

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 964/JP/2017
निर्धारण वर्ष / Assessment Year : 2013-14

M/s Mount Shivalik Industries Ltd., 140 th Mile Stone, Delhi-Jaipur Highway, Village- Gunti, Tehsil, Behror, Alwar.	बनाम Vs.	The CIT, Circle-2, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCM6098 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Ashish Sharma (Adv.)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (DCIT)

सुनवाई की तारीख / Date of Hearing : 04/11/2019
उदघोषणा की तारीख / Date of Pronouncement : 11/11/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT, Alwar dated 10.10.2017 for Assessment Year 2013-14 wherein the assessee has taken following grounds of appeal:-

- "1. That the Commissioner of Income-tax (Appeals) Alwar has grossly erred in upholding the disallowance of Rs. 42,86,372/- under section 40(a)(ia) on account of non-deduction of TDS.*
- 2. That the Commissioner of Income-tax (Appeals) Alwar has grossly erred in upholding/disallowance of Rs. 18,04,847/- on account of misc. expenses.*

3. That the CIT(A), Alwar has grossly erred in upholding the addition of Rs. 12,82,160/- on account of interest received on refunds of Income-tax.

4. That the CIT(A), Alwar has failed to appreciate the fact and add disallowances of Rs. 15,29,193/- and Rs. 18,04,847/- on account of travelling and misc. expenses respectively have been made without bringing on record and evidences to support the additions.

2. In ground no. 1, the assessee has challenged the sustenance of disallowance of Rs. 42,86,372/- U/s 40(a)(ia) of the IT Act.

3. During the course of hearing, the Id. AR submitted that the Assessing Officer has disallowed unloading expenses incurred by the assessee by invoking provisions of Section 40(a)(ia) of the Act. It was submitted that the assessee has engaged spot labourers for the unloading of Beer cases from Truck at the various Depots/Godowns of BSBCL/RSBCL. It was submitted that the responsibility to transport the beer cases from the assessee's premises to the depots/godowns through the transporters did not require the latter to engage the unloading labourers. It was submitted that the spot labourers were engaged by assessee's local Representative by beckoning them on the basis of whosoever is available at a point in time at the Depot/godown. It was further submitted that there is no contract with any labour contractor which has been entered by the assessee as there is no predictability as to the volume of transactions that shall take place in a month or during the beer season and the consignments that is needed at any Depot is decided by the buyer i.e. BSBCL/RSBCL and not the assessee. It was accordingly submitted that there is no possibility of any

contract with anyone in the absence of predictable date, time and volume and in absence of any contract, there was no liability to deduct TDS u/s 194 and hence, the provisions of section 40(a)(ia) are not applicable and have been wrongly invoked by the AO and sustained by the Id CIT(A). Further, reliance was placed on the decision of the Hon'ble Gujarat High Court in case of Pr. CIT vs. Swastik Construction (2018) 254 taxman 163.

4. The Id. DR is heard. It was submitted by the Id DR that during the course of assessment proceedings, the Assessing Officer has examined the matter relating to labour and processing charges amounting to Rs. 42,86,372/- and a show cause was issued to the assessee to explain as to why no TDS has been made on such payments and in response, the assessee submitted that unloading charges are paid at outstation locations and depots of RSBCL which are paid to the workers engaged for unloading the consignment from the trucks to the warehouses/depots of the RSBCL or BSBCL. It was further submitted that every time, different persons are engaged who arrange 5 or 6 labourers who unload the trucks. The Assessing officer held that the assessee has made payment for supply of labours for carrying out the work and therefore, the provisions of Section 194C are applicable. Further, the Assessing Officer referred to the payments made to certain persons on 30.06.2012 for unloading the consignment at warehouse in Patna and held that practically it is impossible that throughout the year under consideration, no person was repeated or the same person has not received the work contract twice and accordingly held that the assessee has deliberately mentioned the fact that no person was

repeated to deceive the income tax authorities for not invoking the Section 194C of IT Act. The Assessing Officer further held that the assessee failed to submit complete ledger of the expenses incurred for unloading charges and in absence of the complete details, it is not possible to verify that the payments were not made in excess of Rs. 30,000/-. Further, the Assessing Officer has held that the assessee submitted self-made vouchers for which payments were made in cash. The Assessing Officer accordingly held that the assessee was required deduct TDS on these payments which were covered U/s 194C of IT Act and since the assessee has failed to do so, therefore, an amount of Rs. 42,86,372/- was disallowed U/s 40(a)(ia) of the Act. Further, the Id DR drawn our reference to the finding of the Id. CIT(A) wherein he has held that the assessee has not maintained any record of names of labourers/workers and the details of vouchers of payments etc. and further given the detailed reasoning by the Assessing Officer, he has upheld the disallowance of Rs. 42,86,372/-. He accordingly supported the findings of the lower authorities.

5. We have heard the rival contentions and perused the material available on record. We find that the fact that the payment has been made by the assessee by way of unloading charges at various locations/depots of its customers and therefore, the expenses have been incurred for the purpose of business have not been disputed by the Assessing Officer. The only dispute relates to non-deduction of TDS U/s 194C of the Act and consequential disallowance by invoking the provisions of Section 40(a)(ia) of the Act. The assessee has contended that it has hired spot labourers for unloading of beer cases at the

various depots/stations. It was submitted that the responsibility to transport the beer cases from the assessee's premises to the depots/godowns through the transporters did not require the latter to engage the unloading labourers. It was further submitted that there is no contract with any labour contractor which has been entered by the assessee as there is no predictability as to the volume of transactions that shall take place in a month or during the beer season and the consignments that is needed at any Depot is decided by the buyer i.e. BSBCL/RSBCL and not the assessee. It was accordingly submitted that in absence of any contract, there was no liability to deduct TDS u/s 194 and hence, the provisions of section 40(a)(ia) are not applicable and have been wrongly invoked by the AO and sustained by the Id CIT(A). The said submissions of the assessee though prima facie look attractive, however, nothing have been brought on record in order to substantiate such contentions. Once the Assessing Officer has formed a prima facie view that the payments are liable for TDS and issued a show cause to the assessee to justify the non-deduction of TDS, the onus is on the assessee to submit the necessary details and documentation and justify the basis for non-deduction of TDS. The assessee should have submitted complete details of persons to whom the payment has been made, place of rendering the services and the amount of payment. However, we find that in the present case, the assessee has failed to submit the necessary information and documentation through which it can be substantiated that the payments for unloading charges doesn't require TDS u/s 194C of the Act. Similar findings have been recorded by the Id CIT(A) which remain unrebutted before us. Even during the course of hearing, nothing has been filed which could have

substantiated the contentions so advanced by the Id AR. Further, we find that in case of Pr. CIT vs. Swastik Construction (Supra), all the relevant facts of the case were on record and basis which the Hon'ble High Court has decided the matter in favour of the assessee, however, in the instant case, the assessee has failed to produce the relevant material on record and therefore, the said decision does not support the case of the assessee. We accordingly do not see any infirmity in the action of the Id. CIT(A) in confirming the action of the AO in making disallowance of Rs. 42,86,372/- by invoking provisions of Section 40(a)(ia) of the Act. In the result, ground no. 1 of the assessee's appeal is dismissed.

6. In ground Nos. 2 and 4, the assessee has challenged the disallowance of Rs. 15,29,193 and Rs. 18,04,847/- on account of travelling and misc. expanses respectively. In this regard, the Id. CIT has recorded a finding that the assessee has failed to provide supporting documents to prove that such expenditures are incurred wholly and exclusively for the purpose of business or profession. We do not see any infirmity in the said finding of the Id. CIT(A) as the onus is clearly on the assessee to demonstrate through verifiable evidence and documentation that the expenses have been incurred for the purposes of business. Both the grounds of appeal are thus dismissed.

7. In ground no. 3, the assessee has challenged the addition of Rs. 12,82,160/- on account of interest received on income tax refunds. The Id. AR submitted that the assessee offered the interest on income tax refund in the previous year and our reference was drawn to the

notes to the financial statements for F.Y. 31.03.2012 wherein the assessee has shown the amount of Rs. 12,64,144/- as interest of income tax refund classified under the head "interest income". It is therefore not disputed that the assessee has shown the amount of income interest in its financial statements, however the question is whether the same has been offered to tax while filing the return of income or not. On perusal of the order of the Assessing Officer as well as Id. CIT(A), we find that there are certain details regarding receipt of refund of income tax and interest on the income tax refunds, however, the figures are apparently not matching. The fact that interest on income tax refund was granted to the assessee and whether the assessee has offered the same to tax in the previous years is a matter of record which can be easily verified, the matter is accordingly set aside to the file of the Assessing Officer to verify the same and decided as per law. In the result the ground of appeal is allowed for statistical purposes.

In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open Court on 11/11/2019.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 11/11/2019.

***Santosh**

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

1. अपीलार्थी / The Appellant- M/s Mount Shivalik Industries Ltd., Alwar.
2. प्रत्यर्थी / The Respondent- CIT, Crile-2, Alwar..
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 964/JP/2017 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar