

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 1009/Ahd/2018
Assessment Year 2013-14**

Shri Bachubhai Jivabhai Soni, 18, Dipawali Society, Vishwakunj Society, Paldi, Ahmedabad PAN: ACLPS2933B (Appellant)	Vs	The DCIT, Circle-5(3), 1 st Floor, Nature View Building, Off: Ashram Road, Ahmedabad Vadodara (Respondent)
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**Revenue by: Shri Vidhyut Trivedi, Sr. D.R.
Assessee by: Shri Druv Patel**

Date of hearing : 24-10-2019
Date of pronouncement : 18-11-2019

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2013-14, arises from order of the CIT(A), Ahmedabad-5 dated 02-02-2018, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The solitary ground of appeal of the assessee is pertained to the issue of confirming the addition of Rs. 1,96,769/-, advertisement expenses paid to Jems & Jewellery Export Promotion Council under rule 40(a)(ia) of the act.

3. The fact in brief is that in this case the assessment order u/s. 143(3) of the act was finalized on 19th Feb, 2016. The assessing officer has made addition of Rs. 1,96,769/- u/s. 40(a)(ia) of the act on the ground that assessee has deducted tax u/s. 194C of the act as against correct deductible amount u/s. 194J of the act.

4. Aggrieved assessee has filed appeal before the Ld. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

5. We have heard rival contention on this issue. After perusal of the material on record, it is noticed that assessee has paid an amount of Rs. 1,96,769/- on account of rent/space allotted by the Jems & Jewellery for exhibition where the assessee has participated in the exhibition. The assessing officer noticed that assessee has deducted TDS @ 1% on the aforesaid payment u/s. 194C of the act, however, the above payment was covered under the provision of section 194I of the act. Therefore, the assessing officer has disallowed the whole payment u/s. 40(a)(ia) of the act after following the decision of Honøble High Court of Kerala in the case of CIT-1 Vs. PVS Memorial Hospital Ltd. (2015-60-taxman.com 69).

6. During the course of appellate proceedings before us, the Id. counsel has brought to our notice that the Honøble High Court of Calcutta in the case of CIT vs. S.K. Tekriwal 361 ITR 432 (Cal) held that once tax is deducted and paid in wrong section with bonafide belief then section 40(a)(ia) would not be applied as it did not satisfy two limbs of said section hence section 40(a)(ia) cannot be applied. The Id. counsel has further referred the decision

of Honorable Supreme Court in the case of CIT vs. Vegetable Products Ltd. 1988 ITR 192 (SC) that where there are two judgments of two high courts, the judgment favourable to assessee may be followed. The assessee has demonstrated in his submission reported at para 5.2 in the order of the Ld. CIT(A) that the assessee has made payment for booking the stall in exhibition of jewellery organized by the Gems & Jewellery Export Promotion Counsel which included various charges i.e. registration charges, badges, house keeping charges etc. After considering the breakup of various expenses, we consider that assessing officer has deducted tax @ 1% with bonafide belief that the payment was made for the composite contract of advertising product of jewellery, therefore, after following the decision of Honorable High Court in the case of CIT vs. S.K. Tekrival 361 ITR 432 (Cal), the disallowance is deleted and appeal of the assessee is allowed.

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

Order pronounced in the open court on 18-11-2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad : Dated 18/11/2019

आदेश क० तालिम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलालय आधिकरण,
अहमदाबाद