

IN THE INCOME TAX APPELLATE TRIBUNAL “C ” BENCH: KOLKATA
[Before Shri Mahavir Singh, JM & Shri M. Balaganesh, AM]

I.T.A No.1467/Kol/2011
Assessment Year: 2007-08

M/s. M. L. Das & Sons
(PAN: AAFFM8921R)
(Appellant)

Vs. Income-tax Officer, Wd-48(1), Kolkata

(Respondent)

&

I.T.A No.1613/Kol/2011
Assessment Year: 2007-08

Income-tax Officer, Wd-48(1), Kolkata
(Appellant)

Vs. M/s. M. L. Das & Sons
(Respondent)

Date of hearing: 24.02.2016
Date of pronouncement: 24.02.2016

For the Appellant: Shri Rudra Dhar, Advocate
For the Respondent: Shri Amitava Bhattacharyya, Sr. DR

ORDER

Per Shri Mahavir Singh, JM:

Both these appeals by assessee and revenue are arising out of order of CIT(A)-XXX, Kolkata vide Appeal No. 126/CIT(A)-XXX/Wd-48(1)/2009-10 dated 08.08.2011. Assessment was framed by ITO, Ward-48(1), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 2007-08 vide his order dated 22.12.2009.

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the addition of bogus labour charges of Rs.17,61,894/- .

3. We have heard rival submissions and gone through facts and circumstances of the case. We find that the AO while framing assessment u/s. 143(3) of the Act noted that this labour charges pertains to AY 2007-08, the year under consideration amounting to Rs.17,61,894/-. As the assessee could not substantiate this labour charges he treated the same as bogus. Aggrieved, assessee preferred appeal before CIT(A), who also confirmed the action of AO by the reason that the Inspector deputed for verification could not trace these parties nor the assessee could file confirmations or similar evidence when confronted by AO. Now before us, Id. Counsel for the assessee only requested that he is ready to produce all evidences including books of account before the AO in case matter is remitted back to the file of AO. On this, Id. Sr. DR has not objected. In view of the above facts, we restore the issue to the file of AO for fresh adjudication and assessee is directed to produce all evidences including books of account before the AO. Accordingly, this issue of assessee’s appeal is allowed for statistical purposes.

4. The next issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO in making disallowance of Rs.8,17,121/- on account of wages paid to daily labourers without deduction of TDS u/s. 194C of the Act by invoking the provisions of section 40(a)(ia) of the Act.

5. We have heard rival submissions and gone through facts and circumstances of the case. We find that the assessee claimed before the AO that it has paid daily labour charges below Rs.50,000/- per annum and the provisions of section 194C of the Act does not apply to his case if individual labour case is seen. The CIT(A) has not accepted the plea and confirmed the addition. We find that it is for the assessee to prove the payment of labour charges that the individual payment is below Rs.50,000/- in each of the case per annum. For this, Id. Counsel for the assessee requested for setting aside this issue to the file of AO so that the assessee will be able to prove its case. In view of the given facts, we are of the view that let this issue be remitted to the file of AO for reconsideration afresh. Accordingly, the issue is restored to the file of AO for fresh consideration. This issue of assessee's appeal is allowed for statistical purposes.

6. Similar is the issue in respect to difference in receipt as per TDS certificate and recorded by assessee in its books of account at Rs.1,12,750/-. Ld. Counsel for the assessee as well as Ld. Sr. DR fairly agreed that this issue can also be restored to the file of AO for verification of the documents. In term of the above, we restore this issue to the file of AO for fresh verification. This issue of assessee's appeal is also allowed for statistical purposes.

7. Now, we are coming to revenue's appeal. At the outset, it is seen that the quantum involved in this case is Rs.25,20,133/- and tax effect on the disputed addition before us is Rs.8,56,845/-, which is less than Rs. 10 lacs.

8. After perusing the materials available on record, we find that the additions disputed before us is below the tax effect limit prescribed by CBDT vide Circular No. 21 / 2015 dated 10.12.2015 for preferring appeals before tribunal by the revenue. On perusal of the Circular No. 21 / 2015 dated 10.12.2015 and the materials available on record, Ld. DR could not point out whether this case falls under any of the exception as provided in the circular despite specific opportunity was given, does not fall under any of the exceptions contemplated in the said Circular, as this is covered. We also find that the Circular makes it very clear that the revised monetary limits shall apply retrospectively to pending appeals also. We find that the Circular is binding on the tax authorities. This position has been confirmed by the *Hon'ble Apex Court in the case of Commissioner of Customs vs Indian Oil Corporation Ltd reported in 267 ITR 272 (SC)*. Hence, we hold that the appeal of the revenue deserves to be dismissed in terms of low tax effect vide

Circular No.21 / 2015 dated 10.12.2015. Accordingly, this being a low tax effect case, we dismiss this appeal of revenue in limine, as unadmitted, without going into the merits of the case.

9. In the result, the appeal of assessee is allowed for statistical purposes and revenue's appeal is dismissed.

Order pronounced in the open court.

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Mahavir Singh)
Judicial Member

Dated : 24th February, 2016

Jd. Sr. P.S

Copy of the order forwarded to:

1. Appellant – M/s. M. L. Das & Sons, 84/5, Sri Kishan Vakant Lane, Howrah-1.
2. Respondent – ITO, Ward-48(1), Kolkata.
3. CIT(A), , Kolkata
4. CIT, , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.