

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

Before Shri P.M. Jagtap, Vice-President

**I.T.A. No. 1282/KOL/2019
Assessment Year: 2011-2012**

Jagannath Shankar Chowdhury,.....Appellant
Sonapatti, Fatakdwār, Kalna,
Dist. Burdwan-713409
[PAN: AFDPC0372D]

-Vs.-

Income Tax Officer,.....Respondent
Ward-1(2), Burdwan,
Aayakar Bhawan, Court Compound,
Burdwan-713101

Appearances by:

Shri J.M. Thard, Advocate, for the Appellant
Shri Jayanta Khanra, JCIT, Sr. D.R., for the Respondent

Date of concluding the hearing : February 20, 2020
Date of pronouncing the order : May 04, 2020

O R D E R

This appeal filed by the assessee is directed against the order of Id. Commissioner of Income Tax (Appeals), Burdwan dated 08.03.2019 and the solitary issue involved therein relates to the disallowance of Rs.3,92,864/- made by the Assessing Officer and confirmed by the Id. CIT(Appeals) under section 40(a)(ia) of the Income Tax Act, 1961.

2. The assessee in the present case is an individual, who is engaged in the business of trading in Mobile Phone, Accessories, Cash Cards and Stationery Goods. The return of income for the year under consideration was filed by him on 27.09.2011 declaring total income of Rs.6,81,403/-. In the Profit & Loss Account filed along with the said return, commission income of Rs.18,60,040/- was credited by the assessee. During the course

of assessment proceedings, it was noticed by the Assessing Officer that the assessee has received commission income for purchasing Cash Cards and other goods from four parties, namely M/s. P.K. International, M/s. Vodafone Essar South Limited, M/s. Vodafone South Limited and M/s. Paul Brothers & Sons after deducting tax at source. He also found that commission was paid by the assessee to six parties aggregating to Rs.3,92,864/- without deducting tax at source. According to the Assessing Officer, the assessee was liable to deduct tax at source from the commission so paid as per the provisions of section 194H and since there was failure on the part of the assessee to comply with the said requirement, the Assessing Officer invoked section 40(a)(ia) and made a disallowance of Rs.3,92,864/- on account of commission.

3. The disallowance made by the Assessing Officer on account of commission under section 40(a)(ia) for non-deduction of tax at source was challenged by the assessee in the appeal filed before the Id. CIT(Appeals). During the course of appellate proceedings before the Id. CIT(Appeals), it was contended on behalf of the assessee that the amount in question represented trade discount allowed by the assessee and since the same was not in the nature of commission as wrongly taken by the Assessing Officer, there was no requirement of deduction of tax at source from the said payment and the question of disallowance under section 40(a)(ia) could not arise. This contention of the assessee was not found acceptable by the Id. CIT(Appeals) on the ground that there had been no sale and purchase of goods made by the assessee with the concerned traders. He accordingly confirmed the disallowance made by the Assessing Officer under section 40(a)(ia) of the Act. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

4. I have heard the arguments of both the sides and also perused the relevant material available on record. The Id. Counsel for the assessee has

raised a new contention in support of the assessee's case on the issue under consideration by submitting that the amount in question represented management fees payable by Vodafone to the concerned parties as distributor and the role of the assessee was only to facilitate the disbursement /reimbursement of the said amount towards management fees to the concerned distributors. In support of this contention, he has also filed the additional evidence in the form of relevant e-mails received from Vodafone and submitted that the matter may be sent back to the Assessing Office for verifying the new plea raised on behalf of the assessee in the light of the said additional evidence. Alternatively he has also submitted that the concerned recipients having already declared the amount in question as their income and having paid tax thereon, the assessee, therefore, cannot be treated as in default for non-deduction of tax at source on the said amount and no disallowance under section 40(a)(ia) can be made. In my opinion, both these contentions raised by the Id. Counsel for the assessee for the first time before the Tribunal require verification and even the Id. D.R. has not raised any objection for sending the matter back to the Assessing Officer for deciding the same afresh after proper verification. I accordingly set aside the impugned order passed by the Id. CIT(Appeals) confirming the disallowance made by the Assessing Officer under section 40(a)(ia) and restore the matter to the file of the Assessing Officer for deciding the same afresh after verifying the contentions raised on behalf of the assessee for the first time before the Tribunal.

5. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open Court on May 04, 2020.

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

Kolkata, the 4th day of May, 2020

- Copies to :
- (1) **Shri Jagannath Shankar Chowdhury,
Sonapatti, Fatakdwār, Kalna,
Dist. Burdwan-713409**
 - (2) **Income Tax Officer,
Ward-1(2), Burdwan,
Aayakar Bhawan, Court Compound, Burdwan-713101**
 - (3) *Commissioner of Income Tax (Appeals), Burdwan;*
 - (4) *Commissioner of Income Tax- , Kolkata*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

By order

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

Laha/Sr. P.S.