

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "F": DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

ITA.No.964/Del./2015
Assessment Year 2010-11

Raj Veer Singh, Prop. Nutech Builders, 25, Shanti Kunj, Behind Pocket D-3, Vasant Kunj, New Delhi 110070. PAN ABBPS1866N	vs.	Asstt. Commissioner of Income Tax, Cir-24(1), New Delhi
(Appellant)		(Respondent)

For Assessee :	Ms. Rano Jain, Advocate Ms. Mansi Jain, CA
For Revenue :	Shri A K Arora, Sr DR

Date of Hearing :	12.12.2022
Date of Pronouncement :	04.01.2023

ORDER

PER ANIL CHATURVEDI, A.M. :

This appeal filed by the assessee is directed against the Order of the Ld. CIT(A)-11, New Delhi, dated 16.12.2014 in Appeal No.107/13-14 relating to the A.Y. 2010-11.

2. The relevant facts as culled from the material on records are as under :

2.1. Assessee is an individual and engaged in the business of civil contractor and stated to be deriving income from contract business. Assessee filed his return of income for A.Y. 2010-11 on 15.10.2010 declaring income of Rs. 20,99,320/-. The case of the assessee was selected for scrutiny and thereafter, assessment was framed under section 143(3) of the I.T. Act, 1961, vide order dated 11.03.2013 and the total income of the assessee was determined at Rs. 98,78,740/-

2.2. Aggrieved by the order of the A.O, the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dated 16.12.2014 Appeal No. 107/13-14, granted partial relief of the assessee.

3. Aggrieved by the order of the Ld. CIT(A), the assessee filed appeal before the Hon'ble Tribunal. The Hon'ble Tribunal vide order dated 08.08.2018 in ITA 964/Del/2015 dismissed the appeal of the assessee on

account of non-prosecution. Thereafter assessee filed miscellaneous application before the Tribunal seeking the recalling of the ex-parte order passed on 08.08.2017. The coordinate bench of the Tribunal vide miscellaneous application no. 149/Del/2021 order dated 11.11.2021 allowed the miscellaneous application of the assessee and recalled the order in ITA No. 964/Del/2015. Accordingly, the assessee is now in appeal in second round and has raised the following grounds:-

1(i). That on the facts and circumstances of the case, the CIT(A) was not justified in confirming disallowance of Rs. 25,73,070/- in terms of provisions of sec. 40(a) (ia) of the Income Tax Act, 1961 on the alleged ground that there was default in compliance to provisions of sec. 194C of the Income Tax Act, 1961.

(ii) That finding and conclusion of the lower authorities is without proper appreciation of facts and provisions of sec. 194C of the Income Tax Act, 1961.

(iii) That there was no default in terms of provisions of sec. 194C as various payments made under reference were not covered for any TDS us. 194C of the Income Tax

2. That in the alternative, there being no case of any outstanding payment as at the Act, 1961. close of the year

and there being no dispute about the genuineness of the claim, there is no case of any disallowance u/s. 40(a)(ia) of the Income Tax Act, 1961.

3. That the CIT(A) has failed to adjudicate the ground relating to the claim of adhoc disallowance of Rs. 28,823/- in respect of claim under the heads staff and labour welfare and miscellaneous expenses.

4(1). That the CIT(A) has also erred in confirming addition of Rs. 39,203/- on account of notional interest without proper appreciation of facts and legal provisions.

(ii). That even otherwise, payment of advance was out of its own funds and on account of business and commercial expediency and as such there is no factual or legal basis for addition of Rs. 39,203/- as notional interest income.

5. That order of the lower authorities are not justified on facts and same are bad in law.

4. Before us at the outset the Ld. AR submitted that ground no 2 & 3 raised by the assessee are not pressed and ground no 4 being in general requires to adjudication. She thereafter submitted that only ground no 1 which is with respect to the disallowance of Rs. 25,73,070/- u/s. 40(a)(ia) needs adjudication.

5. In view of the aforesaid submissions by Ld.AR the ground no 2 to 4 are dismissed.

6. We now proceed with ground no 1 which is with respect to the confirming the disallowance of Rs. 25,73,070/- u/s. 40(a)(ia).

7. During the course of assessment proceedings A.O. noticed that assessee had made payment aggregating to Rs. 25,73,070/- to sub-contractor but had not deducted TDS u/s. 194C of the Act. The assessee was asked to show cause as to why the disallowance not be made u/s. 40(a)(ia) of the Act. Assessee made the submissions which were not found acceptable to A.O. The A.O. thereafter by invoking the provisions of u/s. 40(a)(ia) disallowed of Rs. 25,73,070/- apart from the other various disallowance.

8. Aggrieved by the order of A.O. assessee carried the matter before Ld. CIT(A), who upheld the order of the A.O.

9. Aggrieved by the order of Ld. CIT(A) assessee is now before us.

10. Before us, Ld.AR reiterated the submission made before the lower authorities and further pointed to page no 43 of the paper book which is with respect to the breakup of labour and wages paid to various parties during the year. She pointed to details therein and submitted that as per the Explanation 3 to section 194C as was applicable during the relevant assessment year, assessee was not required to deduct TDS, if the amount paid did not exceed the prescribed limit. She submitted that the table would reveal that there are certain payment to parties which would fall below the limit prescribed and therefore the assessee will not be required to deduct TDS u/s. 194C of the Act. She therefore submitted that the addition of such amount be deleted. She however fairly conceded that there is no finding of the lower authorities on the issue.

11. Ld. DR on the other hand supported the order of the lower authorities and further submitted that there is no finding of the lower authorities on the plea taken by the Ld.AR that certain payments to the contractors do not exceed the limit prescribed u/s. 194C of the Act. He therefore submitted that the matter maybe restored back to the A.O. for necessary verification.

12. We have heard the rival submission and perused the material on record. The issue in the present ground is with respect to the disallowance u/s. 40(a)(ia) on account of non-deduction of TDS u/s.194C of the Act.

13. Before us, Ld.AR has pointed to the breakup of labour and wages debited to the Profit and Loss account during the year under consideration and the copy of which is placed at page no 43 of paper book. From the aforesaid table she pointed to the instances where the payments made to individual parties are below the limit prescribed u/s. 194C for deduction of TDS. We however find that there

is no finding of the lower authorities on this issue. We are therefore of the view that the issue as to whether these payments are below the prescribed limits needs to be relooked by the A.O. We therefore restore the issue back to the file of A.O. and direct him to consider the submissions of the assessee and thereafter pass a speaking order on the issue and decide the issue in accordance with law. Assessee is also directed to co-operate by filing promptly the required details called for by the authorities. **Thus the ground of the assessee is allowed for statistical purposes.**

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

Order pronounced in the open Court on 04.01.2023.

Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Delhi, Dated 04th January, 2023

NV/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'G' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches : Delhi.