

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

I.T.A No. 1516/Kol/2016
Assessment Year: 2009-10

Prayaas Automation (P) Ltd.
(PAN: AADCP0104A)
(Appellant)

Vs. Deputy Commissioner of Income-tax,
Circle-6, Kolkata.
(Respondent)

Date of hearing: 21.11.2016
Date of pronouncement: 30.11.2016

For the Appellant: Shri Miraj D. Shah, A.R
For the Respondent: Md. Ghayas Uddin, JCIT, Sr. DR

ORDER

Per Shri M. Balaganesh, AM:

This appeal by assessee is arising out of order of CIT(A)-2, Kolkata vide Appeal No. 1159/CIT(A)-2/2014-15 dated 04.05.2016. Assessment was framed by DCIT, Circle-6, Kolkata u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2009-10 vide his order dated 29.12.2011.

2. The only issue to be decided in this appeal of assessee is as to whether the Ld. CIT(A) is justified in upholding the disallowance of Rs.1,30,000/- made u/s. 40(a)(ia) of the Act in the facts and circumstances of the case.

2.1. The brief facts of this issue are that the assessee is engaged in the business of manufacturing of industrial, electrical and electronic items. During the year the assessee paid rent of Rs.1,30,000/- to its Kasba Marketing Office without deduction of tax at source. The AO invoked the provisions of section 40(a)(ia) of the Act for violation of provisions of section 194-I of the Act and disallowed a sum of Rs.1,30,000/- in the assessment. Before the Ld. CIT(A), the assessee stated that a sum of Rs.96,000/- alone was paid as rent and the difference of Rs.34,000/- was paid as maintenance and electricity charges to the landlady for which it also produced the copy of the rent agreement in support of its contention. The said rent agreement clearly stipulated a monthly rent of Rs.8000/- and payment of maintenance

and electricity charges by the tenant i.e. the assessee on advance basis. This clause was understood by the Ld. CIT(A) as since the electricity and maintenance charges are paid by the assessee in advance, it also takes the character of rent and accordingly it exceeds the limit prescribed u/s. 194-I of the Act in the sum of Rs.1,20,000/- and accordingly, confirmed the disallowance u/s. 40(a)(ia) of the Act.

2.2. Aggrieved, the assessee is in appeal before us on the following grounds:

“1. For That in the facts and circumstances of the case the Appellate order passed was in violation of principals of natural justice hence is bad in law and be quashed.

2. For that in the facts and circumstances of the case the disallowance of Rs.1,30,000/- by invoking provision of section 40(a)(ia) of the I T Act 1961 is not justified hence the same be deleted.”

2.3. During the course of hearing the Ld. AR argued that the Ld. CIT(A) clearly misunderstood the language of the clause mentioned in the rent agreement. The relevant clause of the rent agreement only stipulated that the tenant has to pay the monthly rent, maintenance and electricity charges in advance i.e. which is payable at the beginning of the month. He also stated that the electricity charges is agreed to be paid on a fixed amount of Rs.500/- per month whereas the maintenance is only reimbursement of monies paid by the landlady to the Association. Hence, the same would not take the character of rent. If the said payment is excluded, the assessee falls below the limit prescribed u/s. 194-I of the Act for deduction of tax at source. In response to this, the Ld. DR vehemently relied on the order of Ld. CIT(A) wherein a finding has been given that assessee had deliberately split the total rent into rent and maintenance charges in order to avoid TDS.

2.4. We have heard rival submissions and gone through the facts and circumstances of the case. We find from the copy of the rent agreement that the rent is payable in advance together with the maintenance charges and electricity charges payable by the tenant to the landlady. We find lot of force in the argument of the Ld. AR that the maintenance charges is only reimbursement of dues paid by the landlady to the Association which maintains the building. We also find that the electricity charges paid by the assessee tenant to the landlady is reimbursement of electricity charges payable by the landlady to the Electricity Department. Hence, the same would not take the character of rent within the meaning of section 194-I of the Act. Hence, what is left is only monthly rent of Rs.8000/- which falls

below the tax deduction limit prescribed u/s. 194-I of the Act, Hence, we hold that there is no violation of section 194-I of the Act and consequently no disallowance u/s. 40(a)(ia) of the Act could not be made. Accordingly, the grounds raised by assessee are allowed.

3. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 30.11.2016

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

Sd/-
(M. Balaganesh)
Accountant Member

Dated :30th November, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Prayaas Automation (P) Ltd., C/o, D. J. Shah & Co. Kalyan Bhavan, 2, Elgin Road, Kolkata-700 020.
2. Respondent – DCIT, Circle-6, Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.