

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri S. S. Viswanethra Ravi, JM]

I.T.A No. 1094/Kol/2016
Assessment Year: 2010-11

Mahesh Kr. Narula
(PAN: ABOPN8174H)
(Appellant)

Vs. Joint Commissioner of Income-tax,
Range-35, Kolkata.
(Respondent)

Date of hearing: 30.11.2016
Date of pronouncement: 09.12.2016

For the Appellant: Shri Mahaveer Prasad Agarwal, AR
For the Respondent: Shri H. R. Singh, JCIT

ORDER

Per Shri M. Balaganesh, AM:

This appeal by assessee is arising out of order of CIT(A)-10, Kolkata vide appeal No. 126/CIT(A)-10/R-35/13-14/Kol dated 17.02.2016. Assessment was framed by JCIT, Range-35, Kolkata u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2010-11 vide his order dated 07.03.2013.

2. The first issue to be decided in this appeal is as to whether the Id CITA is justified in upholding the disallowance made u/s 40(a)(ia) of the Act in the sum of Rs. 2,10,000/- paid to National Trading Co. in the facts and circumstances of the case.

2.1. The brief facts of this issue is that the assessee is an individual engaged in the business of wholesale trading business of tea and running his business under the name and style of Mahesh Trading Co. The generally purchase tea from Kolkata and Siliguri auction and sell them to local parties and also inter-state parties and business concern had its branch office cum sales office at Rampuraphul, Punjab. The Id AO observed from the profit and loss account, the assessee claimed an amount of Rs. 2,10,000/- under the head ‘trade handling charges’. The assessee was asked to furnish the name, full mailing address with amount of the parties to whom it paid the charges together with the deduction and remittance of TDS thereon to the Government account. The assessee replied that the entire amount was paid to one concern viz. National Trading Co. of 3, Amratala Street, Kolkata –

01 and stated that no deduction of tax at source was made on the said payment as the said payment was made only on account of office rent, salary, maintenance charges etc during the year, wherein National Trading Co. had incurred certain office expenditure on behalf of the assessee which were later on reimbursed to them but the said payments were nomenclatured as 'trade handling charges'. However the ld AO not satisfied with the reply proceeded to disallow the expenditure u/s 40(a)(ia) of the Act for violation of provisions of section 194C of the Act. This action of the ld AO was upheld by the ld CITA. Aggrieved, the assessee is in appeal before us on the following ground:-

“1. For that the Ld. CIT(A) erred in upholding the disallowance of payment of Rs.2,10,000/- paid to M/s. National Trading Co. as office expenses, salary, maintenance charges, etc. under section 40(a)(ia) of the Act under the erroneous impression that the payments came in the ambit of section 194C of the Act from which tax was deductible at source.”

2.2. The ld AR reiterated the submissions made before the lower authorities and argued that it is a fact that National Trading Co. had duly reflected the amounts received from the assessee in its returns and prayed for setting aside of this issue to the file of the ld AO for verification of this fact from his side and if found to be correct, then based on the second proviso to section 40(a)(ia) of the Act which has been held to be retrospective in operation by the recent decision of the Hon'ble Delhi High Court in the case of Ansal Landmark Township Pvt Ltd, reported in 377 ITR 635 (Del), which was later followed by the Hon'ble Calcutta High Court in the case of Tirupati Construction in G.A. No. 2146 of 2016 with ITAT No. 287 of 2016 dated 23.08.2016, the assessee may be given the relief from disallowance u/s 40(a)(ia) of the Act. In response to this, the ld DR fairly agreed for re-examination of this issue in the light of the second proviso to section 40(a)(ia) of the Act.

2.3. We have heard rival submissions and gone through the facts and circumstances of the case. We find that in the light of the decision of the Hon'ble Delhi High Court and Hon'ble Calcutta High Court cited supra, if the payee has disclosed the said receipt in his return and paid taxes thereon the assessee should not be invited with disallowance u/s. 40(a)(ia) of the Act by treating him as the assessee in default. We direct the AO to verify the same and dispose of the issue accordingly. Ground No.1 of appeal of assessee is allowed for statistical purposes.

3. The last issue to be decided in this appeal is as to whether the Id CITA is justified in upholding the disallowance of Rs. 72,832/- towards petty freight , warehousing and transportation expenses in the facts and circumstances of the case.

3.1. The brief facts of this issue is that the assessee debited a sum of Rs. 3,69,082/- towards freight, transportation and warehousing charges and the assessee was asked to furnish the name, full mailing address with amount of the parties to whom it paid the charges together with the deduction and remittance of TDS thereon to the Government account. The assessee furnished the details with proper documents with TDS details to the tune of Rs. 2,96,250/- and accordingly the Id AO disallowed the balance sum of Rs. 72,832/- (3,69,082 – 2,96,250) as bogus claim made by the assessee. This action of the Id AO was upheld by the Id CITA. Aggrieved, the assessee is in appeal before us on the following ground:-

“For that the Ld. CIT(A) erred in upholding the entire amount of rs.72,832/- comprising petty expenses.”

3.2. The Id AR argued that the assessee had factually submitted details before the Id AO to the tune of Rs. 3,25,104/- as against Rs. 2,96,250/- wrongly stated by the Id AO. The Id AR also filed the copy of the details filed before the Id AO before us . The balance sum of Rs. 43,978/- represents petty expenses incurred by the assessee throughout the year for which party wise details could not be gathered in view of innumerable number of parties and the number of transactions. Going by the trend of the business of the assessee, these expenses are nothing but the routine freight and transportation charges falling outside the ambit of TDS provisions due to the respective limit prescribed u/s 194C of the Act. Accordingly he prayed for allowing the entire expenditure as a deduction from business income of the assessee. In response to this, the Id DR stated that for the remaining sum of Rs. 43,978/-, no details were furnished by the assessee and hence the disallowance may be restricted to such amount.

3.3. We have heard the rival submissions and perused the materials available on record including the paper book filed by the assessee in this regard. We find that the details for Rs.3,25,104/- have been duly filed by the assessee duly complying with the provisions of TDS with due remittance thereon. In respect of the balance sum of Rs. 43,978/-, the Id AR

argued that the same only represents petty freight and transportation expenses incurred on various dates throughout the year by making payments to various parties which do not warrant any deduction of tax at source in view of the limit prescribed u/s 194C of the Act. We find that the assessee had furnished the details of various expenses as and when called for by the Id AO during the course of assessment proceedings. We find lot of force in the argument of the Id AR that this is a general routine business expenditure incurred by the assessee and accordingly have no hesitation in directing the Id AO to delete this disallowance. Accordingly, the Ground No. 2 raised by the assessee is allowed.

4. The Ground No. 3 is general in nature and does not require any adjudication.
5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 09.12.2016

Sd/-
(S. S. Viswanethra Ravi)
Judicial Member

Sd/-
(M. Balaganesh)
Accountant Member

Dated : 9th December, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – Shri Mahesh Kr. Narula, 3, Amratolla Street, 1st floor
Kolkata-1.
2. Respondent –JCIT, Range-35, Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.