

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "B", BANGALORE**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R.BASKARAN, ACCOUNTANT MEMBER**

**ITA No.1544(Bang)/2019
(Assessment Year : 2012-13)**

M/s Ryatar Sahkari Sakkare Karkhane Niyamit,
Rannanagar, Timmapur,
Tq. Mudhol, Dist. Bagalkot
PANNo.AAAAR0428E

Appellant

Vs

The Income Tax Officer,
Ward-2, Navanagar,
Bagalkot

Respondent

**Appellant by : None
Revenue by : Shri Muzaffar HUSSAIN, CIT**

**Date of hearing : 24-06-2020
Date of pronouncement : 24-06-2020**

ORDER

PER B.R.BASKARAN, AM

The assessee has filed this appeal challenging the order dated 19-03-2019 passed by Ld CIT(A), Hubballi and it relates to the assessment year 2012-13. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the disallowance made u/s 40(a)(ia) of the Act, 1961.

2. None appeared on behalf of the assessee, even though the notice of hearing sent to the assessee by registered post was duly

acknowledged. Hence we proceed to dispose of the appeal ex-parte, without the presence of the assessee.

3. We heard Ld D.R and perused the record. The assessee is a Co-operative Society and is engaged in the business of manufacture of sugar. During the course of assessment proceedings, the AO noticed that the assessee has made following payments without deducting tax at source:-

A) NON COMPLIANCE OF TDS U/S 194C - PAYMENT TO CONTRACTORS			
1	Payments to harvesting contractor	4,67,20,236	
2	Payments to harvesting contractor	15,98,878	
3	Transport contractors bill payments	6,19,75,561	
4	Transport contractors bill payments	17,10,960	11,20,05,635
B. NON COMPLIANCE OF TDS U/S 194J PROFESSIONAL CHARGES			
1	Legal & consultation charges	2,27,1520	22,71,520
Total payments made without making TDS(A+B)			11,42,77,155

On being questioned, the assessee furnished its reply, which has been extracted by the AO at page 3 of the assessment order. However, the AO disallowed the above said payments aggregating to Rs.11.42 crores u/s 40(a)(ia) of the Act by observing that the assessee did not deduct tax at source from the above said payments.

4. The assessee challenged the above said addition by filing appeal before Ld CIT(A). When the notice of hearing was sent by Ld CIT(A) to the assessee, it took adjournments from time to time on the reasoning that an identical issue is pending before the Hon'ble Supreme Court. Hence the Ld CIT(A) disposed of the

appeal ex-parte, confirming the disallowance made by the AO. Aggrieved, the assessee has filed this appeal before the Tribunal.

5. The Ld D.R supported the order passed by tax authorities. However, on a perusal of the order passed by Ld CIT(A), we notice that the first appellate authority has passed the order ex-parte. Similarly, on perusal of the assessment order, we notice that the assessing officer did not address any of the explanations furnished by the assessee, even though he has extracted gist of explanations in the assessment order and the letter dated 11.08.2014 furnished by the assessee to the AO was made part of assessment order.

6. Under these set of facts, the Bench proposed to restore the issue to the file of assessing officer for examining the issue afresh. The Ld D.R also accepted to the same. Accordingly, we set aside the order passed by Ld CIT(A) and restore the impugned issue to the file of the AO for examining it afresh by duly considering and also addressing the explanations furnished by the assessee. We also make it clear that the assessee should be given adequate opportunity of being heard. After hearing the assessee, the AO may take appropriate decision in accordance with law.

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

Order pronounced on 24-06-2020.

Sd/-
(N.V.VASUDEVAN)
VICE PRESIDENT
Dated: 24-06-2020
***am**

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
- 5.DR
- 6.Guard File

By Order
Asst. Registrar