

IN THE INCOME TAX APPELLATE TRIBUNAL, RANCHI BENCH, RANCHI

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

I.T.A. No. 19/Ran/2021 (Assessment Year-2013-14)

(Virtual Hearing)

K.M. Memorial Hospital & Research Centre (P) Ltd., Bye Pass Road, Chas, Bokaro. PAN No. AACCK 3476 B	Vs.	A.C.I.T., Circle-1, Hazaribag.
Appellant/ Assessee		Respondent/ Revenue

Assessee represented by	Shri P. Anand, A.R.
Department represented by	Shri Khubchand T. Pandya, Sr. DR
Date of hearing	21/04/2025
Date of pronouncement	21/04/2025

ORDER

PER: RATNESH NANDAN SAHAY, A.M.

1. This appeal by the appellant is directed against the order of learned Commissioner of Income Tax (Appeals), Hazaribag [in short, the Id. CIT(A)] dated 14/09/2020 for the Assessment Year (AY) 2013-14. In this appeal, the appellant has raised following grounds of appeal:

- "1. For that the learned officers below have erred in making addition of the amount of ₹ 3,00,000/- especially in view of the fact that there was no agreement to make any payment under Section 194C and therefore provision of Section 40(a)(ia) are not applicable in this case. Even if the appellant was liable to deduct TDS then only 30% of the amount can be disallowed.
- 1.1 For that the learned CIT(A) has erred in confirming the addition of ₹ 26,478/- because the appellant had produced all the supporting vouchers of the diesel expenses. Making the addition just because some of the bills could not be produced before the AO is completely wrong and illegal."

2. From perusal of record, we noticed that there is a delay of 52 days in filing this present appeal before this Tribunal, for which the assessee has filed an application for condonation of delay. The assessee in its condonation application has stated that the Director, who is responsible for overseeing the working of the hospital/company was on quarantine due to getting in contact with Covid

Positive patient during the months of November and December, 2020. The Hon'ble Supreme Court had also extended the limitation period vide order dated March 23, 2020. The assessee prayed that the assessee has good case on merit and is likely to succeed, if one more opportunity is provided.

3. On the other hand, the learned Departmental Representative of the assessee has submitted that the Bench may take an appropriate view. Considering the submissions made by the assessee, we condone the delay of 52 days in filing appeal before this Tribunal and admit the same for hearing on merit.
4. The facts of the case, in brief, are that the assessee is a private limited company and runs a hospital. The assessee filed return of income on 28/09/2013 disclosing total income of ₹ 37,09,380/-. The case was selected for scrutiny and the assessment was made by the Assessing Officer on 22/07/2015 under Section 143(3) of the Income Tax Act, 1961 (in short, the Act) assessing the total income at ₹ 69,96,030/-. In the mean time, the Id. Pr.CIT, Hazaribag passed the order under Section 263 of the Act vide its order dated 23/03/2018. During the consequential assessment proceedings, the Assessing Officer found that the assessee has made payment of ₹ 3.00 lacs to one Sri Sudhanshu Ojha but no TDS under Section 194C of the Act was deducted. The Assessing Officer, therefore, disallowed the entire amount under Section 40(a)(ia) of the Act and added back to the total income of the assessee.
5. Aggrieved by the order of the Assessing Officer, the appeal was filed before the Id. CIT(A) who confirmed the order of the Assessing Officer on the ground that when any payment for contract was made above the prescribed limit then the assessee was required to deduct TDS under Section 194C of the Act but since it

has failed to deduct the same. The expenditure claimed at ₹ 3,00,000/- has to be disallowed under Section 40(a)(ia) of the Act.

6. Aggrieved by the order of Id. CIT(A), this appeal has been preferred before us. During the course of hearing, the appellant submitted copy of the Hon'ble ITAT, Kolkata Bench decision in the case of Dipak Parui Vs JCIT held on 20/07/2018 in which the identical facts were decided by the Hon'ble Tribunal. The Id. AR of the assessee placed reliance on this decision of the Hon'ble ITAT, Kolkata Bench wherein it was held as under:

"Latter issue before us is that of correctness of Section 40(a)(ia) disallowance of Rs. 1,79,800/- out of assessee's total claim of Rs. 3,05,364/-. His only argument before us is that section 40(a)(ia) as amended by Finance Act, 2014 w.e.f. 01/04/2015 prescribing such disallowance to be restricted to 30% only than the entire amount of Rs.1,79,800/-, applies with retrospective effect. Learned Departmental Representative vehemently opposes this legal plea. He pleads that the said proviso does not carry any retrospective effect. We find no force in Revenue's instant argument as a coordinate bench of this tribunal in Shri Rajendra Yadav in ITA No. 895/JP/2012 decided on 29/01/2016 already concludes the above amendment w.e.f. 01/04/2015 to be retrospective effect being curative in nature. We therefore direct the Assessing Officer to restrict the impugned disallowance to 30% only to be followed by necessary computation as per law. This latter substantive ground is treated as partly accepted in above terms."

7. The Id. AR of the assessee, thus, prayed before us that since the identical issue has already been decided by the Hon'ble Kolkata Tribunal, the same should be followed in the present case also.
8. On the other hand, the learned Departmental Representative (Id. DR) for the revenue supported the orders of the Assessing Officer and the Id. CIT(A).
9. We have considered the submissions of both the parties, facts of the case, provisions of law and the decision of the Hon'ble Kolkata Tribunal dated 20/07/2018 on which the Id. Authorised Representative of the assessee had

placed reliance and we are in agreement with the decision of Hon'ble ITAT, Kolkata that w.e.f. 01/04/2015 when amendment was brought in the statute that disallowance on account of non-deduction of TDS should be restricted to 30% of that amount under Section 40(a)(ia) of the Act. Accordingly, we also hold that the assessee is entitled to pay 30% of the total amount claimed under Section 40(a)(ia) of the Act. The Assessing Officer is accordingly directed to restrict the addition to 30% of ₹ 3.00 lacs which comes to ₹ 90,000/-. In the result, this ground of appeal of assessee is partly allowed.

10. Ground No. 2 of appeal relates to confirming the addition of ₹ 26,478/- on account of non-production of some of the bills of diesel expenses. The appellant did not press this ground of appeal during the course of hearing and has also submitted in writing that considering the small quantum of disallowance, the petitioner do not want to press this ground. The Id. DR has raised no objection if the appellant does not want to press ground No. 2 of appeal. Considering the submission of appellant, ground No. 2 of appeal is dismissed being not pressed.

11. In the result, this appeal of assessee is allowed partly.

Order pronounced in open court on 21st April, 2025.

Sd/-
(GEORGE MATHAN)
JUDICIAL MEMBER

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Ranchi, Dated: 29/04/2025

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Ranchi