

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.866/Bang/2018
Assessment year : 2005-06

M/s. Ravi Spice Processors Pvt. Ltd., P. B. No.6919, No.74/1, 3 rd Main Road, New Tharagupet, Bengaluru – 560 002. PAN : AAACR 8178 B	Vs.	The Assistant Commissioner of Income Tax, Circle -5(1)(1). Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Narendra Sharma, Advocate
Revenue by	:	Shri. A. Ramesh Kumar, JCIT (DR)(ITAT), Bengaluru

Date of hearing	:	05.03.2020
Date of Pronouncement	:	29.05.2020

ORDER

Per A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A)-V, Bengaluru, dated 01.02.2018, for Assessment Year 2005-06.

2. The grounds raised by the assessee are as under:

1. *The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*

2. *The learned CIT[A] is not justified in upholding the disallowance of RS.10,23,138/- in respect of the amounts debited in the profit and loss account as freight on purchases invoking the provisions of section 40[a][ia] without appreciating that there was no obligation on the appellant to deduct tax u/s. 194C of the Act in respect of the freight charges that constituted and formed part of the purchase cost of the appellant under the facts and in the circumstances of the appellant's case.*
3. *The learned CIT[A] is not justified in upholding the disallowance of Rs.36, 16,957/- being freight forwarding expenses invoking the provisions of section 40[a][ia] without appreciating that there was no expenditure claimed by the appellant on this score and that further the appellant had furnished the proof that taxes were paid by the payees before the learned CIT[A] and hence, no disallowance was required to be made under the facts and in the circumstances of the appellant's case.*
4. *Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s 234-B, 234-C and 234-D of the Act, which under the facts and in the circumstances of the appellant's case and the levy deserves to be cancelled.*

2. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. Learned AR of the assessee placed reliance on the Tribunal order rendered in the case of K. V. Sathyanarayana Murthy, Proprietor, M/s. Srinivasa Iron and Hardware Vs. ITO, Ward-1, Rajahmundry, in ITA No.428/Viz/2014 dated 25.07.2018. The Tribunal order copy was

submitted and our attention was drawn to para 5 of this Tribunal order and it was pointed out that as per para 5 of this Tribunal order, the facts are similar, and in that case also, the assessee has not engaged the transporter but only placed order with the supplier and received the goods through transporters and the payment was made as per the instructions of the supplier on 'to pay' bill and therefore, there is no either express or implied contract with the transporter and therefore, section 194C is not applicable and as a consequence, no disallowance should be made under section 40(a)(ia) of the Income Tax Act, 1961. Regarding the disallowance of Rs.36,16,957/-, it was submitted that Form No.26A issued by a Chartered Accountant to the extent of Rs.27,77,886/- is available on pages 51 to 55 of the Paper Book in which it is certified that to the extent of this amount of Rs.27,77,886/-, the said recipient / payee has accounted and treated this amount for which TDS has not been made by the assessee and therefore, at least to the extent of this amount, no disallowance can be made under section 40(a)(ia) of the Income Tax Act, 1961. He submitted that the matter regarding this aspect should be restored back to the file of AO / CIT(A) for a fresh decision after examining this certificate issued by Chartered Accountant. Learned DR of the Revenue supported the orders of Authorities below.

4. We have considered the rival submissions. In our considered opinion, the whole issue should go back to the file of CIT(A) for a fresh decision, because for the expense of Rs.1023138/-, this is the argument of learned AR of the assessee that this much payment of freight involved was made in respect of those purchases for which there is no contract entered into by the assessee with the transporter and it was the supplier who has engaged the transporter and the assessee has placed order on the supplier for home delivery. Regarding, the second disallowance of Rs.36,16,957/-, this is the argument put forward before us that out of this amount, an amount of

Rs.27,77,886/- was paid to Shri. S. Parthipan, Proprietor, M/s. Hariharan Logistics and regarding this payment, CA certificate has been placed in Paper Book in Form No.26A but the same was not commented upon by the authorities below. In view of this discussion, we set aside the order of CIT(A) and restore the entire matter back to the file of CIT(A) for fresh decision in the light of above discussion after providing adequate opportunity of being heard to both sides.

5. In the result, assessee's appeal is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,
Dated: 29th May, 2020.
/NS/*

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| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.