



आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
AND
SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER
आयकरअपीलसं./ITA No.436&437/RJT/2023
निर्धारणवर्ष /Assessment Year: 2018-19&2019-20

Polo Plus Containers, Survey No. 441/2, At Bhalgamda, Limbdia 363421	बनाम Vs.	The DCIT, CPC Bangalore, Karnataka
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी/Respondent)
Pan No.		AANFP0103E

निर्धारितकीओरसे/Assessee by : Shri Kalpesh Doshi, Ld. AR
राजस्वकीओरसे/Revenue by : Shri Abhimanyu Singh Yadav, Ld. Sr.DR
सुनवाईकीतारीख/Date of Hearing : 03/03/2025
घोषणाकीतारीख/Date of Pronouncement : 02/06/2025

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned two appeals filed by the same assessee, pertaining to Assessment Years 2018-19 & 2019-20, are directed against the separate orders passed under section 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) by the Learned Commissioner of Income-tax (Appeals), both dated 27.10.2023, which in turn arises out of a separate orders passed by the Assessing Officer 0u/s 143(1) of the Act.



2. Since, these two appeals filed by the same assessee for different assessment years and different issues are involved, therefore, all these appeals have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity.

3. The Grounds of appeal (ITA No. 436/Rjt/2023 for AY 2018-19) raised by the assessee are as follows:

(1) That, the Ld. CIT(A) has wrongly confirmed the disallowance of Rs. 64,549/- on account of VAT outstanding u/s 43B of the I.T. Act, 1961.

(2) That, the Ld. CIT(A) has wrongly confirmed the disallowance of Rs. 2,57,795/- on account of 30 percent of various payment on which TDS has not been deducted u/s 40(a)(ia) of the I.T. Act, 1961.

(3) That, the findings of the Ld. assessing officer and Ld. CIT(A) are not justified and are bad-In--law.

4. The Grounds of appeal (ITA No. 437/Rjt/2023 for AY 2019-20) raised by the assessee are as follows:

(1) That, the Ld. CIT(A) has wrongly confirmed the disallowance of Rs. 1,79,692/- on account of 30 percent of various payment on which TDS has not been deducted u/s 40(a)(ia) of the I.T. Act, 1961.

(2) That, the findings of the Ld. assessing officer and Ld. CIT(A) are not justified and are bad-In--law.

5. At the outset, Learned Counsel for the assessee, informs the Bench that assessee, do not wish to press, ground No.1 in ITA No. 436/Rjt/2023 for AY 2018-19, therefore, we dismiss,ground No.1 in ITA No. 436/Rjt/2023 for AY 2018-19, as not pressed.

6. Now, in both the appeals, the common ground, which is to be adjudicated by us, is that Ld. CIT(A) has wrongly confirmed the disallowance of Rs. 2,57,795/- in AY 2018-19 and Rs. 1,79,692/-, in AY 2019-20, on account of 30 percent of various payment on which TDS has not been deducted u/s 40(a)(ia) of the



Income Tax Act, 1961. To adjudicate this common issue, we narrate the facts, by taking, the lead case, in ITA No. 436/Rjt/2023 for assessment year (A.Y.) 2018-19.

7. Succinctly, the factual panorama of the case is that assessee before us is a Partnership-firm and engaged in the business of manufacturing, water storage tanks, and solar water heaters. The return of income for the year under consideration was filed on 31st October 2018, declaring total income of Rs.9,19,070/-. The adjustment under section 143(1)(a) of the Income tax Act, in respect of which 30% of payments, on which TDS was not deducted under section 40(a) (ia) of the Act, amounting to Rs.2,57,795/-, was made in the order under section 143(1) of the Act, dated 13.05.2019, by the assessing officer (CPC-assessing officer).

8. Aggrieved by the order of the assessing officer (CPC-assessing officer), the assessee, carried the matter in appeal, before the Id. CIT(A), who has confirmed the action of the assessing officer. The Id CIT(A) observed that in assessee's case it is to be seen whether the adjustments made are within the purview of 143(1) of the Act and therefore, the disallowance of expenditure indicated in the audit report but not taken into the account in computing the total income in the return has to be added back. As regards the plea that the payer is not considered as an "assessee in default" under first proviso to section 201(1), this can be considered with respect to (w.r.t) charging interest u/s 201(1) of the Act. Submission of additional details/documents in support of such claim cannot be admitted since it is outside the scope of Section 143(1) of the I.T. Act. The assessee has committed default u/s 40(a)(ia) of the Act, the disallowance of such expenditure indicated in the audit report has not been taken into by the assessee while computing his income and this calls for adjustment u/s 143(1) of



the Act. In view of the same, the Id. CIT(A) confirmed the addition made by the assessing officer.

9. Aggrieved by the order of the learned CIT(A), the assessee is in further appeal before us.

10. Shri Kalpesh Doshi, Learned Counsel for the assessee, at the outset submitted that in respect of addition u/s. 40(a)(ia) of the Act, the second proviso to this section clearly states that when the assessee has made default but the payee has shown such amount in its return of income, and has paid the taxes thereon, then, that would be sufficient compliance, and therefore no disallowance should be made. The Ld. Counsel also submitted CA certificate, which clearly stated that payee has included the sum in its return of income and paid the taxes thereon, hence addition should not be made in the hands of the assessee.

11. On the contrary, the Ld. DR for the revenue, submitted that the assessee has not submitted income tax returns of the payee before the assessing officer. Besides, the Ld. Counsel also submitted CA certificate, which stated that payee has included the sum in its return of income and paid the taxes thereon, however, such CA certificate has not been examined by the assessing officer, it is additional evidence before the Bench, therefore the matter may be restored back to the file of the assessing officer to examine the income tax return of the payee to ascertain whether payee had included such some in the income tax return filed by him and offered the taxes thereon or not.

12. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the return of income of the assessee, has been processed u/s 143(1) of the Income Tax Act, and the CPC-AO has



disallowed the expenses u/s 40(a)(ia) of the IT. Act of Rs. 2,57,795/-GMP% of Rs. 8,59,316/-, that is, total amount paid. The assessee has made payment of Rs. 8,59,316/- for various expenses to creditors. Since, it was payment made for the purchases, and the assessee was of the view that the TDS u/s 194A of the Act is not applicable to him. Therefore, the assessee has failed to deduct TDS on such payment u/s 194A of the Act, on bona-fide belief. In this regards, it is submitted by the Id Counsel that since the payee are duly assessed to Income Tax and has duly shown the respective income in the income statement filed and therefore the same is not disallowed u/s 40(a)(ia) of the LT. Act

13. In respect of disallowance made by assessing officer invoking section 40(a)(ia) of the Act, we note that the Finance Act 2012 made an amendment of section 201 & 40(a)(ia) of the Act. In accordance with this amendment, the payer [assessee] would not be deemed to be in default if the recipient of income (payee), has taken into account the amount received from the payer in computing its income and declared it in the return and has paid due tax on the returned income. We note the insertion of second proviso to section, 40(a)(ia) of the Act is curative in nature and so has retrospective effect w.e.f. 1st April, 2005, being a date from which Section 40(a)(ia) of the Act was inserted by the Finance (No. 2) Act, 2004. In view of this, we are of the view that this matter needs fresh adjudication in the light of the decisions of the Hon'ble Delhi High Court in CIT v. Ansal Land Mark Township Pvt. Limited [ITA 160/2015 & 161/2015, dated 26/08/2015], wherein Hon'ble High Court upheld the decision of the Tribunal of Agra Bench in Rajiv Kumar Agarwal v. ACIT that the 2nd proviso to section 40(a)(ia) is curative amendment and has retrospective effect from 01/04/2005. The findings of the Hon'ble Court, are as follows:

"14. The Court is of the view that the above reasoning of the Agra Bench of ITAT as regards the rationale behind the insertion of the second proviso to Section 40(a) (ia) of the Act and its conclusion that the said proviso is declaratory and curative and has retrospective effect from 1st April 2005, merits acceptance.



15. In that view of the matter, the Court is unable to find any legal infirmity in the impugned order of the ITAT in adopting the ratio of the decision of the Agra Bench ITAT in Rajiv Kumar Agarwal v. ACIT

14. Taking into consideration the judicial decisions as cited above, we set aside the impugned order of Ld CIT(A) and remand this issue back to assessing officer and the assessing officer is directed to verify the fact regarding the fulfillment of condition as stated above, by the recipient payee and if the assessing officer finds that the recipient/payee has included the amount in its total income in its return of income and paid taxes thereon, then the disallowance made by the assessing officer by invoking the provisions of section 40(a)(ia) of the Act should be deleted.

15. We are of the view that matter needs fresh adjudication in the light of the fact that the assessing officer will carry out necessary verification in regard to related payments having been taken into account by the recipient in computation of its income and verification of payment of taxes in respect of such income and also filing of income tax return by the recipient. In term of the above, the aspect argued by Ld. counsel is restored back to the file of the assessing officer and assessee will provide all the details, to the assessing officer, in terms of second proviso to section 40(a)(ia) of the Act.

16. In the result, both these appeals filed by the assessee are allowed for statistical purposes, in above terms,

Order is pronounced on 02/06/2025 in the open court.

**Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBR**

**Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER**



Rajkot

(True Copy)

दिनांक/ Date: 02/06/2025

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot