

IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH KOLKATA

Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.189/Kol/2022
Assessment Year: 2013-14

ACIT, Circle-1, Durgapur..... Appellant
vs.

Dutta Automobiles Pvt. Ltd..... Respondent
Nachan Road, Benachity,
Durgapur-713213.
[PAN: AACCD5008Q]

Appearances by:

Shri S. M. Surana, Advocate, appeared on behalf of the appellant.

Smt. Ranu Biswas, Addl. CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : July 28, 2022

Date of pronouncing the order : September 07, 2022

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 22.09.2020 of the Commissioner of Income Tax (Appeals), Durgapur [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

"1. On facts and circumstances of the case, whether the Ld. CIT(A) is justified in holding that the matter involved in the case is identical to the case of the assessee that of A.Y 2010-11.

2. On facts and circumstances of the case, whether the Ld. CIT(A) is justified in deleting the addition on Rs.4,72,37,518/- on account of advance from customers.

3. On facts and circumstances of the case, whether the Ld. CIT(A) is justified in deleting the addition on Rs.8,58,786/- disallowed u/s 40(a)(ia) of the I.T. Act.

4. On facts and circumstances of the case, whether the Ld. CIT(A) is justified in deleting the addition on Rs.93,55,197/- disallowed u/s 40(a)(ia) of the I.T. Act.

The appellant craved leave to make any amend, addition, alteration, modification etc. of the grounds either before the appellate proceedings, or in the course of appellate proceedings."

2. **Ground No.1 & 2** –The appellant is a dealer and retailer of Hero Honda two wheelers and deals primarily in products of Hero Motor Corporation. During the

assessment proceedings, the Assessing Officer found that the appellant had taken advances in cash from its customers amounting to Rs.4,72,37,518/- against booking of Hero Honda motorcycles. The Assessing Officer deputed an Inspector to conduct field enquiries in respect of certain select customers. The Inspector reported that none of those customers have paid advance to the appellant. The Assessing Officer also recorded the statement of one of the customers who denied having paid any advance to the assessee. The Assessing Officer accordingly disallowed the amount shown as received as advance from the customers. However, the Id. CIT(A) deleted the addition so made by the Assessing Officer by relying upon decision of the Coordinate Kolkata Bench of the Tribunal in the own case of the assessee for assessment year 2010-11, wherein, identical additions made by the Assessing Officer were deleted by the ITAT. The Id. CIT(A) further noted even the Calcutta High Court too upheld the decision of the ITAT. He further observed that even in the case of sister concern of the assessee, Dutta Motors, the CIT(A) had partly upheld the additions made by the Assessing Officer on identical facts, however, the same also stood deleted by the decision of the ITAT. Therefore, following the decision of the Calcutta High Court in the assessee's own case for assessment year 2010-11 as well as decision of the Tribunal in various assessment years, the Id. CIT(A) deleted the additions for the year under consideration also.

3. Before us, the Id. Counsel for the assessee has submitted that the advance received from the customers were adjusted in the sale price of motorcycles and profits so delivered were offered for taxation. Further that there was no mismatch in respect of the amount of total sale consideration received. That though, one of the customers in his statement had denied the payment of advance to the assessee, however, there was no difference in the total sale price paid by the said customer as compared to the sale price shown by the assessee in his accounts. It was not the case of the Department that the final bill did not tally. The Id. Counsel for the assessee has further relied on the decision of the Calcutta High Court in the own case of the assessee for assessment year 2010-11 vide GA 1116 of 2016/ITAT 142 of 2016 vide order dated 17.05.2016, wherein, the jurisdictional Calcutta High Court in the similar circumstances has held as under:

“The assessee may not have maintained detailed record of the customers. But question is whether the receipt has satisfactorily been established to be on account of advance

payment. That question has been answered by the learned Tribunal in the affirmative by holding as follows:

"The advance money, in the present case before us, is adjusted the sale price of the motor cycle and sale is disclosed in the return of income i.e. the trading account of the assessee. Accordingly, we find no ambiguity in the system followed by the assessee."

The aforesaid finding was recorded by the learned Tribunal on the basis of evidence disclosed before them which is also found in the paper book filed before us by Mr. Khaitan. It cannot, therefore, be said that the view taken by the Tribunal is perverse. The question essentially is a question of fact and the learned Tribunal on the basis of evidence was satisfied that the money had in fact been received by way of advance and therefore, no question of any bogus liability being created was there as held by the Assessing Officer.

In that view of the matter, we are of the opinion that the finding arrived at by the learned Tribunal is not perverse. [Section 68](#) in the facts of the case had no applicability. The question is, thus, answered in favour of the assessee.

The appeal is, therefore, dismissed."

4. Therefore, the issue is squarely covered by the jurisdictional High Court in the own case of the assessee. There is no merit in these grounds of the appeal of the assessee and the same are accordingly dismissed.

5. **Ground Nos.3 & 4** – Vide Ground Nos.3 &4, the Revenue has agitated the action of the CIT(A) in deleting the addition of Rs.8,58,786/- and Rs.93,55,197/- made by the Assessing Officer u/s 40(a)(ia) of the Act.

6. During the assessment proceedings, the Assessing Officer noticed that the assessee has not deducted TDS on the payments made under the head “freights and insurance’ to various parties totaling to Rs.93,55,197/- . He, therefore, disallowed the said expenditure u/s 40(a)(ia) of the Act. The Assessing Officer further noted that an amount of Rs.8,58,786/- had been debited under the head “advertisement expenses” whereas, the assessee had not deducted the TDS in respect of that payment also. He, therefore, disallowed the said expenditure of Rs.8,58,786/- also u/s 40(a)(ia) of the Act.

7. In appeal, the assessee in respect of ‘freight and insurance charges’ made the following submissions:

“Freight & insurance is a part of cost of motor cycle purchased from Hero Motor Corp Limited the above said company, after adding the amount of freight and insurance they

have and it is clearly evident in the invoice-issued by the above said company. In the invoice issued by determined the price of the motor cycle. Therefore freight & insurance is part of purchase price of motor cycle. The few copies of invoice issued by the above said company to us is being enclosed marked as for your ready reference.

Without prejudice to the above it is bring to your kind attention that as per section 194C any person responsible for paying any sum to any resident contractor for carrying out any work (including supply of labour for carrying out any work) in pursuance of a contract between a specified person and the resident contractor js required to deduct tax at source.

There was no contract either verbal or written with Hero Moto Corp Limited regarding transport of motor cycle. Even we did not engage any individual transporter for transport of motor cycle from the factory of the above said company to our showroom. Moreover, the above said company did not issue any separate invoice for freight and insurance. Even we did not make any payment to any individual transporter. The payment which had been made to the above said company only against the purchase invoice.

Under the Income Tax Act, 1961 there is no provision under which any payment towards insurance is liable for TDS. So the addition of freight and insurance amounting to Rs.93,55,197/- is not tenable.

The Id. CIT(A) considering the above submissions and going through the sample copy of the invoice held that the total amount charged by the Hero Moto Corp Ltd. was inclusive of transportation and insurance charges. The supplier of motorcycles to the assessee i.e. Hero Moto Corp has raised composite bill to the assessee, wherein, the entire charges were payable by the assessee to Hero Moto Corp. Ltd. The Id. CIT(A) observed that it was clear from the invoices that the assessee did not pay any amount to any transporter under any contract, written or oral. Therefore, the Id. CIT(A) deleted the addition made by the Assessing Officer in this respect, observing as under:

“9.1 I have carefully considered the facts of the case and have examined the copies of invoice presented by the appellant. I find that the total cost charged by Hero Moto Corp Ltd. is inclusive of transportation and Insurance charges. To put it differently, it is a composite bill. The entire charge was payable on the composite bill. In other words, what the appellant paid was towards purchase of motor cycle. It is clear from the invoices that the appellant did not pay any amount to any transporter under any contract, written or oral. The amounts were paid as purchase price directly to Hero Motor Corp Ltd. from whom the appellant purchases motor cycles. In such a situation, in my view, there was no occasion for deducting TDS separately on account of transportation. In view of these facts, the Id. AO is directed to delete the addition of Rs.8,58,786 made u/s 40(a) (ia). This ground of appeal is allowed.”

8. Further, in respect of advertisement expenses of Rs.8,58,786/-, the assessee furnished details before the CIT(A) to show that the TDS was duly deducted against such

expenses. The Id. CIT(A) after going through the documents furnished by the assessee verified the ledger account and held that the TDS was duly deducted on the payments made and accordingly deleted the addition so made by the Assessing Officer.

9. The Id. DR could not point out any defect in the order of the CIT(A) in this respect warranting our interference. We, therefore, do not find any merit in the appeal of the Revenue and the same is accordingly dismissed.

10. In the result, the appeal of the Revenue stands dismissed.

Kolkata, the 7th September, 2022.

Sd/-
[Rajesh Kumar]
Accountant Member

Sd/-
[Sanjay Garg]
Judicial Member

Dated: 07.09.2022.

RS

Copy of the order forwarded to:

1. ACIT, Circle-1, Durgapur
2. Dutta Automobiles Pvt. Ltd
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches