IN THE INCOME TAX APPELLATE TRIBUNAL, "C" BENCH, KOLKATA

Before : **Shri Mahavir Singh, Judicial Member, and**
Shri M. Balaganesh, Accountant Member

ITA No. 1184/Kol/2012 – Asst Year 2007-08

I. T. O, Ward 1(1), Kolkata	Vs.	M/s. Shahi Roadways Pvt.Ltd PAN: AADCS 5918F
(Appellant)		(Respondent)

For the Appellant: Shri Dinabandhu Naskar, JCIT, ld.Sr.DR
For the Respondent: Shri Subash Agarwal, Advocate, ld.AR

Date of Hearing: 14-12--2015

Date of Pronouncement: 20 -01-2016

ORDER

SHRI M.BALAGANESH, AM

This appeal of the revenue arises out of the order of the Learned CIT(A), 1, Kolkata in Appeal No. 369/CIT(A)-I/Wd-1(1)/08-09 dated 02-05-2012 for the assessment year 2007-08 against the assessment order passed by the Learned AO u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The first issue to be decided in this appeal is as to whether the provisions of section 40(a)(ia) of the Act could be invoked in respect of hire charges paid to financier of vehicle loans obtained under hire purchase scheme to the extent of Rs. 15,52,111/-.

2.1. The brief facts of this issue is that the assessee is engaged in transportation business and had paid hire charges for vehicle finance to M/s Ashok Leyland Finance Ltd (Rs. 1,58,480/-) and M/s Jayabharat Credit Ltd (Rs. 13,93,631/-) in respect of vehicles obtained from them under hire purchase scheme. The said payments were not

subjected to deduction of tax at source. According to Learned AO, the said payments are in the nature of interest and hence provisions of section 194A read with section 40(a)(ia) of the Act are applicable and accordingly disallowed the said expenditure. On first appeal, the assessee pleaded before the Learned CIT(A) that the hire purchase instalment paid by50 the assessee had no element of interest and relied upon CBDT's Circular No. 1425 dated 16.11.1981. The Learned CIT(A) appreciated the contentions of the assessee and deleted the disallowance. Aggrieved, the revenue is in appeal before us on the following ground:-

> *1. Ld CIT(A)-1,Kolkata has erred in deleting the addition of Rs. 15,52,111/- made u/s 40(a)(ia) on account of non deduction of tax at source u/s 194A on interest payment to financer of vehicle loan relying on the CBDT instruction no 1425 dated 16.11.1981 without appreciating the fact that it was mere a loan for purchase of vehicle and did not qualify the characteristics of hire -purchase. Further, relation of lessor and lessee is missing in this transactions.*

2.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR reiterated the submissions made before the lower authorities and relied on the CBDT Circular No. 1425 dated 16.11.1981.

2.3. We have heard the rival submissions and perused the materials available on record. We find that the impugned issue is squarely covered by the CBDT Circular No. 1425 dated 16.11.1981 in favour of the assessee. The said circular states as below:-

> *"In a hire-purchase contract the owner delivers goods to another person upon terms on which the hirer is to hire them at a fixed periodical rental The hirer has also the option of purchasing the goods by paying the total amount of agreed hire at any time or 'of returning the same before the total amount is paid. It may be pointed out that part of the amount of the hire purchase price is towards the hire and part towards the payment of price. The agreed amount payable bythe hirer in periodical instalments cannot, therefore, be characterised as interest payable in any manner within the meaning of section 2 (28A) of the Income-tax Act, as it is not in respect of any money borrowed or debt incurred in this view of the matter it*

is clarified that the provisions of section 194A of the Income-tax Act are not attracted in such transactions.

(Instruction No. 1425 F. No. 275/9/801T(B) dated 16-11-81 from CBDT. Vol. XXVII No. 3 page 403.)"

In view of the aforesaid circular, we hold that the payment of hire charges does not fall under the term interest as defined in section 2(28A) of the Act and consequently the payments are not liable for deduction of tax at source u/s 194A of the Act. Hence no disallowance u/s 40(a)(ia) of the Act is warranted. Accordingly, the ground no. 1 raised by the revenue is dismissed.

3. The next ground to be decided in this appeal is as to whether the provisions of section 40(a)(ia) of the Act could be invoked in respect of lorry hire charges and trailer hire charges incurred by the assessee to the extent of Rs. 7,32,032/- and Rs. 1,01,213/- respectively in the facts and circumstances of the case.

3.1. The brief facts of this issue is that the Learned AO observed that the assessee had claimed lorry hire charges of Rs. 7,32,032/- and Trailor hire charges of Rs. 1,01,213/- as expenditure in its profit and loss account for which tax was not deducted at source and hence there is violation of section 194C of the Act. The Learned AO proceeded to invoke section 40(a)(ia) of the Act and sought to disallow the said expenditure. On first appeal, the Learned CITA based on the details filed by the assessee found that single payment does not exceed Rs. 20,000/- and total payment to any party during the year was not more than Rs. 50,000/- and accordingly held that the provisions of section 194C of the Act are not applicable and consequently deleted the disallowance. Aggrieved, the revenue is in appeal before us on the following ground:-

2. Ld CIT(A)-1,Kolkata has erred on the facts and law in deleting the additions of 8,33,245/- (7,32,032/- + 1,01,213/-) made u/s 40(a)(ia) on Pr-account of non deduction of tax at source u/s 194C on payment of Lorry hire charges and trailer hire charges stating that all the

payments were either below Rs.20,000/- or total payment to one party during the financial year was below Rs 50,000/- in spite of the fact that ledger a/c and evidences produced during the assessment stage shows that total payment of Rs. 3,96,888/- was made in violation of provision of section 194C(total of single payment in excess of Rs. 20,000/- is Rs. 3,13,259/- and aggregate payment to one single party in excess of Rs. 50,000/- is Rs.83,629/-)

3.2. The Learned DR vehemently supported the order of the Learned AO and argued that the details of bills were submitted before the Learned CITA for the first time and prayed for set aside to the file of the Learned AO. In response to this, the Learned AR fairly conceded that the issue be verified by the Learned AO in detail.

3.3. We have heard the rival submissions. We find that the assessee had filed all the details before the Learned CITA wherein he observed that no single payment exceeding Rs 20,000/- and no payment exceeding Rs. 50,000/- was made to any party during the year. In the facts and circumstances of the case, we deem it fit and appropriate, in the interest of justice and fairplay, to set aside this issue to the file of the Learned AO to decide this issue afresh based on the evidences submitted by the assessee before the Learned AO. The assessee is also at liberty to file fresh documents and evidences to substantiate its claim of deduction. Accordingly the ground no. 2 raised by the revenue is allowed for statistical purposes.

4. The next issue to be decided in this appeal is as to whether the depreciation could be disallowed in respect of vehicles in the facts and circumstances of the case amounting to Rs. 6,09,570/-.

4.1. The brief facts of this issue is that the Learned AO observed that the assessee had purchased two vehicles bearing registration number NL-01-D-2921 and NL-01-D-3621 under hire purchase scheme from M/s Jayabharat Credit Ltd vide hire purchase agreement dated 30.3.2007. The Learned AO felt that the vehicles are not put to use

by the assessee before 31.3.2007 and further found that the vehicles were registered only on 11.4.2007 and 12.4.2007 respectively and accordingly felt that the assessee is not entitled for depreciation for Asst Year 2007-08. In response to show cause notice, the assessee replied before the Learned AO that the hire purchase agreement was entered into on 30.3.2007 and the vehicles were put to use on 31.3.2007 but the statement date was 31.3.2007 because it was issued to assessee on that date by the hire purchase financier. The assessee further sought to explain that even if the vehicle is used for one day it is eligible for depreciation as per section 32 of the Act. However, the Learned AO sought to disallow the depreciation of Rs. 6,09,570/-. Before the Learned CITA, the assessee filed the provisional registration certificates in march 2007 itself and argued that the vehicles were effectively put to use by march 2007 itself. The Learned CITA held that the assessee is a transporter with annual receipt with gross operating income of Rs. 22.03 crores and keeping in view of these facts and circumstances, the assessee is entitled for depreciation u/s 32 of the Act. Aggrieved, the revenue is in appeal before us on the following grounds:-

> *3. Ld CIT(A)-1,Kolkata has erred in allowing the depreciation of Rs. 6,09,570/- on vehicle no NL-01-0-2921 and NL-01-d-3621 in spite of the fact that vehicles were not put to use during the financial year as evident from the fact that hire purchase agreement for purchase of vehicle was drawn on 31.03.2007 and vehicles were registered with the motor vehicle department on 11.04.07 and 12,.04.07 respectively ie after the end of the relevant financial year.*
> *4. Ld CIT(A)-1,Kolkata has erred in admitting the additional evidences regarding temporary registration of vehicles no NL-01-D-2921 and NL-01- d-3621 without calling for remand report under Rule 46A of the IT. Rule*

4.2. The Learned DR vehemently supported the order of the Learned AO and argued that the provisional registration certificates were produced before the Learned CITA for the first time and no remand report were called for by the Learned CITA in this regard from the Learned AO and prayed for set aside to the file of the Learned AO. In

response to this, the Learned AR fairly conceded that the issue be verified by the Learned AO in detail.

4.3. We have heard the rival submissions. We find that the assessee had filed the provisional registration certificates of vehicles dated march 2007 before the Learned CIT(A). We find that there is violation of Rule 46A of the IT Rules and the Learned AO should be given reasonable opportunity to examine the details filed by the assessee before the Learned CIT(A). In the facts and circumstances of the case, we deem it fit and appropriate, in the interest of justice and fair play, to set aside this issue to the file of the Learned AO to decide this issue afresh based on the evidences submitted by the assessee before the Learned AO. The assessee is also at liberty to file fresh documents and evidences to substantiate its claim of deduction. No finding is given by us with regard to the allowability of depreciation on vehicles based on the usage of the vehicles by the assessee. Accordingly the ground nos. 3 & 4 raised by the revenue are allowed for statistical purposes.

5. The next issue to be decided in this appeal is as to whether the depreciation could be disallowed in respect of unserviceable crane in the facts and circumstances of the case amounting to Rs. 1,41,894/-.

5.1. The brief facts of this issue is that the Learned AO observed that the assessee had purchased a scrap and unserviceable crane from M/s Scrap (India) Howrah – 711202. The Learned AO on verification of the invoice thereon held that is not a genuine transaction and no plant and machinery was purchased and concluded the transaction to be a bogus transaction. The assessee tried to explain before the Learned AO that it is a genuine transaction and produced the copy of certificate of fitness of such vehicle along with tax receipt and other motor vehicle documents. The assessee also explained that the vehicle was acquired and then repaired later and hence it is shown in the invoice as scrap. The Learned AO however sought to disallow the depreciation

claimed on the said vehicle. On first appeal, the Learned CIT(A) appreciated the fact that the two cranes were purchased and were repaired and were brought to working condition by obtaining the certificate of fitness. Based on this certificate of fitness and invoice copy, the Learned CIT(A) directed the Learned AO to allow depreciation u/s 32 of the Act. Aggrieved, the revenue is in appeal before us on the following grounds:-

> *5. Ld CIT(A)-1,Kolkata has erred in allowing the depreciation of Rs.1,41,8941- on unserviceable crane stating that it was repaired in order to bring it to the workable conditions in spite of the facts that assessee failed to produce the supporting evidences for repairing the said crane, before AO.*
> *6. Ld CIT(A)-1,Kolkata has erred in admitting the additional evidences regarding bills and vouchers of repairing of unserviceable crane calling for remand report under Rule 46A of the I.T. Rule.*

5.2. The Learned DR vehemently supported the order of the Learned AO and argued that the fresh details were produced before the Learned CIT(A) for the first time and no remand report were called for by the Learned CIT(A) and prayed for set aside to the file of the Learned AO. In response to this, the Learned AR fairly conceded that the issue be verified by the Learned AO in detail.

5.3. We have heard the rival submissions. We find that there is violation of Rule 46A of the IT Rules and the Learned AO should be given reasonable opportunity to examine the details filed by the assessee before the Learned CIT(A). In the facts and circumstances of the case, we deem it fit and appropriate, in the interest of justice and fair play, to set aside this issue to the file of the Learned AO to decide this issue afresh based on the evidences submitted by the assessee before the Learned AO. The assessee is also at liberty to file fresh documents and evidences to substantiate its claim of deduction. Accordingly the ground nos. 5 & 6 raised by the revenue are allowed for statistical purposes.

6. The last issue to be decided in this appeal is as to whether the disallowance u/s 40A(3) of the Act could be made in the facts and circumstances of the case in the sum of Rs. 74,974/- and Rs. 33,528/- .

6.1. The brief facts of this issue is that the assessee claimed Rs. 27,54,531/- as expenses on account of tyres and tubes and Rs. 51,64,185/- on account of Diesel & Mobil. The Learned AO observed from the ledger account that most of the expenses were incurred through journal entries or cash payments. The Learned AO observed that total cash payments exceeding Rs. 20,000/- were made to the extent of Rs 3,74,874/- and Rs. 1,67,643/- and accordingly sought to disallow 20% of the same amounting to Rs. 74,974/- and RS. 33,528/-. The Learned CIT(A) on first appeal deleted the disallowance. Aggrieved, the revenue is in appeal before us on the following ground:-

> *7. Ld.CIT(A)-1, Kolkata has erred in deleting the additions u/s. 40A (3) amounting to Rs. 1,08,5021- (74,974 + 33,5281-) making observation that ad hoc disallowance of expenditure under these heads exceeds the disallowance u/s. 40A(3) ignoring the fact that amount disallowed u/s 40A(3) was not the part of ad hoc disallowance.*

6.2. The Learned DR vehemently supported the order of the Learned AO. In response to this, the Learned AR argued that since independent addition is made on account of expenses of tyres and tubes and diesel & mobil by the Learned AO at the rate of 5% as against 15% made by the Learned AO, no separate addition need to be made u/s 40A(3) of the Act for the same expenses.

6.3. We have heard the rival submissions. We find that the violation u/s 40A(3) of the Act is independent of other addition made on estimated basis by the Learned AO for want of supporting bills and vouchers. Moreover, the Learned AO had duly reduced the amount of cash expenses exceeding Rs. 20,000/- while making the estimated disallowance of expenses and hence the action of the Learned AO cannot be

faulted with. Hence we have no hesitation in allowing this ground no. 7 of the revenue.

7. In the result, the appeal of the revenue is partly allowed.

THIS ORDER IS PRONOUNCED IN OPEN COURT ON 20 -01-2016

Sd/- Sd/-
(Mahavir Singh Judicial Member) (M. Balaganesh, Accountant Member)

Date 20 -01/2016

Copy of the order forwarded
to:-

1.. The Appellant: Income Tax Officer, Ward 1(1), P-7 Chowringhee Square, 7th Floor, Kol-69.
2 The Respondent: M/s. Shahi Roadways Pvt. Ltd 47 Bharpara Road, Shalimar, Howrah-711103.
3 /The CIT, 4.The CIT(A)

5. DR, Kolkata Bench
6. Guard file.

True Copy, By order, Asstt Registrar

**PRADIP SPS