

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH,
(VIRTUAL HEARING AT KOLKATA)****[BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER &
SHRI SONJOY SARMA, JUDICIAL MEMBER]****I.T.A. No. 296/PAT/2018**
Assessment Year: 2008-09

Paras Nath Singh	Vs.	ACIT, Circle-1, Patna
Prop: M/s. Pushpak Enterprises, Dhanauti, Marai Road, Ganga Bridge Colony, Hajipur, Vaishali-844101.		
(PAN: AIAPS 8489 H)		
Appellant		Respondent

Date of Hearing	20.07.2022
Date of Pronouncement	14.09.2022
For the Appellant	None
For the Respondent	Shri Rupesh Agrawal, Sr. DR

ORDER**PER SONJOY SARMA, JM:**

The present appeal has been preferred by the assessee against the order of Id. CIT(A)-1 Patna dated 30.08.2018 [hereinafter referred to as 'CIT'] 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:

i. For that the Ld. CIT(A) has erred in dismissing the additional ground of the appellant wherein it has been assailed that the Assessing Officer has erred in assuming jurisdiction without service of jurisdictional notice u/s 143(2).

ii. For that the Ld. CIT(A) has erred in holding that the appellant has not filed return u/s 139 or in response to notice u/s 142(1).

iii. For that the Ld. CIT(A) has failed to appreciate that the appellant has submitted its return way back on 28/11/2008 and accordingly the Assessing Officer was required to issue notice u/s 143(2) before assumption of jurisdiction by virtue of order u/s 263 dated 05/10/2012 of CIT-1, Patna.

iv. For that the Ld. CIT(A) has erred in relying on the judgment of Apex Court in the case of CST Vs Subhash & Co. reported in 130 STC 97 that too without confronting the appellant while deciding the additional ground against the appellant.

v. For that the Ld. CIT(A) has failed to appreciate that the judgment of the Apex Court in the said case is starkly distinguishable to the facts of the present ease wherein there is complete lack of jurisdiction on account of non-issuance of notice u/s 143(2).

vi. For that the Ld. CIT(A) has erred in upholding the disallowance u/s 40(a)(ia) amounting to Rs.25,74,023/- being the expenditure incurred on freight and Cartridge.

vii. For that the Ld. CIT(A) has erred in relying on judicial precedents while affirming the disallowance that too without confronting the appellant with the decisions relied upon.

viii. For that the disallowance of Rs.25,74,023/-is wrong, illegal and unjustified on the facts and in the circumstances of the appellant's case.

ix. For that the whole order is bad in fact and law of the case and is fit to be modified.

x. For that other grounds, if any, shall be urged at the time of hearing of appeal.”

2. Brief facts of the case are that the assessee filed its return of income on 28.11.2008 by showing total income at Rs. 44,17,239/- for the assessment year 2008-09. Thereafter, the return was subjected to assessment u/s 143(3) and an assessment order was passed on 31.12.2010 and the said assessment order was set aside u/s 263 and afresh assessment order was passed u/s 144 r.w.s. 143(3) r.w.s. 263 of the Act, the AO passed an order where Rs. 25,74,023/- was disallowed under the head of freight and carriage expenses and total income of the assessee was determined at Rs. 88,69,312/- vide order dated 20.02.2014.

3. Dissatisfied with the above, the assessee preferred an appeal before the ld. CIT(A) and the ld. CIT(A) dismissed the appeal of the assessee.

4. We have heard the ld. DR and perused the records placed before us. On perusal of memo of appeal, we find that assessee has raised almost 10 grounds of appeal. Ground no. 1 to 5 are challenged by the assessee which are related to issuance of jurisdictional notice u/s 143(2) and question of applicability of filing the return in response to notice u/s 142(1) as ground no. 3 to 5 are similar and consequential in nature and therefore, we are going to

decide the grounds no. 1 to 5 together. The issues raised by the assessee are that assessment order passed u/s 143(3) without serving jurisdiction notice u/s 142(2), therefore, impugned order passed by the authorities below is bad in law. However, deciding this issue, the ld. CIT(A) contended that in the instant case, no return of income was required to be file either u/s 139 of the Act or in response to notice u/s 142(1) of the Act as the initiation of proceeding u/s 263 of the Act in the case of assessee, the return of income for the previous year, relevant to the assessment year in appeal was already in record therefore, there was no requirement to issue notice u/s 143(2) of the Act. Since, there was no requirement to issue notice u/s 143(2) of the Act after assessment order being setting aside u/s 263 of the Act and from the records, it was observed that the AO issued notice u/s 142(1) of the Act which was initially issued on 14.11.2013 upon the assessee to produce certain details which was not complied with and the ld. CIT(A) clearly established that reasonable opportunity had been given to the assessee therefore it would not affect the jurisdiction of the AO further he relied on the judgement of Hon'ble Apex Court in the case of CST vs M/s. Subhash & Co. 130 STC 97 and he held that the principles of natural justice had been adequately complied with in the instant case and dismiss the grounds of appeal raised by the assessee before him. Similar grounds of appeal are also raised before us by the appellant. However, we also did not find any infirmity in respect of order passed by the ld. CIT(A) in relation with above issues and view that issues were properly addressed by the ld. CIT(A) in his order. Therefore, we do not want to interfere in the same, as such grounds raised by the assessee are accordingly dismissed.

5. Further ground no. 6 to 10, perusal of the same we noticed that the main grievance of the assessee is disallowance u/s 40(a)(ia) amounting to Rs. 25,74,023/- being the expenditure incurred in respect of freight and carriage. On this specific issue from the perusal of assessment order passed by the AO and it was come to our notice that he had categorically observed that assessee did not furnish the name and address of the party to whom payments were made on account of freight and carriage beside that assessee did not furnish the details of TDS before the AO also. Therefore, the ld. AO viewed that it was a clear violation of section 194C/40(a)(ia) of the Act. Similarly, view was taken by the ld. CIT(A) while deciding this issue and finds that assessee has not be able to furnish any

details/documents in support of payment under the head of freight and carriage expenses and no TDS was deducted on such payment. Further he observed that assessee has failed to furnish certificate of Chartered Accountant as required by section proviso to section 40(A)(ia) of the Act and assessee has violated the provision of section 194C/40(a)(ia) of the Act and he disallowed the payments made on account of freight and carriage by virtue of section 40(a)(ia) of the Act.

6. While considering the above issues on board before us no new material placed before us to prove the fact contrary and from the impugned order passed by the Id. CIT(A) it is crystal clear that the payment made on account of freight and carriage by the assessee in violation of section 40(a)(ia) of the Act and assessee has not been able to furnished any details/documents in respect of such payments made under the head of freight and carriage expenses therefore, we do not want to interfere in the order passed by the authorities below, the ground raised by the assessee are accordingly dismissed.

7. In the result, the appeal of the assessee is dismissed.

Order is pronounced in the open court on 14.09.2022

(Manish Borad)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 14.09.2022

Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant– Paras Nath Singh.
2. Respondent – ACIT, Circle-1, Patna.
3. CIT(A),
4. CIT ,
5. DR, ITAT,

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata