

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI PRAMOD M. JAGTAP, VICE PRESIDENT
AND
SMT.SUCHITRA R. KAMBLE, JUDICIAL MEMBER

ITA No. 1201/Ahd/2019
Assessment Year:2012-13

The DCIT, Circle-1(2), Ahmedabad	Vs	Shri Vinod Chimanlal Modi, Prop. of M/s. Riddhi Infrastructure, B-12, L.R. Apartment, Opp. Police Commissioner Office, Shahibaug, Ahmedabad-380004 PAN : AGQPM 1294 E
अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
Revenue by :		Shri Vijaykumar Jaiswal, CIT-DR
Assessee by :		Shri M.K. Patel, AR

सुनवाई की तारीख/Date of Hearing : 27/06/2022
घोषणा की तारीख /Date of Pronouncement: 29/06/2022

आदेश/ORDER

PER PRAMOD M. JAGTAP, VICE-PRESIDENT

This appeal is preferred by the Revenue against the order of learned Commissioner of Income-tax (Appeals)-10, Ahmedabad ("CIT(A)" in short) dated 15.05.2019, and the solitary issued therein relates to the deletion by the learned CIT(A) of the disallowance of Rs.12,12,18,192/- made by the Assessing Officer under Section 40(a)(ia) of the Income-tax Act, 1961 ("the Act" in short).

2. The assessee, in the present case, is an individual who is engaged in the transportation business. The return of income for the year under consideration was filed by him on 25.09.2012 declaring a total income of

Rs.45,74,820/-. In the assessment originally completed under Section 143(3) of the Act vide an order dated 21.01.2015, the total income of the assessee was determined by the Assessing Officer at Rs. 45,95,764/-. Thereafter, it was noticed by the Assessing Officer that the assessee during the year under consideration had paid freight charges of Rs.12,12,18,192/- to M/s. S. S. Enterprises and since the said party had provided a Permanent Account Number (PAN) being AABCG5360R, no tax was deducted by the assessee from the payment of freight charges made to the said party. He also noticed that the PAN provided by M/s. S.S. Enterprises was invalid and the assessee, therefore, was required to deduct tax at source from the payment of freight charges made to the said party. He accordingly reopened the assessment and issued a notice under Section 148 of the Act to the assessee on 03.03.2017 after recording the reasons and obtaining the required approval. In reply, a letter was filed by the assessee on 13.04.2017 stating that the return of income originally filed by him on 25.09.2012 be treated as the return filed in response to notice under Section 148 of the Act. During the course of re-assessment proceedings, it was brought to the notice of the Assessing Officer by the assessee that M/s. S.S. Enterprises was a proprietary concern of M/s. Gunesh India Pvt. Ltd. and, therefore, PAN of M/s. Gunesh India Pvt. Ltd. was provided which was a valid one. The relevant documentary evidence in order to establish that M/s. S.S. Enterprises was a proprietary concern of M/s. Gunesh India Pvt. Ltd. was also produced by the assessee before the Assessing Officer. The Assessing Officer, however, did not find this explanation offered by the assessee to be acceptable. According to him, the proprietary concern was a separate entity which was required to obtain PAN separately and quote the same in the relevant transactions. He held that since the proprietary concern of M/s.

S.S. Enterprises had not obtained PAN of its own and had furnished PAN of its holding company, the assessee was required to deduct tax at source from the payments made to the said party on account of freight charges. Since the assessee had failed to do so, the Assessing Officer invoked Section 40(a)(ia) of the Act and disallowed the freight charges paid to M/s. S.S. Enterprises aggregating to Rs.12,12,18,192/- in the assessment completed under Section 143(3) r.w.s. 147 of the Act vide order dated 28.12.2017.

3. Against the order passed by the Assessing Officer under Section 143(3) r.w.s. 147 of the Act, an appeal was filed by the assessee before the learned CIT(A) challenging the validity of the said order as well as disputing the disallowance of Rs.12,12,18,192/- made therein under Section 40(a)(ia) of the Act on account of freight charges paid to M/s. S.S. Enterprises on merit. After considering the submission made by the assessee as well as the relevant material available on record, the learned CIT(A) did not find merit in the preliminary legal issue raised by the assessee challenging the validity of the assessment made by the Assessing Officer under Section 143(3) r.w.s. 147 of the Act and rejecting the same, he upheld the validity of the assessment made by the Assessing Officer under Section 143(3) r.w.s. 147 of the Act. The learned CIT(A), however, found merit in the issue raised by the assessee challenging the disallowance made by the Assessing Officer under Section 40(a)(ia) of the Act on account of freight charges paid to M/s. S.S. Enterprises and proceeded to delete the said disallowance for the following reasons given in his impugned order:-

“There has been some confusion because of name of the proprietor which is Gunesh India Pvt. Ltd. Actually, M/s. S.S. Enterprises is one unit of is Gunesh India Pvt. Ltd. hence, the PAN of S.S. Enterprises and is Gunesh

India Pvt. Ltd. shall be the same. The appellant has filed copy of account with Bank of Baroda wherein name of the account is "S.S. Enterprise proprietor is Gunesh India Pvt. Ltd". A copy of minutes of meeting of the Board of Directors of M/s. Gunesh India Pvt. Ltd. also indicates M/s. S.S. Enterprises being the business handling unit so far as it relates to transportation sC&F/Clearing Agency. A copy of order dated 23.03.2015 u/s 143(3) for is Gunesh India Pvt. Ltd. indicates M/s. S.S. Enterprises, proprietor is Gunesh India Pvt. Ltd. Therefore, appellant is correct in saying that the PAN for S.S. Enterprises is the same as it is for is Gunesh India Pvt. Ltd. In the circumstances, the view taken by AO is no sustainable in eyes of law as it is based on wrong presumption as if PAN of S.S. Enterprise is different from that of is Gunesh India Pvt. Ltd.

In view of the above facts, the impugned addition of Rs.12,12,18,192/- made u/s. 40(a)(ia) is hereby deleted."

4. Aggrieved by the order of the learned CIT(A), the Revenue has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that sufficient documentary evidence was placed on record by the assessee before the learned CIT(A) to establish that M/s. S.S. Enterprises is a proprietary concern of M/s. Gunesh India Pvt. Ltd. and on the basis of the same, a finding was recorded by the leaned CIT(A) in his impugned order that M/s. S.S. Enterprises being a proprietary concern of M/s. Gunesh India Pvt. Ltd. is not required to obtain a separate PAN. At the time of hearing before us, the learned DR has not been able to rebut or controvert this finding of fact recorded by the learned CIT(A) on verification of the relevant documentary evidence placed on record by the assessee. The PAN of M/s. Gunesh India Pvt. Ltd. thus was the PAN of M/s. S.S. Enterprises and the Assessing Officer was not justified in treating the same as invalid and consequently to

make the disallowance under Section 40(a)(ia) of the Act for the alleged failure of the assessee to deduct tax at source from the payment of freight charges made to M/s. S.S. Enterprises. The PAN of M/s. Gunesh India Pvt. Ltd. which was also the PAN of its proprietary concern M/s. S.S. Enterprises was duly provided to the assessee and the assessee, therefore, was not required to deduct tax at source from the freight charges of Rs.12,12,19,192/- paid to M/s. S.S. Enterprises. As such, considering all the facts and circumstances of the case, we find no infirmity in the impugned order of the learned CIT(A) deleting the disallowance of Rs.12,12,19,192/- made by the Assessing Officer under Section 40(a)(ia) of the Act and upholding the same, we dismiss this appeal filed by the Revenue.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the Court on 29th June, 2022 at Ahmedabad.

Sd/-

(SUCHITRA R. KAMBLE)
JUDICIAL MEMBER

Ahmedabad, Dated 29/06/2022

***Dr*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

Sd/-

(PRAMOD M. JAGTAP)
VICE-PRESIDENT

आदेशानुसार/ BY ORDER,

True Copy

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad