

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.04/Viz/2020
(निर्धारण वर्ष/Assessment Year:2006-07)**

M/s Annavarapu Enterprises
D.No.24-26-2
Dr.Durgaprasad Buildings
Opp.Ramalayam
Sambamurthy Road
Durga Puram, Vijayawada

Vs Income Tax Officer
Ward-2(4)
Vijayawada

[PAN : AA-EFA0456G]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri G.V.N.Hari, AR
प्रत्यर्थी की ओर से / Respondent by : Smt.Suman Malik, DR

सुनवाई की तारीख / Date of Hearing : 22.06.2020
घोषणा की तारीख/Date of Pronouncement : 26.06.2020

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the
Commissioner of Income Tax (Appeals) [CIT(A)]-6, Hyderabad in Appeal

No.10113/2019-20/B1/CIT(A)-6 dated 01.10.2019 for the Assessment Year (A.Y.)2006-07.

2. Brief facts of the case are that the assessee is a C&F agent. The assessee filed the return of income admitting total income of Rs.1,37,568/-. The return was processed u/s 143(1) of the Income Tax Act, 1961 (in short 'Act') and subsequently converted to scrutiny. The Assessing Officer (AO) in the assessment proceedings found that the assessee made the payments towards transportation charges amounting to Rs.9,88,797/-, security service charges to the extent of Rs.82,286/- and interest of Rs.9000/- to Sri T.T.Srinivasa Rao. The AO further found that the transportation charges as well as the security charges are in the nature of contract payments and TDS required to be made u/s 194C of the Act. Similarly, interest paid to Sri T.T.Srinivasa Rao attracts TDS u/s 194A of the Act and the assessee failed to deduct the TDS. The assessee argued before the AO that the assessee is a C&F agent, the transportation charges and security charges are in the nature of reimbursement of expenses, thus submitted that no TDS required to be made on account of transportation charges as well as the security charges. In respect of interest payment, the assessee argued that the assessee has obtained Form 15G and filed with CIT, Vijayawada, hence, no

TDS required to be made. However, not being impressed with the submissions made by the assessee, the AO disallowed the expenditure u/s 40(a)(ia) of the Act and made the addition to the returned income.

3. Against which the assessee went on appeal before the CIT(A) but none appeared before the CIT(A) on behalf of the assessee and the Ld.CIT(A) dismissed the appeal of the assessee. Basing on the written submissions made the Ld.CIT(A) decided the appeal on merits and held that the assessee required to deduct tax at source u/s 194C and 194A of the Act, thus did not find any error in the order of the AO and accordingly, upheld the order of the AO and dismissed the appeal of the assessee.

4. Against which the assessee filed appeal before us. During the appeal hearing, the Ld.AR argued that the assessee is a C&F agent, the payments made by the assessee are in the nature of reimbursement of expenses, hence submitted that no TDS required to be made on account of transportation charges, as well as security charges. The assessee also reiterated the submissions made before the AO, stating that since, the assessee obtained the Form 15G, no TDS required to be made on interest payments also. The Ld.AR further submitted that in the instant case, the CIT(A) decided the appeal on the basis of written submissions and none

appeared before the Ld.CIT(A). Therefore, requested to remit the matter back to the file of the Ld.CIT(A) to decide the issue on merits. The Ld.AR further submitted that on identical issue, the Hon'ble ITAT in the case of M/s Annavarapu Enterprises (1989) in I.T.A.No.13/Viz/2016 dated 30.08.2017 decided the appeal in favour of the assessee. Therefore, submitted that the issue is squarely covered by the decision of this Tribunal in the case of M/s Annavarapu Enterprises (1989). Hence, one more opportunity may be given to the assessee to present the case.

5. On the other hand, the Ld.DR vehemently opposed to remit the matter back to the file of the CIT(A).

6. We have heard both the parties and perused the material placed on record. In the instant case, as per para No.4.2 of the CIT(A) order, the Ld.CIT(A) had issued only one notice, fixing the case for hearing on 13.09.2019 and decided the appeal on the basis of written submissions. The Ld.CIT(A) ought to have given one more opportunity in the interest of justice. This appeal was decided without being personally heard the assessee. Further the Ld.AR submitted that on identical issue in the case of M/s Annavarapu Enterprises (1989) (supra), this Tribunal has decided the issue in favour of the assessee. Similarly, the Ld.CIT(A) for the A.Y.2006-07

and 2008-09 in the case of M/s Annavarapu Enterprises (1989) decided the appeal in favour of the assessee and deleted the addition. Therefore, in the interest of justice, we are of the considered view that the assessee required to be given an opportunity to present it's case before the Ld.CIT(A). Hence, we remit the matter back to the file of the Ld.CIT(A) with a direction to examine whether the expenditure in question i.e., reimbursement of expenses attracts TDS or not and whether the case is covered by the decision of this Tribunal as argued by the Ld.AR and decide the appeal on merits after giving sufficient opportunity to the assessee. Accordingly, appeal of the assessee is allowed for statistical purpose.

7. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on 26th June, 2020.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 26.06.2020

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee– M/s Annavarapu Enterprises, D.No.24-26-2, Dr.Durgaprasad Buildings, Opp.Ramalayam, Sambamurthy Road, Durga Puram, Vijayawada
2. राजस्व/The Revenue – Income Tax Officer, Ward-2(4), Vijayawada
3. The Pr.Commissioner of Income Tax, Vijayawada
4. The Commissioner of Income Tax (Appeals)-6, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam