

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER

ITA No.9553/Del/2019
Assessment Year: 2011-12

Amtech Engineers, A-3/73, Sec.4, Rohini, New Delhi-1100 85	Vs.	ITO, Ward 62(1), New Delhi.
PAN :AAHFA9694H		
(Appellant)		(Respondent)

Appellant by	Shri Sanjay Sharma, Adv.
Respondent by	Shri Om Parkash, Sr. DR

Date of hearing	11.04.2023
Date of pronouncement	19..04.2023

ORDER

This is an appeal by the assessee against order dated 24.09.2019 of learned Commissioner of Income-Tax (Appeals)-20, New Delhi pertaining to assessment year 2011-12.

2. Registry has notified delay of 14 days in filing the appeal. The assessee has filed an application supported by an affidavit explaining the cause of delay and seeking condonation thereof.

3. After considering the submissions of the parties, I am satisfied that the delay in filing the appeal was due to reasonable cause. Accordingly, I condone the delay and admit the appeal for adjudication on merits.

4. The only dispute in the present appeal relates to disallowance made under Section 40(a)(ia) of the Income-Tax Act,1961 for alleged non-deduction of tax at source on certain payments made to parties.

5. Briefly, the facts are, the assessee is a registered partnership firm and engaged in the business of civil contract works, unloading, shifting and installation of machinery and painting/fabrication works. As observed by the Assessing Officer, for the assessment year under dispute, the assessee, though, had contractual receipts of Rs.1,66,19,455, however, it did not file any return of income. Therefore, the assessment was reopened under Section 147 of the Act. In response to notice issued under Section 148 of the Act, assessee filed its return of income declaring taxable income of Rs.4,25,100.

6. In course of assessment proceedings, the Assessing Officer noticed that the assessee had debited various expenditures, such as loading and unloading charges, generator and compressor charges,

taxi charges etc. aggregating to Rs.35,72,000. Whereas, the assessee has not deducted tax at source while making such payments to third parties. Therefore, he called upon the assessee to explain why the payment made should not be disallowed under Section 40(a)(ia) of the Act.

7. Not being satisfied with the submissions of the assessee, the Assessing Officer ultimately disallowed the amount of Rs.35,72,000 under Section 40(a)(ia) of the Act.

8. Assessee contested the aforesaid disallowance before learned Commissioner (Appeals). While deciding the appeal, learned Commissioner (Appeals) granted partial relief to the assessee by restricting the disallowance to Rs.32,22,700.

9. Before me, learned counsel appearing for the assessee submitted that there is no loss to Revenue due to failure on the part of the assessee to deduct tax at source as the payee had offered the income to tax.

10. In this context, learned counsel drew my attention to copy of Form 26AS for assessment year 2011-12. Thus, he submitted, in terms

with second proviso to section 40(a)(ia) of the Act, no disallowance should be made.

11. Learned Departmental Representative submitted, assessee's claim requires factual verification by the Assessing Officer.

12. I have considered rival submissions and perused the material available on record.

13. Undisputedly, in the year under consideration, assessee had claimed deduction of certain expenditures, which were paid to third party without deducting tax at source. The sole contention of the learned counsel for the assessee before me is to the effect that the payment made have already been offered to tax by the concerned payee, therefore, the second proviso to section 40(a)(ia) of the Act will come to the rescue of the assessee.

14. On a specific query being made by the Bench, learned counsel fairly submitted that neither this argument was taken before the departmental authorities nor the copy of Form 26AS filed at this stage was furnished before the departmental authorities .

15. Keeping in perspective the aforesaid factual position, though, I treat the evidences furnished before me now to be in the nature of

additional evidences and admit them, however, considering the fact that such evidence was not furnished before the departmental authorities and also the fact that assessee's claim of applicability of second proviso to section 40(a)(ia) of the Act requires factual verification, wh

ich has not been done by the departmental authorities as the assessee took the aforesaid contention before me for the first time, I am inclined to restore the issue to the Assessing Officer with a direction to factually verify assessee's claim regarding applicability of 2nd proviso to section 40(a)(ia) the Act in the context that the respective payees have offered the corresponding income to tax.

16. Needless to mention, the Assessing Officer must afford reasonable opportunity of being heard to the assessee before deciding the issue. Grounds are allowed for statistical purposes.

17. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 19th April, 2023.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 19th April, 2023.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi