

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 37/RPR/2021
निर्धारण वर्ष / Assessment Year : 2012-13

Vijay Transmission Pvt. Ltd.
Plot No.121/3, 8, 12, 13,
Village Kanhera, Urla Acholi Marg,
Post-Urla, Raipur (C.G.)
PAN : AACCV4467B

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-1(1), Raipur (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by : Shri Praveen Goyal, CA
Revenue by : Shri G.N Singh, Sr. DR

सुनवाई की तारीख / Date of Hearing : 28.11.2022

घोषणा की तारीख / Date of Pronouncement : 13.01.2023

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee company is directed against the order passed by the Commissioner of Income-Tax (Appeals), National Faceless Appeal Center (NFAC), Delhi, dated 05.03.2021, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income-tax Act, 1961 (in short 'the Act') dated 27.03.2015 for the assessment year 2012-13. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. That on the facts and in the circumstances of the case and in law, the CIT(A) erred in ad-hoc lump-sum disallowance on account of crane hire charges of Rs.2,00,000/- u/s.40A(2)(b) of the Act.
2. That on the facts and circumstances of the case and in law, the CIT(A) erred in ad-hoc lump-sum disallowance on account car hiring charges of Rs.50,000/- u/s.40A(2)(b) of the Act.
3. The appellant craves to add, alter or delete any of the grounds of appeal during the course of appellate proceedings.”

2. At the very outset of the hearing of the appeal, it transpires that the appeal filed by the assessee company is time barred by 22 days. As per the application filed by the assessee appellant the impugned delay had occasioned because of the complete lockdown in District: Raipur during the period 08.04.2021 to 17.05.2021. It is the claim of the assessee applicant that due to the lockdown it had no access to the records lying in its office. It

was, thus, the claim of the assessee that the impugned delay in filing of the appeal was due to circumstances which could neither be attributed to any deliberate conduct nor smacked of any lackadaisical approach on its part. The Ld. DR did not raise any objection to the seeking of condonation of delay by the assessee applicant. After hearing the parties, we are satisfied with the reasons leading to the impugned delay, and considering the order of the Hon'ble Supreme Court of India in Suo Moto Writ Petition (Civil) No.3 of 2020 dated 23.03.2020, which, thereafter had from time to time been modified by the Hon'ble Apex Court vide its order(s) dated 08.03.2021, 27.04.2021, 23.09.2021 and 10.01.2022 find the appeal filed by the assessee appellant within the extended period of limitation, and thus, admit the same.

3. Succinctly stated, the assessee company which is engaged in the business of galvanization and fabrication of steel had e-filed its return of income for A.Y.2012-13 on 30.09.2012, declaring a loss of Rs. (-) 2,89,99,381/-. Subsequently the case of the assessee was selected for scrutiny assessment u/s.143(2) of the Act.

4. During the course of the assessment proceedings, it was, inter alia, observed by the A.O that the assessee company had debited a sum of Rs.42,06,923/- towards crane hiring charges which were paid to M/s. Vijay Parivahan (P) Ltd., a person specified u/s.40A(2)(b) of the Act. Observing that the crane hiring charges paid to other parties were comparatively on

the lower side as against the aforesaid payment made to the related party, the A.O on an ad-hoc basis disallowed out of the same a lumpsum amount of Rs.4 lac. Also, it was observed by the A.O that the assessee company had raised a claim for deduction of car hiring charges which were paid to, viz. (i) Keshav Alok Paliwal (HUF) :Rs.4,39,666/-; and (ii) Shri Keshav Chand Paliwal : Rs.45,932/-, both of whom were persons specified u/s.40A(2)(b) of the Act. Observing that the car hiring charges paid by the assessee company to the aforementioned persons had substantially increased as in comparison to those paid in the preceding year, the A.O in order to avoid any suppression of income worked out a lumpsum disallowance of Rs.1 lac u/s.40A(2)(a) of the Act. After, inter alia, making the aforesaid disallowances u/s.40A(2)(a) of the Act, the A.O vide his order passed u/s.143(3) dated 27.03.2015 scaled down the loss of the assessee company to Rs.(-) 2,83,78,194/-.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals), who being of the view that the disallowance of 10% of crane hiring charges paid by the assessee to its related party, viz. M/s. Vijay Parivahan (P) Ltd was on the higher side, thus, scaled down the same to 5%. On a similar footing, the CIT(Appeals) holding a conviction that the disallowance of 20% of the car hiring charges paid by the assessee to its

related parties was also exorbitant, therefore, in light of so called fairness scaled down the same to 10%.

6. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

7. We have heard the ld. authorized representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the ld. AR to drive home his contentions.

8. Ostensibly, the disallowances made by the A.O u/s.40A(2)(a) of the Act out of the crane hire charges and car hiring charges paid by the assessee to its related parties were made on an *ad-hoc* basis without having regard to the "Fair Market Value" (FMV) of the services for which the said respective payments were made to them; or the legitimate needs of the business of the assessee company; or the benefit derived by or accruing to the assessee from availing the said services. Although the CIT(Appeals) had observed that the respective disallowances were made without quantification of the excessiveness/unreasonableness of the charges paid by the assessee company, but despite so observing he merely scaled down the same and impliedly approved the basis adopted by the A.O for working out the said disallowances u/s. 40A(2)(a) of the Act.

9. Having given a thoughtful consideration to the issue involved in the present case, we are unable to concur with the very basis adopted by the A.O for triggering and making the consequential disallowance u/s.40A(2)(a) of the Act, which, as observed by us hereinabove were made without having regard to the FMV of the services for which the said respective payments were made; or the legitimate needs of the business of the assessee company; or the benefit derived by or accruing to the assessee from availing the respective services under consideration. Ostensibly, section 40A(2)(a) of the Act, in unequivocal terms, contemplates, that it is only where the A.O having regard to the FMV of the goods, services or facilities, for which payment is made; or legitimate needs of the business or profession of the assessee; or the benefit derived by or accruing to him, therefrom, is found to be excessive or unreasonable, then, it is only to the said extent that the expenditure as is so considered by him to be excessive or unreasonable is not to be allowed as a deduction. Although Section 40A(2)(a) mandates consideration of the basis/yardsticks factored in it for the purpose of quantification of the unreasonableness/excessiveness of any expenditure incurred in respect of a specified party, but we find that in the present case before us there is a complete disregard of the said statutory obligation on the part of the A.O.

10. Adverting to the view taken by the CIT(Appeals), the same does not reveal any better story, for the reason that he had principally approved the

ad-hoc disallowance made by the A.O u/s. 40A(2)(a) of the Act and had merely scaled down the same on the ground of fairness. As the orders of the both the lower authorities militates against the clearly worded mandate of Section 40A(2)(a) of the Act, therefore, we set-aside the order of the CIT(Appeals) and vacate the respective disallowances of Rs. 2 lac and Rs.50,000/- as had been sustained by him with respect to crane hiring charges and car hiring charges u/s.40A(2)(a) of the Act.

11. Resultantly, the appeal of the assessee is allowed in terms of our aforesaid observations.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules, 1963, by placing the details on the notice board.

Sd/-

DR. DIPAK P. RIPOTE
(ACCOUNTANT MEMBER)

Sd/-

RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 13th January, 2023

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Raipur (C.G)
4. The Pr. CIT, Raipur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर बेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फाइल / Guard File.

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary

आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.