



आयकर अपीलीय न्यायाधिकरण, रायपुर न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

(Through Virtual Court at Raipur)

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI JAMLAPPA D. BATTULL, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA Nos. 275/RPR/2016
निर्धारण वर्ष / Assessment Year : 2010-2011

Shri Kailas Chand Agrawal
53, Shri Balaji Bhawan, T.P Nagar
Korba (C.G.)

PAN : ACQPA 4988 B

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy Commissioner of Income Tax,
Income Tax Office, Mahanandi Complex,
Korba (C.G.)

.....प्रत्यर्थी / Respondent

Appearances

Assessee by : Shri G. S. Agrawal
Revenue by : Shri G. N. Singh

सुनवाई की तारीख / Date of conclusive Hearing : 09/02/2022
घोषणा की तारीख / Date of Pronouncement : 01/04/2022

आदेश / ORDER

PER JAMLAPPA D. BATTULL, AM:

The present appeal is filed by the assessee against the first appellate order of Commissioner of Income Tax - Appeals, Bilaspur [for short "CIT(A)"] passed u/s 250 vide order dt 07/03/2016, which in turn sprung from the assessment order [for short "AO"] dt 18/03/2013 passed by the Ld Assessing Officer [for short "Ld AO"] u/s 143(3) of the Income-tax Act, 1961 [for short "the Act"] for assessment year [for short "AY"] 2010-2011.

2. The dispute under this tax litigations is twofold, firstly it challenges the legality of ad-hoc disallowance of business expenses and secondly claims rescue from the application of 40(a)(ia) on the evidential documents of identification and copy of ITR.

3. Before advancing the matter on facts for adjudication, we reproduce grounds challenged by the appellant as under;

“1. That under the facts and the law, the learned commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs8,30,975/- made by the learned Assessing Officer u/s 40(a)(ia) for non-deduction of tax u/s 194A from NBFC, namely M/s Magma Leasing Finance Limited and M/s SREI Infrastructure Limited, rejecting the explanations”

“Prayed that the deductees are national repute NBFCs and are paying taxes and no amount is outstanding at the end of the year”

“Prayed to delete the disallowance of Rs8,30,975/-“

“2. That under facts and the laws, the learned CIT(Appeals) further erred in maintaining the adhoc disallowance of Rs2,00,000/- on lumpsum basis made by the learned Assessing Officer, out of various expenses claimed by the assessee”

*“Prayed to delete the disallowance of Rs2,00,000/-“
(Emphasis supplied)*

4. Pithily the facts of the case are;

4.1 The appellant assessee is an individual and proprietor two concerns in the name & style viz; **Shri Balaji Road Carrier**, engaged in transport & logistic business and **Shri Balaji Petroleum**, engaged in trading of petroleum products. For AY 2010-2011, a return of income was e-filed on 25/09/2010 declaring total income of ₹17,20,230/-, which was summarily processed u/s 143(1) of the Act and subsequently selected for scrutiny through CASS.

4.2 The assessment u/s 143(3) of the Act was framed assessing the total income at ₹27,54,450/- on account of following three disallowance;

- a. Part of total expenses for sum of ₹2,00,000/- on ad-hoc basis reciting the reasoning of self-made cash vouchers and the presence of element of otherwise business usages etc.
- b. Interest on delayed payment of TDS to the ex-chequer for sum of ₹3,241/- and
- c. Interest / finance charges ₹8,30,975/- u/s 40(a)(ia) paid to certain Non-Banking-Financial-Corporation [for short “NBFC”] without deduction of tax at sources [for short “TDS”] u/s 194A of the Act.

4.3 Aggrieved assessee carried the matter in an appeal before the first appellate forum, wherein Ld CIT(A) not finding any infirmity in the view taken by the Ld AO, upheld the disallowance carried out in its entirety.

4.4 The appellant being aggrieved with the order of the CIT(A), has carried the matter in appeal before us with the grounds of appeal set herein before at Para 3.

5. We have heard the rival contention of both the parties; perused material placed on record and duly considered the facts of the case in the light of settled legal position and the case laws relied upon by the appellant assessee as well the respondent revenue.

6. **We shall now first deal with ground number 1 relating to disallowance u/s 40(a)(ia) of the Act;**

6.1. During the course of hearing of this appeal, the Ld AR candidly placed on records that, in the absence of certificates from a Chartered Accountant and NBFC

in terms of first proviso to section 201(1), has taken us through paper book comprised of;

- a. Tax audit reports obtained u/s 44AB of the Act in relation to both the businesses,
- b. A certificate of lower deduction issued to one of the NBFC viz; SREI Equipment Finance Pvt Ltd & the copy of PAN thereof,
- c. A letter of confirmation from Magma Fincorp Ltd against the payment of interest & a copy of ITR filed by it.

6.2. Admittedly, it is a matter of fact borne from the records that, following amount of interest / finance charges were debited without TDS u/s 194A and was subjected to 40(a)(ia) disallowances by the Ld AO, against which no certificates in “Annexure-A to form 26A”, from a Chartered Accountant as contemplated in first proviso to section 201(1) of the Act r.w.s. 31ACB; were placed neither before the Ld AO during the course assessment proceeding nor before the Ld CIT(A);

Sr	NBFC Payee (Interest / Finance Charges Paid)	Amt of Interest/finance charge Debited / Claimed as Exps & disallowed	CA Certificate Details	
			Date	Certified Amount
1	Magma Leasing Finance Ltd	3,46,000	No Certificate Placed on Record	
2	SREI Infrastructure Finance Ltd	4,84,975	No Certificate Placed on Record	

6.3. As regards to allowability of interest/finance charges, it is imperative to make note of insertion of first proviso to Section 201 (1) by the Finance Act 2012, operative with effect from 1st July 2012 which reads as under:

"Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the sum paid to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident-

- (i) has furnished his return of income under section 139;*
(ii) has taken into account such sum for computing income in such return of income; and
(iii) has paid the tax due on the income declared by him in such return of income;
And the person furnishes a certificate to this effect from an accountant in such form as may be prescribed.
(Emphasis supplied)

6.4. The corroborative & corresponding amendments in section 40(a)(ia) was also carried out by the same Finance Act, 2012 by insertion of second proviso and made effective from 1st March, 2013, which read as under;

The following second proviso shall be inserted in sub-clause (ia) of clause (a) of section 40 by the Finance Act, 2012, w.e.f. 1-4-2013 :

Provided further that where an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII-B on any such sum but is not deemed to be an assessee in default under the first proviso to sub-section (1) of section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso.

Explanation.—For the purposes of this sub-clause,—

- (i) "commission or brokerage" shall have the same meaning as in clause (i) of the Explanation to section 194H;*
(ii) "fees for technical services" shall have the same meaning as in Explanation 2 to clause (vii) of sub-section (1) of section 9;
(iii) "professional services" shall have the same meaning as in clause (a) of the Explanation to section 194J;
(iv) "work" shall have the same meaning as in Explanation III to section 194C;
37[(v) "rent" shall have the same meaning as in clause (i) to the Explanation to section 194-I;
(vi) "royalty" shall have the same meaning as in Explanation 2 to clause (vi) of sub-section (1) of section 9;]
(Emphasis supplied)

6.5. The conjunctive & constructive interpretation **first proviso to Section 201(1) and second provision to section 40(a)(ia)** of the Act reveals that, these have been inserted to benefit the Assessee, to provide that where a person fails to deduct tax at source (TDS) on the sum paid or credited to a resident payee under certain contingencies, such person;

- a. **Shall first be excluded from holding as the assessee in default**, subject to placing on records the certificate from a chartered accountant and
- b. **Shall then be deemed that, such person has deducted and paid the tax** on such sum on the date of furnishing of return of income by the resident payee.

6.6. In the aforesaid position of statute and the law laid down by the Hon'ble Delhi High Court in **CIT Vs Ansel Landmark Township** reported at 377 ITR 635 and Hon'ble Apex Court in judgment in **M/s Hindustan Coca Cola Beverages Pvt Ltd Vs CIT** reported at 293 ITR 22 and in the context of circular number e Circular No. 275/201/95-IT(B) dt 29/1/1997 issued by the Central Board of Direct Taxes [for shot "CBDT"], the Hon'ble Lordships have observed that, once it is proved on record that, the payee has accounted the amount in question as income and discharged the due taxes thereon then, no recovery of tax demand be enforced against the assessee.

6.7. In the case at hand, firstly, so far as payment of interest / finance charges to M/s Magma Leasing Finance Ltd is concern, a copy of ITR filed for AY 2010-2011 along-with a letter of confirmation of receipt is placed to substantiate the compliance of aforesaid provision, however in the absence of certificate from an accountant proving the twofold facts, as to whether the amount of interest in question is accounted as income and taxes due thereon has been paid to the credit

of Government Treasury remained unestablished. Secondly so far as SREI Infrastructure Finance Ltd is concern, in support of assessee's claim, the reliance was placed on copy of PAN and a certificate of lower deduction obtained by the said NBFC from the Income Tax Authority and contended the due compliance of first provision to section 201(1) vis-à-vis second proviso to section 40(a)(ia) of the Act, however the assessee failed to substantiate how these documents alone testify the twofold establishment of aforesaid provision of law, therefore the appellant disentitled himself from immunity of being held as **"the assessee-in-default"** within the meaning of Section 201(1) of the Act and resultantly, un-distanced from application of provisions of section 40(a)(ia) of the Act. Thus, in the light of aforesaid observations, the **ground number 1 is dismissed.**

7. **We shall now deal with ground number 2 relating to ad-hoc disallowances;**

7.1. At the outset, the Ld AR submitted that, Ld AO had in a most arbitrary manner disallowed portion of expense applying ad-hoc percentile and which has been sustained by the Ld CIT(A), despite of the fact that, all these business expenditure debited to profit & loss account [for short **"P&L"**] and claimed in the return of income has all the valid characteristic laid in section 37(1) of the Act;

Sr	Head of Expenses	Major Business Expenses
1	Vehicle Repairing	73,42,144
2	Office Expenses	32,835
3	Diesel & Lubricants	10,84,337
4	Labour Welfare	3,18,643
5	Motor Cycle running	35,670
6	Salary & Wages	30,41,623
Total		1,18,55,252



7.2. During the course of hearing, Ld AR claimed that, the solitary basis for making and sustaining the aforesaid disallowance of expenditure by the lower tax authorities was that, the some of the aforementioned expenditure were in cash and were supported only by self-made vouchers in the absence of third-party evidence.

7.3. Our careful consideration of assessment records and the records of appellate proceedings it transpired that, neither of the lower tax authorities had pointed any such voucher, the genuineness of the expenditure therein claimed to have been incurred by the assessee wholly and exclusively for the purpose of its business did not inspire any confidence, nor it was the case of the revenue that any part of the expenditure in question was either found to be bogus or fictitious, nor was found to have not been incurred by the assessee wholly and exclusively for the purpose of his business. Indeed, it showcased an exercise of running around the circle by both the lower tax authorities while dealing with the present case.

7.4. We neither could come across any provision in the present Income Tax Statute nor it has been brought to our notice by either parties to dispute, which subscribes vis-à-vis authorises the tax authorities to arrive at this logic of subscribing ad-hoc disallowances. Evidently, there has been no clear findings as to number of vouchers requiring denial of allowances with the amount of expenditure and nature of defects therein or therewith, moreover department could not bring out any deprecative material on record to substantiate its conclusion as logical. We couldn't also see remotely there is any mention of rationale in arriving at the percentile of disallowance in the present case, consequently we find substantial force in the claim of the assessee that devoid of any specific infirmity qua the assessee's claim for



deduction of the aforementioned expenditure by the lower tax authorities, and for the reason, the ad-hoc disallowance carried out in a most arbitrary manner could by no means be held to be justified.

7.5. Our aforesaid view is fortified by the judgment of the Hon'ble High Court of Madras in “V.C. Arunai Vadivelan Vs ACIT” (TCA No 612 of 2019 dt 05/02/2021), wherein the lordships has held para 7 as;

“Given the nature of the industry in which the assessee operates, we can take judicial notice of the fact that, computer generated vouchers may not always be issued by the transporters unless they are an organization owning a large fleet and If the Assessing Officer had any doubt with regard to the genuinity of any one of the vouchers produced he could have drawn sample vouchers and called upon the assessee to establish its genuineness. Without doing so, making an adhoc disallowance by not specifically assigning any reason to a voucher or bunch of vouchers is not legally tenable.”
(Emphasis supplied)

7.6. Considering the entire conspectus of case, we, do not find favour with the view taken by the lower tax authorities, consequently we vacate the ad-hoc disallowance in its entirety and thereby allow the ground number 2 of the appeal.

12. Resultantly, these appeal of the assessee is partly allowed in aforesaid terms, with no order as to cost.

Order pronounced on this Friday 1st day of April, 2022.

Sd/-
RAVISH SOOD
JUDICIAL MEMBER
रायपुर/ RAIPUR ; दिनांक / Dated : 01st April, 2022

Sd/-
JAMLAPPA D. BATTULL
ACCOUNTANT MEMBER



आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT-1, Raipur(C.G)
4. The Pr. CIT, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय न्यायाधिकरण, रायपुर बेंच, रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,
निजीसचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.