

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD
BENCH "A-SMC", HYDERABAD

BEFORE SHRI A. MOHAN ALANKAMONY,
ACCOUNTANT MEMBER

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| | ITA No.139/Hyd/2017 | | |
| | Assessment Year: 2007-08 | | |
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| Chadalavada Hariprasad, Vivekananda Road, Gudur, Nellore District. PAN: ABVPC 1883 H | Vs. | Dy. Commissioner of Income Tax, Circle-1, Nellore. | |
| (Appellant) | | (Respondent) | |
| | | | |
| Assessee by: | Sri A.V. Raghuram – AR | | |
| Revenue by: | Sri D.J. Prasad Anand - DR | | |
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| Date of hearing: | 21/10/2019 | | |
| Date of pronouncement: | 13/01/2020 | | |

ORDER

This appeal is filed by the assessee against the order of the Ld. CIT(A), Tirupati in appeal No. 360/2014-15/CIT(A)/TPT, dated 4/1/2017 passed U/s. 143(3) r.w.s 254 & U/s. 250(6) of the Act for the A.Y. 2007-08.

2. The assessee has raised 6 grounds in his appeal, however, the crux of the issue is that the Ld. CIT (A) has erred in confirming the order of the Ld. AO who had disallowed the expenditure of Rs. 11,68,000/- invoking the provisions of section 40(a)(ia) of the Act.

3. The brief facts of the case that the assessee is an individual engaged in the business as Film Distributor, filed his return of income for the AY 2007-08 on 28/3/2008 declaring income of Rs. 3,44,566/- and agricultural income of Rs. 1,40,000/-. On the earlier instance the Tribunal had set aside the order of the Ld. CIT (A) and restore the matter back to the file of the Ld. AO in order to examine and decide the issue in the light of the Special Bench decision in the case of Marline Shipping Transport and Others. When the matter came up before the ld. AO on the second round, by then, the Hon'ble jurisdictional Andhra Pradesh high Court had suspended the decision rendered by the Special Bench of the Tribunal. Further, the issue was decided by the Hon'ble Gujarat High Court and Kolkata High Court against the assessee. Based on the same, the Ld. AO once again invoked the provisions of section 40(a)(ia) of the Act and disallowed the amount of Rs. 11,68,000/- in the hands of the assessee vide his order dated 28/3/2014. The Ld. CIT (A) thereafter passed ex-parte order confirming the order ld. AO aggrieved by which the assessee is now in appeal before us.

4. Before us, the Ld. AR submitted that the matter may be remitted back to the file of the Ld. AO for de-novo consideration as the assessee is confident that the recipient of the amount of Rs. 11,68,000/- has duly included the same in the return of income and paid tax. The Ld. DR on the other hand, vehemently objected to the submission of the Ld. AR and pleaded for confirming the orders of the Ld. Revenue Authorities.

5. I have heard the rival submission and carefully perused the materials on record. At the outset, I find that the assessee had not appeared before the Ld. CIT (A) therefore the Ld. CIT (A) was forced to pass ex-parte order on merits. Even before us, at this stage, the assessee has not produce any evidence to show that the recipient of amount of Rs. 11,68,000/- has included the same in the return of income and paid tax duly. In this situation, I do not find much strength in the arguments advanced by the Ld. AR. However, considering the prayer of the Ld. AR, and in the interest of justice, I hereby remit the matter back to the file of Ld. CIT (A) in order to consider the appeal afresh by providing one more opportunity to the assessee of being heard. At the same breath, I also hereby caution the assessee to promptly co-operate before the Ld. CIT (A) in the proceedings failing which the Ld. CIT (A) shall be at liberty to pass appropriate order in accordance with law and merits based on the materials on the record. It is ordered accordingly.

5. In the result, appeal filed by the assessee is allowed for statistical purposes as indicated hereinabove.

Pronounced in the open Court on 13th January, 2020.

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated:13th January, 2020

OKK

Copy to:-

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- 2) The DCIT, Circle-1, Nellore.
- 3) The CIT(A), Tirupati.
- 4) The Pr. CIT, Tirupati.
- 5) The DR, ITAT, Hyderabad
- 6) Guard File