

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES 'B', NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND**

DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

**ITA No. 816/Del/2016
Asstt. Year: 2011-12**

Akbar Qureshi Dinesh Mohan Sinha, Advocate 108/109, Parmesh Business Centre Plot No. 20, Community Centre, Karkardooma, Delhi.	Vs	ITO Ward 1(1) Faridabad.
(APPELLANT)		(RESPONDENT)
PAN No. AACPQ0549C		

**Assessee by : Sh. D.M. Sinha, Adv.
Revenue by : Ms. Ashima Neb, Sr. DR**

Date of Hearing: 03.12.2019	Date of Pronouncement: 03.12.2019
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ORDER

PER DR. B.R.R. KUMAR, A.M.

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Faridabad dated 04.01.2016.

2. Following grounds have been raised by the assessee:
1. *"That the order is bad in law and facts of the case since the Ground No. 1, 2 and 9 remain un-disposed off, the Ld. CIT(A) has wrongly uphold the order of the Assessing Officer while ignoring the above mentioned grounds;*
 2. *Because the Ld. CIT(A) has wrongly uphold that Ld. Assessing Officer has jurisdiction in framing an assessment, since no notice has ever been sent at the address given on return;*

3. *Because the addition as confirmed u/s 40(1)(a) of the Income Tax Act, 1961 is bad since the petitioner was not in default within the meaning of sec. 201(1); and had secure the requisite documents;*
4. *Because section 194C sub-section (6) specifically speaks about non deduction of TDS in case of playing hiring on leasing goods carriage;*
5. *Because disallowance of expenses confirmed on estimated basis is bad and there is no material/material facts available on record;*
6. *Because the order is bad while confirming the decision that
Ground No. 4 Crane running expenses (Rs. 6,26,336.00)
Ground No. 5 expenses disallowed (Rs. 1,08,572.00)
Ground No. 8 Repair & Maintenance (Rs. 1,25,000.00)
Ignore or lack the commercial expediency in making the expenses.*
7. *Because while making an order or framing an opinion regarding an expense, without looking to that whether expenses was wholly or exclusively for the business purposes;*
8. *Because of confirming the disallowance of depreciation is bad since the crane fitted truck and operate through engine;*
9. *40(a)(ia) is interpreted to mean that it applies only to amount payable kind attention is hereby draw on the special bench cases Merlym, Shipping & transports.*
10. *That the confirmation of penalty is bad."*

3. The Ground No. 1 is general in nature.

4. Ground No. 2 pertains to jurisdiction in framing the assessment.

The Ld. AR argued that no notice has ever been sent at the address given

on the Income Tax Return. It was argued that while the address of the assessee as per the Income Tax Return is Delhi, the Assessing Officer stationed at Faridabad do not hold the jurisdiction and hence, the assessment made is bad in law. Ld. DR argued that the issue of notice and jurisdiction cannot be raised at this juncture in view of the provisions of sec. 292BB and also relied on the judgment of Hon'ble Delhi High Court in the case of Abhishek Jain Vs. ITO in WP (Civil) No. 11844/2016 dated 01.06.2018.

5. Heard the arguments of both the parties and perused the material available on record. We find that the notice has been duly served on the assessee and the assessee has not raised any objection on the jurisdiction with ITO, Faridabad within one month of the issue of notice u/s 143(2). Hence, we hereby dismiss the appeal of the assessee on this ground.

6. Ground no. 3, 4 and 9 relate to non-deduction of TDS and subsequent addition u/s 40(ia) for the default u/s 201(1). Brief facts of the issue are that the assessee is in the business of hiring of cranes. During the year the assessee has paid an amount of Rs. 1,04,87,799/- to various parties on account of the crane hire charges. The Assessing Officer held that the provisions of the TDS have not been observed by the assessee and hence the amount paid by the assessee without deducting the TDS has been treated u/s 40(a)(ia) of the Act. During the

proceedings before Ld. CIT(A) the assessee has raised the ground at sl. No. 3 that there was no TDS default. The Ld. CIT(A) adjudicated the issue taking into consideration the judgments of various courts on the issue of amounts paid and payable and applicability of section 40(a)(ia) thereof. The Ld. CIT(A) held that the provisions of sec. 40(a)(ia) is applicable to the amounts paid and as well as payable. However, the moot issue of whether or not the assessee is liable to deduct tax on the payments made to various crane operators has not been adjudicated. Hence, we remind this issue back to the file of the Ld. CIT(A) to adjudicate on the core issue of applicability of sec. 194C(6) to the payments made by the assessee.

7. Ground no. 5, 6 and 7 relate to disallowance on account of crane running expenses, repair & maintenance expenses and other expenses. The Assessing Officer has disallowed 25% out of the crane running expenses, 25% out of repair and maintenance expenses and 20% out of other expenses. Before the Assessing Officer, no details have been produced on the plea that there was loss of books of accounts and an FIR has been filed. The Assessing Officer clearly observed that the FIR do not depict any loss of books of accounts and it pertains to only loss of cheque book, bill book and letter head. Even before the Ld. CIT(A) no details have been produced. The assessee could not prove or bring anything on record pertaining to loss of bills and vouchers with regard to

the expenses which are generally maintained and kept at the office premises. Even during the hearing before us, no direct or indirect evidences to prove the expenses incurred have been filed. Hence, in the absence of any other evidence, we decline to interfere in the reasoned order of the Ld. CIT(A) on this issue.

8. Ground no. 8 relates to depreciation allowable on the cranes. The Assessing Officer allowed depreciation @ 15% on the grounds that the cranes are not commercial vehicles. The Ld. CIT(A) confirmed the addition made by the Assessing Officer on the grounds that it was not clear whether the cranes are mounted on vehicle or truck. Before us, it was argued that the cranes do not move on their own unless they are mounted on the vehicles which make them mobile. The Ld. DR relied on the orders of the authorities below.

9. Heard the arguments of both the parties and perused the material available on record. The cranes are registered as a motor vehicle under the motor vehicle Act and are used for commercial purpose. Though it is not used as a transport vehicle, Crane is a four wheeled excavator-cum-transport vehicle used for excavation of earth and movement of the same, though for limited distances and for lifting of equipments. Even though the purpose of Motor Lorry which is a heavy motor vehicle used for transport of goods from place to place, cannot be served by a crane, we are of the view that the expression motor lorry covered by the

Income Tax Rules providing for higher rate of depreciation can be basically used for a heavy vehicle such as crane which is also used for transport of excavated soil, sand or other goods, for a limited distance. Therefore it serves as a transport equipment as well and so long as it is registered under the Motor Vehicles Act, it is a motor vehicle within the meaning of the said term as held by the Hon'ble High Court of Kerala in the case of CIT Vs. Gaylord Constructions and Hon'ble High Court of Gujarat in the case of Gujco Carriers Vs. CIT 122 taxman 206 and Bose Abraham Vs. State of Kerala (2001) 9 KTR 366 (SC)

10. Ground no. 10 is premature at this juncture and hence, not adjudicated.

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

Order Pronounced in the Open Court on 03/12/2019

Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated: 03/12/2019

Kavita

Copy forwarded to:

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

ASSISTANT REGISTRAR

