

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'C(SMC)' BENCH, KOLKATA**

Before Shri P.M. Jagtap, Vice-President

**I.T.A. No. 1211/KOL/2019
Assessment Year: 2011-2012**

Shri Sandeep Saria,.....Appellant
'Sunflower Apartments',
74, Topsia Road, Tower-1, Flat No. 12B,
Kolkata-700046
[PAN: ALEPS2101B]
-Vs.-

Assistant Commissioner of Income Tax,.....Respondent
Circle-36, Kolkata,
Aayakar Bhavan,
110, Shanti Pally, Near Ruby Hospital, E.M. Bye Pass,
Kolkata-700107

Appearances by:

Shri Sunil Surana, FCA, for the Appellant
Shri Jayanta Khanra, JCIT, Sr. D.R, for the Respondent

Date of concluding the hearing : October 24, 2019

Date of pronouncing the order : October 24, 2019

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-10, Kolkata dated 29.04.2019 and the solitary issue involved therein relates to the disallowance of Rs.3,31,118/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) under section 40(a)(ia) of the Act.

2. The assessee in the present case is an individual, who is engaged in the business of manufacturing and trading of Engineering Goods, Spare-parts as well as doing Job Works. The return of income for the year under consideration was filed by him declaring total income of Rs.31,54,173/-. In the assessment completed under section 143(3) vide an order dated 24.03.2014, disallowance, inter alia, of Rs.3,31,118/- was made by the Assessing Officer under section 40(a)(ia) of the Act on account of

carriage inward and carriage outward charges as the said charges were paid by the assessee to one Shri Pappu Yadav without deducting tax at source as required under section 194C of the Act. On appeal, the Id. CIT(Appeals) confirmed the said disallowance.

3. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal on the following grounds:-

“(1) For that the Id. CIT(A) erred in confirming the action of the AO in making disallowance of carriage inward and carriage outward expenses amounting to Rs.3,31,118/- u/s 40(a)(ia) when there was no contract between the parties and therefore, there was no requirement to deduct tax at source.

“(2) For that in the alternative, the CIT(A) erred in confirming the disallowance under section 40(a)(ia) which should have been restricted to 30% in view of the retrospective amendment in section 40(a)(ia)”.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. At the time of hearing, the Id. Counsel for the assessee has not pressed Ground No. 1 raised by the assessee in this appeal. The same is accordingly dismissed as not pressed.

5. As regards Ground No. 2, the Id. Representatives of both the sides have agreed that the issue raised in this appeal is squarely covered in favour of the assessee, inter alia, by the decision of the Division Bench of this Tribunal rendered in the case of Dipak Parui -vs.- JCIT vide order dated 27.07.2018 passed in ITA No. 767/KOL/2016, wherein a similar issue was decided by the Tribunal in favour of the assessee for the following reasons given in paragraph no. 5 of its order:-

“5. Latter issue before us is that of correctness of section 40(a)(ia) disallowance of Rs.1,79,800/- out of assessee’s total claim of Rs.3,05,364/-. His only argument before us is that section 40(a)(ia) as amended by Finance Act, 2014 w.e.f. 01.04.2015 prescribing such disallowance to be restricted to 30% only than the entire amount of Rs.1,79,800/-, applies with retrospective effect. Learned

Departmental Representative vehemently opposes this legal plea. He pleads that the said proviso does not carry any retrospective effect. We find no force in Revenue's instant arguments as a coordinate bench of this Tribunal in Shri Rajendra Yadav in ITA No. 895/JP/2012 decided on 29.01.2016 already concludes the above amendment w.e.f. 01.04.2015 to be retrospective effect being curative in nature. We, therefore, direct the Assessing Officer to restrict the impugned disallowance to 30% only to be followed by necessary computation as per law. This latter substantive ground is treated as partly accepted in above terms".

Respectfully following the decision of the Division Bench of this Tribunal in the case of Dipak Parui (supra), I direct the Assessing Officer to restrict the disallowance made under section 40(a)(ia) to 30%. Ground No. 2 of the assessee's appeal is accordingly allowed.

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

Order pronounced in the open Court on October 24, 2019.

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

Kolkata, the 24th day of October, 2019

- Copies to :
- (1) **Shri Sandeep Saria,**
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74, Topsia Road, Tower-1, Flat No. 12B,
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110, Shanti Pally, Near Ruby Hospital, E.M. Bye Pass,
Kolkata-700107
 - (3) **Commissioner of Income Tax (Appeals)-10, Kolkata,**
 - (4) **Commissioner of Income Tax, Kolkata- , Kolkata;**
 - (5) **The Departmental Representative**
 - (6) **Guard File**

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.