

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

**ITA No. 3103/Del/2014
Assessment Year: 2007-08**

SUNIL SETHI, 37, RAJPUR ROAD, DELHI – 110 054 (PAN: AKJPS4479G)	Vs.	ACIT, CIRCLE 20(1), NEW DELHI
APPELLANT		RESPONDENT

Assessee by	Shri K. Sampath, Advocate
Revenue by	Shri Pradeep Singh Gautam, Sr. DR

ORDER

This appeal filed by the assessee against the impugned order dated 27.02.2014 passed by the Ld. CIT(Appeals)-xxii, New Delhi in relation to assessment year 2007-08 on the following grounds:-

On the facts and in the circumstances of the case and in law the authorities below erred in making the following additions to the returned income:-

1. Rs. 10,68,968/- being the amount of reimbursement of interest u/s. 40A(ia) of the Act;
2. Rs. 7,94,786/- on account of wages paid u/s. 40a(ia) of the act;
3. Rs. 80,000/- being the amount of remuneration paid by invoking provision of section 40(A)(2) of the Act;
4. Rs. 26,000/- by applying provision of section 40A(3) of the Act;
5. Rs. 19,424/- and Rs. 33,947/- under the heads 'vehicle running expenses' and

‘telephone expenses’ respectively on estimate basis treating the same as personal in nature.

All the above actions being arbitrary, erroneous and unjust must be quashed with directions for appropriate relief.

2. Assessee has also filed an Application for admission of additional ground, the contents thereof are read as under:-

“APPLCIATION FOR ADMISSION OF ADDITIONAL GROUND OF APPEAL.

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Over and above the five grounds of appeal taken in the Statutory Form No. 36 as filed, the following additional ground of appeal is filed:

“That on the facts and in the circumstances of the case and in law the authorities below erred in disallowing Rs/ 10,68,968/- under section 40a(ia) of the Income Tax Act, 1961 without even pausing to consider whether the receipt is of such incomes on which tax had been paid on those incomes by the respective recipients as envisaged under the proviso to section 201(1) of the Act.”

Having not been verified at the level of the Assessing Officer during assessment it is pleaded that the issue be kindly remanded back to the Assessing Officer for consideration and fresh orders.

The above ground was not taken specifically though the disallowance under section 40a(1a) of the Act was agitated against. That is because the need for verification came to be inserted in the Statute with effect from 01.07.2012 by the Finance Act, 2012 which date incidentally was after the completion of the assessment by the Assessing Officer. The omission to raise the ground earlier was, therefore, not out of any negligence

or malafides. The ground being legal merits to be admitted as such."

3. At the time of hearing, Ld. Counsel for the assessee stated that additional ground may be admitted and decided accordingly. In support of other grounds, he filed the written synopsis, which read as under-

"This appeal is directed against the order of the Id. CIT (Appeals)-XXII, New Delhi, in Appeal No. 228/2009-10 dated 27.02.2014.

2.1 The grounds taken in appeal are five in number as under:

"On the facts and in the circumstances of the case and in law the authorities below erred in making the following additions to the returned income:-

- I. Rs.10,68,968/- being the amount of reimbursement of interest u/s 40a(ia) of the Act;*
- 2. Rs.7,94,786/- on account of wages paid u/s 40a(ia) of the Act;*
- 3. Rs.80,000/- being the amount of remuneration paid by invoking provision of Section 40 (A) (2) of the Act;*
- 4. Rs.26,000/- by applying provision of Section 40A (3) of the Act;*
- 5. RS.19424/- and Rs.33,947/- under the heads 'vehicle running expenses' and 'telephone expenses' respectively on estimate basis treating the same as personal in nature.*

All the above actions being arbitrary, erroneous and unjust must be quashed with directions for appropriate relief."

2.2 The Appellant Shri Sunil Sethi is a sub-agent of ICICI Bank for provision of vehicle loans. He is also related to Upper India Trading Co. [Delhi] Pvt. Ltd.

('UITCDPL') which is the sole-selling agent for Hero Honda Motorcycles in Delhi as its Director. The Appellant has an understanding with (UITCDPL) that he would render comprehensive assistance and support in the sale of motorcycles by it including facilitation of loans for purchase by customers, after sale service etc. etc. With this agenda the further understanding of the Appellant with (UITCDPL) was that the expenses incurred by the Appellant in the process would all be shared with UITCDPL and reimbursed to it.

2.3 Submissions ground-wise are as under:

3.1 The first ground is with regard to the disallowance of a sum of Rs.10,68,968/- being interest reimbursement disallowed under Section 40a(ia) of the Income Tax Act, 1961 ('the Act') by the Assessing Officer and confirmed by the Id. CIT (Appeals). The observations of the Assessing Officer while so doing have been extracted in detail by the Ld. CIT (Appeals) in his order at para 6 on page Nos. 3 & 4. According to the Assessing Officer admittedly the assessee-Appellant had not deducted any tax at source. As per the provisions of Section 194A of the Act the assessee was required to deduct TDS on amount exceeding Rs.5,000/- at the specified rates. In the instant case, however, the assessee failed to deduct TDS. Since it was credited to a resident on which tax had not been deducted consequently the same not be deducted in computing total income chargeable under the head 'Profit and gains from business and profession'. So the interest charges of Rs.10,68,968/- were disallowed u/s 40a(ia) by adding it back to the assessee's income. The Ld. CIT (Appeals) confirmed the addition as made by the Assessing Officer with observations as are contained on page 19 of the impugned appellate order. He observed that the Appellant had admitted failure to deduct and pay TDS. The claim of the Appellant of a subsisting agreement with UITCDPL of which the Appellant was a Director could not change the nature of the expenses to a re-imbusement. Any such claim could not be allowed as no agreement could not go beyond the

provisions of the Income Tax Act. Since Appellant did not deduct TDS on interest payment of Rs.10,68,968/- the total interest payment had to be disallowed u/s 40a(ia) of the Act and so the addition made by the Assessing Officer had to be upheld.

3.2 It is respectfully submitted before the Hon'ble Tribunal that the authorities below have failed to note the purport and scheme of the Act. While it is true that an agreement between the two assesseees cannot override the provisions of the I. T. Act yet it is also equally true that the provisions of the Act, as they are, are required to be applied notwithstanding existence of any agreement or not. Proviso to Section 201 (1) provides as under:

"Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a [payee] shall not be deemed to be an assessee in default in respect of such tax if such [payee] -

(i) has furnished his return of income under section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income;

and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:]

3.3 Appellant seeks leave to submit a copy of the acknowledgement of the Income Tax Return as filed by for the year UITCDPL. In terms of the proviso, therefore, Appellant deserves relief but connected after verification of the connected tects. Pleaded accordingly.

4.1 Ground No. 2 is against the confirmation of the disallowances of wages in a sum of Rs.7,94,786/- also u/s 40a(ia) of the Act. The Appellant has paid wages to

temporary staff numbering 19 in a sum of Rs.10,15,778/-. These were in respect of securities and maintenance services amongst other availed by the Appellant in the normal course of its business from different persons. The Assessing Officer construed each individual payment of these labourers as being pursuant to a contract and opined that they were covered u/s 194C of the Act and with the Appellant not having deducted at source the same were not allowable as deduction against income as computed in terms of the prohibition u/s 40a(ia) of the Act. Observations of the Assessing Officer are extracted in full by the Id. CIT (Appeals) in the impugned appellate order on page Nos. 5,6 & 7.

4.2 The Id. CIT (Appeals) confirmed the addition as made by the Assessing Officer in terms of his observations as contained in para 8.3 on page Nos. 19 & 20 of the appellate order. He was of the view that since there was no evidence that the payments were not covered under the provisions of section 194C of the Act and further that the genuineness of such payments with month-wise details were not available the same were rightly disallowed by the Assessing Officer in assessment u/s 40a(ia) of the Act.

4.3 It is submitted that the authorities below erred in construing the payments made to casual labourers and the maintenance staff and other as being pursuant to a contract. They were all employees and each one of them was an independent employee with no connection or association with any organization which was in the business of providing services. There was no contract as envisaged u/s 194C of the Act with anyone. The Assessing Officer has not brought any evidence on record to establish the existence of any contract, valid or otherwise, between the Appellant and these casual workers. Each payment has to be considered separately for TDS in terms of Section 194A of the Act. Each one of these payments made to casual workers was less than the maximum amount not exigible to tax during this year. There was therefore, no liability to deduct tax at

source even under section 194A of the Act. Consequently section 40a(ia) of the Act had no application to the facts of the case. The disallowance as made by the Assessing Officer and confirmed by the Id. CIT (Appeals) is thus palpably erroneous and merits to be annulled.

5. Ground Nos. 3 concerns disallowance u/s 40 (A) (2) of the Act. The Appellant had paid remuneration of Rs.1,60,000/- to his daughter Chandini who was a Sales Executive in the organization of the Appellant. Appellant himself had other business activities including that of being a Director in UITCDPL and so required managerial support. The Assessing Officer was of the view that there was an extra commercial element in the payment made to the daughter. He compared the remuneration paid to her with those paid to the staff otherwise employed by the Appellant and opined that 50% of the salary paid to her was required to be disallowed. The full discussion on this point as done by the Assessing Officer is contained on page Nos. 7, 8, 9 & 10 of the impugned CIT (Appeals) 's order. In appeal the Id. CIT (Appeal) confirmed the addition as made by the Assessing Officer in the case of Chandini. It is respectfully submitted that the Id. CIT (Appeals) fell into an error in comparing the remuneration paid for 12 months service to Chandini with the remuneration of others paid for services rendered sporadically and also for short periods during the year. The compassion as made by the Assessing Officer was between un-comparables and being so was invalid. It is pleaded that the entire remuneration as paid to Chandini must be directed to be allowed in view of the excellent performance of the Appellant during the year where the sales of vehicles doubled .as compared to the preceding year.

6.1 Ground Nos. 4 & 5 are in respect of nominal disallowances concerning disallowance u/s 40 (A) (2) of the Act and personal use for vehicles and phones. It is submitted that the expenses as incurred are all genuine and being so in terms of the decision of the Hon'ble

Punjab & Haryana High Court in the case of Gurudas Kamat no disallowance of Section 40A(2) variety was warranted. As to personal expenses the Ld. CIT(A) had arbitrarily confirmed 20% disallowance which was highly excessive.

Pleaded accordingly.”

4. Ld. DR relied upon the orders of the authorities below.
5. I have heard both the parties and perused the records especially the impugned order; additional ground as well as written synopsis filed by the assessee counsel. After perusing the aforesaid additional ground, I am of the view that in the interest of justice, the same is admitted. I find considerable cogency in the contention of the ld. counsel for the assessee that the authorities below erred in disallowing Rs.10,68,968/- under section 40a(ia) of the Income Tax Act, 1961 without even pausing to consider whether the receipt is of such incomes on which tax had been paid on those incomes by the respective recipients as envisaged under the proviso to section 201(1) of the Act. It is also noted that the this has not been verified at the level of the Assessing Officer during assessment, therefore, there is force in the contention of the ld. Counsel for the assessee that the matter may be remanded back to the Assessing Officer for consideration and fresh orders. In view of above, discussions, the additional ground as aforesaid as well as the other inter-related grounds no. 1 to 5 raised by the assessee in the appeal are also set aside to the file of the AO for fresh adjudication, after giving adequate opportunity of being heard to the assessee. Assessee is also directed to fully cooperate with the AO and file all the necessary evidences, if any, to substantiate his case.

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

Order pronounced on 03/12/2019.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 03/12/2019

SRB

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI