

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR
BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER AND
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER

ITANo.306/Nag./2017
(Assessment Year : 2013-14)

Rahul Udyog
Kandli, Paratwada,
Dist.Amravati-444 805

..... Appellant

PAN No: AAJFR6853P

v/s

ITO, Ward-2
Ambapeth
Amravati-444 601

..... Respondent

Assessee by : Shri Rathan Sharma,C.A
Revenue by : Shri Rajeev Benjwal, CIT

Date of Hearing – 09.06.2022

Date of Order – 10 .06.2022

ORDER

PER SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee directed against order of the Learned Commissioner of Income Tax-1, Nagpur, dated 07.03.2017, wherein the assessee has taken the following grounds of appeal:-

“1. On the facts and circumstances of the case and in law the Ld. Commissioner of Income-tax (Appeals) erred in disallowing the Hamali Expenses of Rs. 2,03,212/-u/s. 40(a)(ia) without verifying

the facts that Id AO has disallowed the Hamali Expenses for the want of revenue stamps on vouchers and contravention of sec 40A(3) and not for non deduction of TDS. Further appellant has categorically submitted that the payments are directly made to Hamali therefore question of TDS does not arise.

2. On the facts of circumstances of the case Ld CIT (Appeals) erred in law & on facts by disallowing Jalau Lakdi Exps at Rs. 1,58,320/- & Bardana purchase Rs. 2,38,050/- u/s. 40A(3) irrespective of the fact that payment to individual person is below Rs. 20,000/- and provision of sec. 40A(3) not applicable in his case.

3. The Ld CIT (Appeals) erred in restricting the interest paid to relatives from 18% to 15% u/s. 40A(2) and thereby disallowing Rs. 4,63,656/- inspite of the fact that interest rate is quite fair & reasonable with existing market rate and no contrary evidence is brought by Ld AO on record regarding excessive interest rate.

2. At the outset, it is noted that there has been a delay of 47 days in filing the present appeal. After hearing both the parties and pursuing the material available on record, the delay is hereby condoned and the appeal is admitted for adjudication on merits.

3. Now, coming to the merits of the case, we refer to the relevant findings of the Id. CIT(A) which read as under:-

“4.2 Appellant's submissions along with assessment order and records have been considered carefully. The appellant has claimed various business expenses and, in evidence thereof, supporting bills and vouchers have also been produced during assessment proceedings. AO himself has accepted appellant's audited books of accounts without mentioning any deficiency or defect therein either by him or the auditor. AO has also not disputed that these expenses have been incurred for appellant's business purposes and are reflected in his books of accounts. None of the bills/ vouchers pertaining to these expenses have been found bogus or false or that payments therefor been made by the appellant outside his books of accounts. The appellant has also explained these facts, as submitted in appeal, to AO. It is pertinent to note that non-fixation of revenue stamp on the payment voucher does not make the payment illegal but it is only violation of provisions of Stamp Act and AO could have intimated the concerned authority accordingly. Any violation of Stamp Act provisions can, at best lead to initiation of proceedings under that Act. However, as long as such payments have not become illegal on account of such violation the same cannot be hit under the IT. Act solely on this ground. Same view has also been held by Hon'ble ITAT, Kolkata vide order dtd.07/07/2011 passed in case of ITO, Ward-1 (3), Hooglyvs Smt. Mahua Mukherjee in ITANo.172/Kol./2011. Therefore, disallowance of truck freight

expenses(Rs.5,25,820/-) and of rafu expenses (Rs. 11,350/-) made solely on ground of non-affixation of revenue stamps on vouchers is not found sustainable and, accordingly, deleted.

4.3 AO has made disallowance of hammali expenses (Rs.3,64,737/-) also for reason of non-deduction of IDS on payments of Rs.2,03,212/- made to two parties, each payment being exceeding Rs.75,000/-. The appellant has not made any submissions on this issue even in appeal proceedings. Therefore, keeping in view facts of the case and specific provisions of Section 40(a)(ia) of the IT. Act. addition of Rs.2,03,212/- out of Rs. 3,64,737/- made by AO is found sustainable and hereby, confirmed for hamali expenses.

4.4.1 After perusal of entire material on records, appellant's submissions are found acceptable in respect of toor purchase where the appellant has also produced sale patti along with supporting vouchers from the agriculturist for verification before AO and no adverse comments been made in the assessment order except for the fact of cash payment being made. However, appellant's contentions are found devoid of any merits in respect of jalaulakdi (gutke) expenses and bardana purchases in the absence of supporting documentary evidences proving the necessity and justification for these cash payments except his vouchers. Accordingly, addition of

Rs. 1,43,301/- made for toor purchase is, hereby, deleted. Disallowance of jalaulakdi (gutke) expenses at Rs. 1,58,320/- and of bardana at Rs.2,38,050/- are u/s 40A(3) is, hereby, confirmed.

7.2 Appellant's submissions along with assessment order and records have been considered carefully. During the entire course of assessment as well as appeal proceedings, the appellant has failed to explain and justify the payment of interest @ exceeding 15% when he himself has paid interest @15% to some of such loan creditors. No commercial expediency or business exigencies been shown by the appellant to justify payment of such higher interest to some of the lenders. Deduction is a matter of proof and it is for the appellant to prove as to why interest paid at higher rates and claimed as an expense in his books of accounts. After perusal of entire material on records, AO is found justified in making the impugned disallowance. Accordingly, addition of Rs. 4,63,656/- is, hereby, confirmed.”

4. During the course of hearing, the ld. AR submitted that the disallowances of Hamali expenses have been sustained by the ld.CIT(A) invoking provisions of section 40(a)(ia) of the Act. It was submitted that the Assessing Officer in his initial show-cause notice has raised the said issue, however, after considering the submissions of the assessee, the said charge was dropped and disallowances were made by the Assessing

Officer on account of the fact that the assessee has submitted that the vouchers without proper stamps in support of the expenses and the genuineness of the said expenses were questioned by the Assessing Officer. It was submitted that during the course of appellate proceedings, the ld.CIT(A) has decided the matter in favour of the assessee holding that none of the bills/vouchers pertaining to the expenses have been found bogus or false or the fact that the payments have been made outside the books of accounts. Therefore, as far as genuineness of the expenses and fixation of revenue stamps on vouchers is concerned, the matter was decided in favour of the assessee. However, the ld.CIT(A) has sustained the disallowances on account of non-deduction of TDS on payment of ₹ 2,03,212/- made to two parties on each payments exceeding ₹. 75,000/-. In this regard, our reference was drawn to the submissions made by the assessee before the Assessing Officer, wherein it was submitted that these payments were made to group of Hamali workers /Hamali labours and as token of payments, the signature of one Hamali labour was taken on the voucher, but this payment is not made to a single labour and therefore, there was no issue of deducting the TDS on such expenses. It was further submitted that it is highly inconceivable that a payment to a single Hamali will exceeding ₹. 75,000/- so as to attract the TDS provisions. It was accordingly submitted that the very basis adopted by the ld. CIT(A) has been dropped by the Assessing Officer and the same cannot be raised again by the ld.CIT(A) and in any

case, the explanation so furnished by the Assessing Officer before the Assessing Officer have not been appreciated in proper perspective by the ld.CIT(A), while sustaining the disallowances of ₹. 2,03,212/-. It was accordingly submitted that the disallowances so sustained by the ld CIT(A) may be directed to be deleted. Similar contentions were raised in respect of jalaue lakdi and bardana purchases and it was submitted that the assessee has paid the amount to the family head of advasi family and group leader of the persons who collect the reused bardana and all these payments are covered under the exception provided in Rule 6DD(e)(i).

5. Regarding disallowances of interest paid to relatives @ 18% as against 15% applied by the Assessing Officer, it was submitted that the said rate of interest is as per SBI rate, prevalent at the relevant point in time and our reference was drawn to the assessee's paper book page No. 54 & 55, wherein the SBI rate of interest on personal loan has been stated to be in range of 18.20 to 18.50% during financial year 2012-13. It was accordingly submitted that the rate of interest paid by the assessee is as per the prevailing market rate and in any case no basis has been prescribed by the Assessing Officer for restricting the rate of interest to 15% as against 18% by the assessee.

6. Per contra, the ld. DR has relied on the findings of the Assessing Officer as well as the ld.CIT(A).

7. We have heard the rival contentions and perused the material available on record. Regarding Hamali expenses, we find that it is a consistent position of the assessee before the AO as well as before the Id CIT(A) that no payment has been made to a single hamali exceeding Rs 20,000/- in cash per day. At the same time, it is also emerging from the records that in two cases, the consolidated payments have been made to the group leader and his signatures have been taken on vouchers which on face of it has created an impression that the payment has been made to a single person, however, on deeper scrutiny of the assessee's submissions, it is noted that individual name of the each of the recipient have also been stated in the vouchers which has apparently skipped the attention of the lower authorities. In light of the same, disallowance so sustained by the Id. CIT(A) of Rs 2,03,212/- is hereby directed to be deleted and in the result, ground no. 1 of the assessee's appeal is allowed.

8. Regarding jalau lakdi and bardana expenses, the Id CIT(A) has returned a finding that no supporting documentary evidence has been submitted in support of necessity and justification of cash payments. We find that the jalau lakdi has been purchased from Adivasi families, a fact which is not under dispute. Therefore, what is relevant to examine and which the assessee has to suitably explain is the place, the mode

and manner of such purchases, whether such purchases have been made close to habitual adode of the Adivasis or at nearby village/hamlet market where the Adivasis gather and sell their wood so gathered from the forest and manner and mode of such purchases and the same will in turn demonstrate the business necessity of such purchases being made in cash. It is the claim of the assessee that he is regularly undertaking such transactions with the Adivasis and in such a scenario, it won't be difficult for the assessee to gather relevant facts and figures and the periodicity of such purchases and submit the same before the taxing authorities as the onus is clearly on the assessee to provide suitable explanation in this regard. Similarly, is the position regarding bardana expenses. Therefore, in the interest of justice, the matter is set-aside to the file of the AO to examine the same afresh as per law after providing suitable opportunity to the assessee. In the result, the ground no. 2 of the assessee's appeal is allowed for statistical purposes.

9. Regarding disallowance of excess interest paid to related parties, both the AO as well as Id CIT(A) have returned a finding that in some cases, the assessee has himself paid interest @ 15% whereas in other cases, he has paid interest @ 18% and the assessee's explanation was called which he has failed to furnish during the assessment and first appellate proceedings. However, before us, the Id AR has contended that rate of interest @ 18% is comparable with SBI personal loan prevailing during

the relevant period. Therefore, the issue is application of internal comparable vis-à-vis external comparable and for the purposes, one needs to determine the terms and features of such loan transactions and to what extent, they are comparable with the transactions in the instant case and which will provide a better and realistic comparison. Neither the assessee nor the AO has furnished any basis for such comparison. Therefore, in the interest of justice, the matter is set-aside to the file of the AO to examine the same afresh as per law after providing reasonable opportunity to the assessee. In the result, ground no. 3 of the assessee's appeal is allowed for statistical purposes.

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

Order pronounced in the open Court on 10 .06.2022

Sd/-
YOGESH KUMAR U.S
JUDICIAL MEMBER

Sd/-
VIKRAM SINGH YADAV
ACCOUNTANT MEMBER

NAGPUR, DATED: 10 .06.2022

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Nagpur City concerned;*
- (5) *The DR, ITAT, Nagpur;*
- (6) *Guard file.*

KasarlaThirumalesh
Sr. Private Secretary

True Copy
By Order

(A.R./Sr. P.S./P.S.)
ITAT, Nagpur