow the appeal of the assessee for statistical purposes.

9. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 27th September, 2019

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 27.09.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

I.T.A. No.143/Viz/2018, A.Y.2010-11
M/s Udaya Bhaskara Constructions, Undrajavaram 🇮🇳

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee - M/s Udaya Bhaskara Constructions, D.No.4-77, Gandhkotavari Street, Undrajavaram, West Godavari Dist.
2. राजस्व/The Revenue - Income Tax Officer, Ward-2, Tanuku
3. The Pr.Commissioner of Income Tax, Rajamahendravaram
4. The Commissioner of Income Tax (Appeals)-12, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

// True Copy //

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam