

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 213/Bang/2023
Assessment Year : 2016-17

The Income Tax Officer, Ward -1, Ballari.	Vs.	Shri Hospet Basavaraj, Prop: Sri Venkateshwar Logistics, J P Nagar, Ballari Road, Hospet – 583 201. PAN: AGHPB5219R
APPELLANT		RESPONDENT

Assessee by	:	Shri R.E. Balasubramanyam, CA
Revenue by	:	Shri Nischal .B, Addl.CIT (DR)

Date of Hearing	:	16-08-2023
Date of Pronouncement	:	29-08-2023

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by revenue against order dated 09.01.2023 passed by the Ld.CIT(A), Visakhapatnam-3 for A.Y. 2016-17 on following grounds of appeal:

“1. Whether the CIT(A) was justified in deleting/restricting all the additions made by AO, by not taking cognizance of the fact that the assessee appellant took corrective actions only after his tax infractions were detected and additions on that account made in the assessment order.

2. Any other ground that may be raised subsequently.”

Brief facts of the case are as under:

2. The assessee an Individual, is involving in the business activities of engaging Transport contracts and running such business concern under the name and style of M/s. Sri Venkateswara Logistics having its business premises located at the address mentioned above. The subject assessee has filed its Return of Income falling under compulsory Tax audit for the Assessment Year 2016-2017 on 16-10-2016, returning total income of Rs. 13,67,940/-. Subsequently the said Return of Income filed for the Assessment Year 2016-17 has been selected for Limited Scrutiny under CASS. The reason for selection of scrutiny is to examine "Large other expenses claimed in the Profit and Loss account ". Accordingly notice under Section 143(2) of the Income-Tax Act, 1961 was issued to the assessee.

2.1. On receipt of the statutory notices, the assessee filed certain details which were examined. The Ld.AO noted that assessee has made expenses to the extent of Rs.14,49,00,602/- towards transportation charges. The Ld.AO noted that assessee had deducted TDS on transportation charges amounting to Rs.7,30,16,338/-. It was noticed that, on the balance amount of Rs.40,36,304/-, assessee did not deduct TDS. The Ld.AO thus made addition in respect of the same u/s. 40(a)(ia) of the act. The Ld.AO further noted that, assessee had not deducted TDS on Rs.6,00,13,260/- as it had obtained declaration u/s. 194C(6) of the act. The Ld.AO issued notice to assessee calling upon to explain as to why 30% of such transport expenses should not be disallowed u/s. 40(a)(ia) of the act. As the assessee failed to file any submissions, disallowance of Rs.56,07,422/- was made.

2.2. The Ld.AO further noted that, on an amount of Rs.33,13,638/-, the provisions of section 194C(6) cannot apply as the payment made by some parties exceeded Rs. 75,000/- during the year. Accordingly, a disallowance of Rs.9,94,091/- was made in the hands of the assessee.

2.3. The Ld.AO thereafter noticed that assessee had made cash payments amounting to Rs.1,13,19,000/- that exceeded the threshold limit u/s. 40A(3) of the act. Accordingly, the said disallowance was made by the Ld.AO.

2.4. The Ld.AO further observed that assessee had debited sum of Rs.27,50,250/- under the head expenses other than transportation. As the assessee failed to furnish explanation and evidences in support of the expenditure, 10% of such expenses was disallowed in the hands of the assessee amounting to Rs.2,45,025/-.

2.5. The Ld.AO also made an addition of Rs. 3 Lakhs as he was of the opinion that the said sum was towards purchases of furniture and was necessarily to be capitalised.

Aggrieved by the order of the Ld.AO, assessee filed appeal before the Ld.CIT(A).

3. Before the Ld.CIT(A), assessee filed various details in support of the disallowance made by the Ld.AO. The Ld.CIT(A) remanded the documents / details / evidences filed by the assessee to the Ld.AO and upon receipt of the remand report, the Ld.CIT(A) allowed the claim of assessee by totally deleting the addition in respect of the disallowance made u/s. 40(a)(ia), 40A(3), expenditure claimed based on bills and vouchers. In respect of the payment to the parties that fall outside the scope of 194C(6),

the addition was upheld as the Ld.AO in the remand report highlighted the discrepancy in the PAN details filed by assessee which was not verifiable.

Aggrieved by the order of Ld.CIT(A), revenue is in appeal before this *Tribunal*.

4. The revenue has raised only one ground aggrieved by the disallowances made by Ld.CIT(A) under various heads. The Ld.DR though vehemently support the order of the Ld.AO could not contradict the observations of the Ld.CIT(A) in the impugned order based on which the additions were deleted.

4.1. On the contrary, the Ld.AR relied on the orders passed by Ld.CIT(A).

We have perused the submissions advanced by both sides in the light of records placed before us.

5. The Ld.AR has filed a chart in respect of the issues that forms part of the ground raised by the revenue and the observations of the Ld.CIT(A) as under:

S.No.	Issue	Amount
1.	TDS payment made by the Appellant resulting in reconsideration of 40a(ia)	40,36,304.00 Page 10
2.	Non-deduction of TDS u/s 194C failed by the Appellant due to failure in collection of PAN number.	12,24,607.00 (30% of Rs. 40,82,023.00)
3.	Cash payments within threshold limit of 40A(3).	1,13,90,000.00

4.	Expenditure claimed based on bills and vouchers.	2,45,025.00
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We note that the Ld.CIT(A) has given a detailed observation on the above issue in the impugned order as under:

5.1 Issue 1: - TDS payment made by the Appellant resulting in reconsideration of 40a(ia)

The Ld.CIT(A) has decided the issue by observing as under:

“3.7 I have considered ground no.2, gone through the submissions made on behalf of the appellant and seen the remand report and order of the AO carefully. From the remand report submitted by the AO. I observe that Form 27A was filed on 15.02.2019 and TDS compliance was made by the appellant belatedly. The AO in the remand report stated that since the appellant complied with the TDS provisions the addition made by invoking provisions of section 40a(ia) may be reconsidered. I am in agreement with the views of the AO and addition of Rs.40,36,304/- is deleted accordingly. Ground no.2 is allowed.”

5.1.1 We do not find any infirmity in above observations by the Ld.CIT(A). The Ld.DR at the time of hearing could not produce any evidence contrary to the above findings. We therefore do not find any necessity to interfere with the above factual observations by the Ld.CIT(A) that is based on the remand report called for and the evidences filed by the assessee during the first appellate proceedings.

5.2 Issue 2: Non-deduction of TDS u/s 194C failed by the Appellant due to failure in collection of PAN number.

The Ld.CIT(A) has decided the issue by observing as under:

“4.4 I have considered ground no.3, gone through the submissions made on behalf of the appellant and seen the remand report and order of the AO carefully. I observe from the assessment order and the remand report that the appellant made payments without obtaining PAN of the concerned persons, which is not complied with the provisions of section 194C(6) of the Act. The appellant had failed to comply with the newly amended sub-section (6)

and (7) of the section 194C of the Act which resulted in non deduction of TDS against transportation charges payments. The AO in his remand report stated as under:

The assessee did not obtained PAN of the person to whom payments are made. Since, the statute is clearly states that the assessee gets immunity of not making TDS on obtaining PAN in the declarations. Hence, in view of said provision, the immunity cannot be given in the cases listed above to the extent of Rs. 40,82,023/- and as such the addition may be confirmed to the extent of 30% of Rs. 40,82,023/-

I am in agreement with the observation of the AO. hence ground no. 3 is partly allowed.”

5.2.1 We do not find any infirmity in above observations by the Ld.CIT(A). The Ld.DR at the time of hearing could not produce any evidence contrary to the above findings. We therefore do not find any necessity to interfere with the above factual observations by the Ld.CIT(A) that is based on the remand report called for and the evidences filed by the assessee during the first appellate proceedings.

5.3 Issue 3: Cash payments within threshold limit of 40A(3)

The Ld.CIT(A) has decided the issue by observing as under:

“6.4 I have considered ground no.5, gone through the submissions made on behalf of the appellant and seen remand report and order of the AO carefully. From the submissions and remand report submitted by the AO I observe that the said cash payments are within the threshold limit prescribed under section 40A(3) of the Act and are in accordance with the provisions of the Act. Hence, addition of Rs.1,13,90,000/- is allowed. Ground no. 5 is allowed.”

5.3.1 We do not find any infirmity in above observations by the Ld.CIT(A). The Ld.DR at the time of hearing could not produce any evidence contrary to the above findings. We therefore do not find any necessity to interfere with the above factual observations by the Ld.CIT(A) that is based on the remand report called for

and the evidences filed by the assessee during the first appellate proceedings.

5.4 Issue 4: Expenditure claimed based on bills and vouchers.

The Ld.CIT(A) has decided the issue by observing as under:

“7.5 I have considered ground no.6, gone through the submissions made on behalf of the appellant and seen remand report and order of the AO carefully. During appeal the appellant had submitted acknowledgment dated 14.11.2018 comprising of supporting documents regarding the expenditure of Rs.2,45,025/-. I observe that the supporting bills and vouchers to the extent of expenditure claimed by the appellant are genuine hence addition of Rs.2,45,025/- is deleted. Ground no.6 is allowed.”

5.4.1 We do not find any infirmity in above observations by the Ld.CIT(A). The Ld.DR at the time of hearing could not produce any evidence contrary to the above findings. We therefore do not find any necessity to interfere with the above factual observations by the Ld.CIT(A) that is based on the remand report called for and the evidences filed by the assessee during the first appellate proceedings.

Accordingly, we do not find any merit in the ground raised by the revenue.

In the result, the appeal filed by the revenue stands dismissed.

Order pronounced in the open court on 29th August, 2023.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 29th August, 2023.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,
ITAT, Bangalore