

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "B" KOLKATA**

Before **Shri N.V. Vasudevan, Judicial Member** and
Shri Waseem Ahmed, Accountant Member

ITA No.371/Kol/2013 Assessment Year :2007-08
--

Sk. Mafijuddin Joukrishnapur, Sekendari, Ghatal, Dist. Paschim Midnapore, [PAN No.ANMPS 8381 H]	V/s.	ACIT, Range-2, Midnapore, West Bengal
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

अपीलार्थी की ओर से/By Appellant	Shri Sunil Surana, FCA
प्रत्यर्थी की ओर से/By Respondent	Shri P.B. Pramanik, JCIT-SR-DR
सुनवाई की तारीख/Date of Hearing	26-11-2015
घोषणा की तारीख/Date of Pronouncement	16-12-2015

आदेश /ORDER

PER Waseem Ahmed, Accountant Member:-

This appeal by assessee is against the order of Commissioner of Income Tax (Appeals)-XXXVI, Kolkata in appeal No.789/CIT(A)-XXXVI/Kol/09-10 dated 17.12.2012. Assessment was framed by ACIT, Range-2, Midnapore Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 24.12.2009 for assessment year 2007-08. Assessee has raised following grounds:-

"1. For that the order of the Ld. CIT(A) is arbitrary, illegal and bad in law.

2. For that the Ld. CIT(A) erred in confirming the disallowing Rs.1,04,86,798/- being payment made to labor as wages and Rs.98,674/- and again to labour as dying charges by applying section 40(a)(ia) when payment was made on

day to day basis to the labour, there was no contract and the addition has been confirmed on presumptions.

3. For that the Ld. CIT(A) erred confirming the addition of the Assessing Officer amounting to Rs.1,00,000/- for low drawings when the AO made the addition without any basis or bringing on record any material to justify the said addition.”

2. First we take up ground No.1. The issue raised by assessee in this appeal is that Ld. CIT(A) erred in confirming the disallowance of ₹1,04,86,798/- and ₹98,674/- towards payment of labour wages and for dying charges on account of violation of provision of Sec. 40(a)(ia) of the Act.

3. Briefly stated facts are that assessee is an individual engaged in business carrying out jari works on contract basis. During the course of assessment proceedings, Assessing Officer found that assessee has debited a sum of ₹1,04,86,798/- under the head “wages to labour” and ₹98,674/- under the head ‘dying charges’. The AO found that the assessee has not deducted TDS from the aforesaid payments. The AO issued show cause notice to the assessee to explain the reasons for violation of provision as specified under section 194C of the Act. However, the assessee/ authorized representative neither appeared nor submitted any reply to the above show cause notice. Therefore the AO disallowed both the expenses and added the same to the income of assessee.

4. Aggrieved, assessee preferred appeal before Ld. CIT(A) who confirmed the action of assessee by observing in para-5 of his order which reproduced below:-

“5. The submissions of A/R, assessment order and the remand reports were duly considered. As it is evident from the record that appellant was asked to produce books of account, vouchers and bills relating to various expenses as

disallowed by AO in the assessment and remand proceedings before AO. But these books of account, bills and vouchers were never produced before for verification. In the appellate proceeding, matter was further examined and to verify/examine these expenses books of account with bills/vouchers were called for but in spite of opportunities on 26.11.2012 and 10.12.2012 these documents were not produced. In the absence of books of account, genuineness of expenses remains unverified. Hence expenses of Rs.1,04,85,798/- as labour charges and Rs.98,674/- as dyeing charges as disallowed by AO are confirmed.”

Shri Sunil Surana, Ld. Authorized Representative appearing on behalf of assessee and Shri P.B. Pramanik, Ld. Departmental Representative appearing on behalf of Revenue.

5. We have heard rival contentions of both the parties and perused the materials available on record. Ld. AR submitted that wages was paid to daily workers. The workers were not having PAN and payments were being made to the workers either on daily basis or weekly basis. The Id. AR drew our attention to the order of Id. CIT(A) where the remand report of the AO was recorded. The relevant portion of the remand report stands as under:-

“Sri Amit Kumar Nayek a/r of the assessee appeared on 24.10.2011 and on 08.11.2011 and produces the master roll of wages for the period of June 2006 totaling Rs.9,33,120/- paid to nearly 320 job workers, for the period of April 2006 totaling Rs.9,92,800/- paid to 375 job workers, for the period from 23.02.2007 to 15.03.2007 and from 23.03.2007 to 29.03.2007 totaling Rs.13,19,100/- and paid to 1500 job workers. He has failed to produce all the wages register totaling amount of Rs.104,85,798/-.

The A/R has also produce the dying charges register paid to the labourer totaling Rs.91,800/- and paid to 105 job workers. During the scrutiny proceedings the assessee has failed to produce the details books of accounts including wages register paid to the labourers and dyeing charges register paid to the labourers though ample opportunities have been given to the assessee.”

On the basis of the above, Id. AR claimed that the necessary details were provided to the AO for verification of the wages and dying charges. The Id. AR claimed that the detail for the wages dying charges was very

voluminous so part of the details was furnished for verification. Moreover, the AO could not find any discrepancy from the part of the details in relation wages and dying charges submitted for the verification. The Id. AR submitted that number of workers were increasing and decreasing on the basis of requirement of the work. Without prejudice to above, Id. AR argued that the provision of Sec.194C of the Act was not applicable to assessee, who is an individual for the relevant year, as it was brought under the Act with effect only from 01.06.2006. Besides this, there was no written contract between assessee and the job workers, so this transaction is out of purview of Sec. 194C of the Act.

6. We find from the aforesaid discussion that the genuineness of the expense has nowhere been doubted either by AO or Ld. CIT(A). Now the question before us is that the provision of Sec. 194C of the Act is applicable to this transaction or not. As roughly contended by the Ld. AR the provision of Sec. 194C of the Act were not applicable to the individual. Therefore, in respect of payments made between 01.04.2006 to 31.05.2006, there was no obligation to TDS by the assessee and addition to the above extent u/s. 40(a)(ia) of the Act cannot therefore be sustained. In respect of the payments from 01.06.2006 to 31.03.2007, the claim of the assessee is that these expenses paid to the job-workers only on the basis of daily job work and they did not have any detail of PAN or bank accounts. We find that the order of AO is silent on this aspect. It was also submitted that assessee has engaged workers depending upon its requirement for the job work. There was always a fluctuation in the numbers of workers employed in the work. For the wages expenses, some time there were 320 workers and some time there were 1500 workers. For the dying charges there were as many as 105 job workers during the year to whom the payment of ₹98,674/- were

paid. We find from the details that the requirement of worker was very much fluctuating during the year which shows the labours were not permanent workers of the assessee. In fact, details for some of the workers had been filed by the assessee before Ld. CIT(A). The number of labour was hired depending on the requirement from the outside when there was need for the workers and they were paid on the basis of assigned task. The Ld AR submitted that the details of daily workers can also be provided. We are of the view that since the Ld. CIT(A) confirmed the addition for the reason that details of sub-contract payments were not filed for the whole period, the assessee should be offered an opportunity in this regard. We therefore, set aside the order of Ld. CIT(A) and remand the issue to the AO for fresh consideration to enable the assessee to prove his case with a proper evidence.

7. Next ground raised by assessee is as regards that Ld. CIT(A) has erred in confirming the addition made by AO amounting to ₹1 lakh on account of low drawings.

7.1 During the year under consideration, assessee has shown drawing for an amount of ₹ 48,000/- only and AO found and considering the market value as well as standard of living of assessee drawing should be not less than ₹1.48 lakh. Therefore AO added a sum of ₹1 lac to the income of assessee.

7.2 The assessee preferred appeal to CIT(A) who has upheld the order of the AO.

8. Aggrieved, assessee preferred second appeal before us.

9. We have heard both the parties and perused the materials available on record. We find from the orders of authorities below that no material evidence has brought for making the addition of ₹1 lakh on account of low drawings of the assessee. In the absence of any specific reason for disallowance of said amount and we delete the same. We reverse the order of AO which subsequently confirmed by Ld. CIT(A) and in our considered view, we allow assessee's ground.

10. In the result, assessee's appeal is partly allowed for statistical purpose.

Order pronounced in the open court 16/12/2015

Sd/-
(N.V.Vasudevan)
(Judicial Member)
Kolkata,

Sd/-
(Waseem Ahmed)
(Accountant Member)

*Dkp

दिनांक:- 16/12/2015 कोलकाता ।

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Sk.Mafijuddin, Joukrishnapur, Sekendari, Ghatal,
Dist. Paschim Midnapore, West Bengal
2. प्रत्यर्थी/Respondent-ACIT, Range-2, Midnapore, West Bengal
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,
उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।