

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH "SMC", KOLKATA

[Before Shri Rajesh Kumar, Accountant Member &
Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 644/Kol/2023
Assessment Year : 2014-15

MCNALLY BHARAT INFRASTRUCTURE LIMITED	Vs.	DCIT, Circle-4(1), Kolkata
PAN: AAFCM 4947 C		
Appellant		Respondent

Date of Hearing	08.08.2023
Date of Pronouncement	25.08.2023
For the Assessee	Shri Bibhas Saha, Advisor Taxation
For the Revenue	Shri Prabir Guptachoudhury, Addl. CIT

ORDER

Per Sonjoy Sarma, JM:

This appeal of the assessee for the assessment year 2014-15 is directed against the order dated 02.05.2023 passed by the Id. Commissioner of Income-tax, Appeals, NFAC, Delhi [hereinafter referred to as 'the Id. CIT(A)']. The assessee has raised the following grounds of appeal:

"1. On the facts of the case and in law, the appellate order under section 250 read with section 251 of the Income-tax Act, 1961 ('the Act') passed by the Id. CIT(Appeals) under National Faceless Appeal Centre ("NFAC") (hereinafter referred to as "CIT(A)") is erroneous on facts and bad in law.

Corporate Tax

2. Disallowance of rent expenses

2.1. That on the facts and circumstances of the case, the Id. CIT(A) has erred in holding that expenses relating to rent reimbursed to holding company aggregating to Rs. 15,98,400/- do not qualify for deduction under the Act.

2.2. That on the facts and circumstances of the case, the ld. AO has erred in not deliberating on the imposition of interest of Rs. 19,267/- u/s 234D although the issue was taken up in grounds of appeal.

3. The appellant craves leave to add to add/or amend, alter, modify or rescind the grounds hereinabove before or at the time of hearing of the appeal.”

2. Brief facts of the case are that the assessee filed its return of income for the A.Y. 2014-15 by declaring total income at Rs. Nil. The return of income filed by the assessee was processed u/s 143(1) of the Act followed by selection of the case for scrutiny and were duly issued and served upon the assessee. During the assessment proceeding, the ld. AO has observed that assessee has claimed expenses on rent at Rs. 15,98,400/-. However, assessee has not deducted TDS as required u/s 40(a)(ia) of I.T. Act. Therefore, the AO has disallowed expenses of Rs. 15,98,400/- in the hands of assessee.

3. Aggrieved by the above order, assessee is in appeal before the ld. CIT(A) where the appeal of the assessee was dismissed.

4. Feeling aggrieved by the above order, assessee is in appeal before this Tribunal where the only issue involved for determination is against sustaining the addition of Rs. 15,98,400/- made u/s 40(a)(ia) of the Act. The ld. AR submitted that the assessee is paying rent to its holding company and in respect of premises taken by the holding company on rent paid is claimed as reimbursement since several years. This position has been accepted by the department in the proceedings and subsequent assessment years and never disputed even when the provision for TDS inserted on the statute

since 1994 by inserting section 194-I of the I.T. Act, 1961 was in Act w.e.f. 01.06.1994. Similarly, this position was also not disputed even after the amendment in section 40(a)(ia) of the Act by the Taxation Law (Amendment) Act, 2006 w.e.f. 01.04.2006. The Id. AR further contended that on this issue there is no material change in the facts and law during the year under consideration. As per the lease deed entered between subsidiary and holding company, which provided for use of the premises by the subsidiary companies and consequent to that actual payments made by the lessee (holding company) to the lessor and necessary tax was deducted there from. The Id. AR also submitted that the holding company has also not debited the whole of rent to its books of account which has only debited the rent which pertains to the part of the premises occupied by it. Therefore, on the factual position, there was no lessor and lessee relationship between the holding company and present assessee where the provisions of section 194-I are attracted. The Id. AR to substantiate his contention he relied on the decision in the case of ACIT, Circle-15(1), New Delhi vs M/s. Result Service Pvt. Ltd. which is pari material in the facts of the case wherein the Hon'ble Tribunal held that disallowance u/s 40(a)(ia) of the Act for non-deduction of TDS u/s 194-I for recovery of rent from subsidiary company by holding company and the impugned addition made by the AO cannot be sustained either on facts or in law and the same is therefore liable to be deleted.

5. On the other hand, Id. DR relied on the decision rendered by the authorities below. We after hearing the rival submission of the parties and perused the material available on record. The assessee

is a subsidiary of holding company M/s. McNally Bharat Engineering Co. Ltd. and McNally Bharat Engineering Co. Ltd. entered into lease agreement with Williamson Magor and Co., 4th Floor at 4 Mangoe Lane, Kolkata-700001 and applicable tax deducted at source by depositing thereon. As the assessee was occupying part of the said rented property and reimbursing its holding company towards rent partially. In the present case, the assessee is paying rent to the holding company as reimbursement since last couple of years. This position has been accepted by the department all through and it has been never disputed even when provisions for TDS were inserted on statute since 1994, section 194-I of the Act was inserted in Act w.e.f. 01.06.1994. Similarly, this position was not disputed even after amendment in section 40(a)(ia) of the Act by the Taxation Law (Amendment) Act, 2006 which is w.e.f. 01.04.2006. On this issue, there is no material change in the facts and circumstances of the case as well as the law during the year under consideration. The ld. AR placed before us the copy of lease deed which provided for use of the premises by subsidiary companies. The actual payments are made by the lessee (holding company) to the lessor and necessary tax was deducted there from. Further, the holding company also did not debit the whole rent to its books of account. It has only debited the rent which pertains to the part of the premises occupied by assessee. In such a situation, in our considered opinion, there is no lessor and lessee relationship between the holding company and the present assessee where the provisions of section 194-I are applicable. Keeping in view, on the facts of the case and following the decision rendered by the co-ordinate bench in the case of ACIT, Circle-15(1)

vs M/s. Result Service Pvt. Ltd. Accordingly, we direct the AO to delete the addition made u/s 40(a)(ia) of the Act setting aside the impugned order dated 02.05.2023 passed by the ld. CIT(A) by allowing the appeal of the assessee.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 25.08.2023.

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Sonjoy Sarma)
Judicial Member

Dated: 25.08.2023
Biswajit, Sr. PS

Copy of the order forwarded to:

1. Appellant- McNally Bharat Infrastructure Limited, Ecospace Campus 2B, 7th Floor, 11F/12 (Old Plot No. AA II/BIK 3), New Town Rajarhat, North 24 Parganas, Kolkata-700159.
2. Respondent – DCIT, Circle-4(1), Kolkata.
3. Ld. CIT
4. Ld. CIT(A)
5. Ld. DR

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata