

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH
(Conducted Through Virtual Court)
Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA No. 238/Ahd/2018
Assessment Year 2012-13

Shri Mohmed Shakil Mohmed Shafi Mutawalli [Pop: Sabar Industries] 122, GIDC, Motipura, Himatnagar PAN: ABLPM3361L (Appellant)	Vs	The ITO, S.K. Ward-3, Himatnagar-383001 (Respondent)
---	----	---

Revenue by: Shri R.R. Makwana, Sr. D.R.
Assessee by: Shri Sanjay R. Shah, A.R.

Date of hearing : 09-09-2021
Date of pronouncement : 16-09-2021

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2012-13, arises from order of the CIT(A)-2, Ahmedabad dated 26-10-2017, in proceedings under section 143(3) r.w.s. 263 of the Income Tax Act, 1961; in short "the Act".

2. The assessee has raised following grounds of appeal:-

“Your appellant being aggrieved by the Order passed by me Commissioner of Income Tax (Appeals)-2, Ahmedabad [hereinafter referred to as "Learned CIT (Appeals)"] dated 26/10/2017 presents this appeal against the same on the following amongst other grounds of appeal. The grounds of appeal set out hereunder are independent of and without prejudice to each other:

1.0 The learned CIT(A) erred in law and on facts in confirming disallowance of Rs.7,95,121/- out of Rs.10,63,955/- made by the learned A.O. u/s 40 (a)(ia) of the Act.

2.0 The learned CIT(A) grossly erred in confirming such disallowance ignoring the provisions of Section 194C (6) of the Act and also ignoring the binding decision of Hon'ble Gujarat High Court in the case of CIT v/s Valibhai Khanbhai Mankad reported at 261 CTR 538. It is submitted that it be so held now and disallow once as confirmed by the learned CIT(A) be deleted.”

3. The assessee has also filed additional grounds of appeal as follows:-

“1.0 The learned AC erred in disallowing a sum of Rs.10,63,955/- on the ground that this amount which is paid for freight has not been established to have been paid for the purpose of transport and thus erred in disallowing the said amount questioning the genuineness of the expenses whereas the learned Administrative CITs u/s 263 order had directed him to verify the applicability of section 40 (a)(ia) to such payment. The learned AO has thus exceeded his jurisdiction and so the order passed by him is bad in law on this count. The learned CIT(A) erred in upholding such treatment by the learned AO in para 2.2 of his order. It is submitted that it be so held now and the disallowance made by the learned AO and confirmed by learned CIT(A) on this count be deleted.

1.1 Without prejudice to the above, the learned AO and learned CIT(A) failed to appreciate that the appellant had led full evidences to establish genuineness of the payment made for freight to the transporters and hence the above payment of Rs. 10,63,955/- should not have been disallowed by questioning the genuineness of the same, it is submitted that it be so held now.”

4. There was a delay of 26 days in filing this instant appeal. In this regard, the assessee has filed application for condonation of delay in filing the appeal along with affidavit dated 13th Feb, 2020. In the affidavit, the assessee has explained that order passed by the ld. CIT(A) was misplaced from the assessee and after locating the order the same handed over to the consultant of the assessee who was based at Himatnagar, however, the appeal before the ITAT was to be filed by another consultant based at

Ahmedabad. Therefore, there was some delay in filing the instant appeal because of the circumstances which were beyond the control of the assessee. Looking to the explanation of the assessee and marginal delay in filing this appeal it appeared that there was reasonable cause which resulted delay in filing this appeal. Therefore, we condone delay of 26th days in filing this appeal.

5. The fact in brief is that original assessment u/s. 143(3) of the Act was finalized in the case of the assessee on 26th March, 2014 determining total income at Rs. 9,15,737/-. Subsequently, ld. CIT has passed order u/s. 263 and directed the Assessing Officer to make afresh assessment after giving opportunity to the assessee on the issue of non-deduction of tax on the freight payment of Rs. 10,63,995/-. Consequently, assessment u/s. 143(3) of the Act was finalized on 16th Feb, 2015 wherein Assessing Officer held that only submission of PAN No. of the transporters were not sufficient with respect to the payment made to transporter. Consequently, the claim of transport expenses of Rs. 10,63,995/- was disallowed and added to the total income of the assessee.

6. The assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee holding that assessee has not made compliance with the provision of section 194C(7) of the Act.

7. During the course of appellate proceedings before us, the ld. counsel has submitted paper book comprising copies of documents and details of submission made before the Assessing Officer and ld. CIT(A). The ld.

counsel has referred page nos. 14 to 18 of the paper book containing particulars of the transporters along with copies of invoices, transportation bills along with the particulars of truck no. PAN no, phone no and complete addresses of the transporters. The ld. counsel has referred the decisions of Soma Rani Ghosh Vs. DCIT 74 taxmann.com 90 (Kolkata ITAT), CIT vs. Shri Mrikamba Transport Co. 57 taxman.com 273 (Karnataka High Court) and ACIT vs. Arihand Trading Co. 104 taxmann.com 336 (Jaipur ITAT).

The ld. counsel submitted that in the aforesaid decisions it was held that when the assessee had made compliance with the provision of section 194C(6) then simply not making compliance with section 194C(7) will not lead to disallowing the claim of assessee u/s. 40(a)(ia) of the act. On the other hand, the ld. Departmental Representative has supported the order of lower authorities

8. Heard both the sides and perused the material on record. Without reiterating facts as elaborated in this order, assessment order u/s. 143(3) of the act was passed on 26th March, 2014. In this regard, the ld. counsel submitted that at the time of original assessment relevant supporting information i.e. PAN No, copy of transport bill and other particulars comprising complete addresses of the transporters were furnished before the Assessing Officer demonstrating that assessee had made compliance with the provision of section 194(6) of the I.T. act. Without considering the relevancy of these facts, the ld. Pr. CIT has set aside this issue to the file of Assessing Officer for making afresh assessment. During the course of assessment made u/s. 143(3) r.w.s. 263 of the Act before the Assessing Officer, copies of PANs of the transporters along with copies of invoices

containing particulars of phone no., address, and other particulars of the transportation of the goods were furnished. However, the Assessing Officer has neither disproved the genuineness of these evidences nor made any further verification/examination related to the claim of such expenditure debited to the P & L A/c. The Id. CIT(A) has sustained the disallowance merely on technical basis that assessee has failed to make compliance with the provision of section 194(7) of the act. In this regard, we have gone through the judicial pronouncements referred by the Id. counsel in the case of the Soma Ghosh v Vs. DCIT 74 taxman.com 90 the ITAT Calcutta holding that if assessee complies with the provision of section 194(6), no disallowance u/s. 40(a)(ia) is permissible even though there is violation of provision of section 194C(7) of the act. In the case of CIT vs. Marikamba Transport Co., the Hon'ble High Court of Karnatka 57 taxman.com 273 held that in case of payment made to sub-contractor non-filing of form no. 15-I/Jis only a technical defect and provision u/s. 40(a)(ia) should not attract in such a case. In the light of the above facts and findings, it is observed that in this case assessee has furnished the copies of PAN along with copies of invoices of transportation bill comprising complete address of the transporter, phone no and complete particulars of the goods loaded through the transportation. However, the Assessing Officer has not taken any step to disprove the genuineness of the transportation expenses by not conducting any inquiry therefore simply for technical lapse u/s. 194(7) it is not appropriate to disallow the claim of transportation expenses. Looking to the above facts and finding, we consider that the decision of Id. CIT(A) is not justified, therefore, this ground of appeal of the assessee is allowed. Since we have allowed the main ground of appeal of the assessee, therefore, the

additional ground filed by the assessee has become infructuous and the same is dismissed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 16-09-2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad : Dated 16/09/2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद