



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI. MAHAVIR SINGH, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

ITA No.320/LKW/2020
Assessment Year: 2013-14

Sudhanshu Rastogi 217, Eldeco Green Gomti Nagar Lucknow	v.	The ACIT Range 1 Lucknow
TAN/PAN:ACFPR9504B		
(Appellant)		(Respondent)

Appellant by:	Shri Samrat Chandra, C.A.		
Respondent by:	Shri S. H. Usmani, CIT (DR)		
Date of hearing:	29	11	2022
Date of pronouncement:	01	12	2022

ORDER

PER BENCH:

This appeal by the assessee is arising out of the order of the ld. CIT(A)-1, Lucknow in appeal No. CIT(A), Lucknow-1/10025/2016-17, dated 4.8.2020. The assessment was framed by the ACIT, Range 1, Lucknow for assessment year 2013-14 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 31.3.2016.

2. The only issue in this appeal of the assessee is as regards to the order of the ld. CIT(A) confirming the action of the Assessing Officer in making disallowance of purchases of embroider cloth items shown as expenses payable under the head 'Ready (Embroidery)' in the balance sheet. For this, the assessee has raised following two grounds:

(1) The Ld. Assessing Officer erred on facts and in law in making disallowances u/s 40(a)(ia) for expenses shown payable under the head Ready (embroidery) in the Balance Sheet to the tune of Rs.1,19,30,161/-

(2) The Ld. A.O. while making ad-hoc disallowance has not brought any single evidence of the expense not being in the nature of purchase.

3. The brief facts are that the assessee is a proprietor of Sarat Arts engaged in the business of trading of embroidery clothes. The Assessing Officer, during the course of assessment proceedings, on perusal of the profit and loss accounts of Sarat Arts, noted that the assessee has debited direct expenses to the tune of Rs.4,68,36,533/- under the head Ready (Embroidery). The Assessing Officer required the assessee as to why these expenses be not disallowed in the absence of non-deduction of TDS. The assessee vide letter dated 21.3.2016, explained that the assessee deals in trading of embroidered clothe items and the alleged expenses of Rs.4,68,36,533/- are in the nature of purchases of embroidered cloth items. The Assessing Officer was not convinced and according to him, the assessee has not deducted the TDS in regard to the amounts payable to various parties under the head Ready (Embroidery) in the balance sheet to the tune of Rs.1,19,30,161/- and thereby he disallowed these as business expenses under section 40(a)(ia) of the I.T. Act for non-detection of TDS. Aggrieved, the assessee preferred in appeal before the Id. CIT(A). The Id. CIT(A) also confirmed the action of the Assessing Officer. Aggrieved, at the assessee preferred appeal before the Tribunal.

4. Before us, on behalf of the assessee, Shri Samrat Chandra, C.A. appeared and on behalf of the Revenue, Shri S. H. Usmani, CIT (DR) appeared. The ld. Counsel for the assessee produced before us the books of account, complete details and vouchers for verification. He also filed a copy of the audited accounts and took us through the profit and loss account and stated that this amount of Rs.4,68,36,533/- is clearly in the nature of purchases and booked in the trading account under the head purchases of Ready (Embroidery). The ld. Counsel for the assessee, to butter his argument, drew our attention to the trading account enclosed in the assessee's paper book which represents the proceeds of the purchases are sold and the sale of Ready (Embroidery) is at Rs.5,37,06,037/-. The ld. Counsel for the assessee drew our attention to the balance sheet of Sarat Arts wherein Ready (Embroidery) is shown as current liabilities at Rs.1,19,30,161/- which is payable to various parties, which is on account of purchase of embroider clothes. For this, the ld. Counsel for the assessee drew our attention to the voluminous bills produced before us and one of the bills is shown that it is purchase of Sari and not any work contract, as envisaged in section 194C of the Act. The ld. Counsel for the assessee stated that once these are purchase items, the provisions of section 40 (a)(ia) of the I.T. Act for non-deduction of TDS does not apply. On the other hand, the CIT (DR) heavily relied on the assessment order and that of the ld. CIT(A).

5. We have heard the parties and gone through the facts and circumstances of the case. The admitted position is that the assessee is engaged in the business of the retail trade of embroidery clothes in the name and style of Sarat Arts. The

assessee is regularly maintaining its books of account and duly got the same audited under section 44AB of the Act. The assessee before us filed complete books of accounts, bills and vouchers for verification and evidences, explaining the entire transaction. The ld. Counsel for the assessee produced the trading account and profit and loss account and balance sheet for the year ended on 31.3.2013. The trading account clearly reflects that there is purchase of Ready (Embroidery) to the extent of Rs.4,68,36,533/- and the corresponding sale also booked at Rs.5,37,06,037/-. It is an admitted position that the assessee has shown Ready (Embroidery) i.e. current liabilities payable to various parties at Rs.1,19,13,161/- i.e. sundry creditors of trade and not expenses. As pointed out by the ld. Counsel for the assessee that the assessee has already deducted TDS on embroidery charges paid to various carigars and for this, the ld. Counsel for the assessee drew our attention to the financial expenses incurred by the assessee at Rs.2,22,27,376/-. The ld. Counsel for the assessee stated that the assessee has deducted TDS on this, which is shown as payable but paid as per the provisions of the Act within the next month, amounting to Rs.2,51,137/-. We noted that these are not at all expenses. These are purchases, rather trade items not liable for disallowance under section 40(a)(ia) of the I.T. Act, as no TDS is to be deducted for purchases of these items. The disallowance under section 40(a)(ia) of the I.T. Act attracts only expenses incurred by the assessee, on which tax is deductible at source under Chapter XVIIB. According to us, once no TDS is liable to be deducted on these purchases, no disallowance under section 40 (a)(ia) of the

I.T. Act can be attracted. Hence, we delete this addition and allow this issue of the assessee's appeal.

6. In the result, the assessee's appeal is allowed.

Order pronounced in the open Court on 01/12/2022.

Sd/-
[GIRISH AGRAWAL]
ACCOUNTANT MEMBER

Sd/-
[MAHAVIR SINGH]
VICE PRESIDENT

DATED:01/12/2022

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR