

IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH KOLKATA
BEFORE SHRI S.S.VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.1384/Kol/2016

(निर्धारण वर्ष /Assessment Year:2011-12)

ITO, Ward-41(4), Nadia, Nediar Para, Ananta Hari Mitra Road, PO-Krishnanagar, Dist- Nadia, PIN-741 101(WB)	Vs.	Md. Abutaleb Surahabali Khan, Tehatta Thakur Para P.O.Tehatta-741 160 District-Nadia (W.B)
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: ANRPK 7592 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by : Sri Nicholas Murmu, JCIT
Assessee by : None

सुनवाई की तारीख / **Date of Hearing** : **14/02/2017**

घोषणा की तारीख/**Date of Pronouncement** **22/02/2017**

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Revenue pertaining to Assessment Year 2011-2012, is directed against the order passed by Id. CIT(A)-12, Kolkata in Appeal No.461/CIT(A)-12/Kol/Wd-41(4)/Nadia/2014-15, dated 08.03.2016, which in turn arises out of an order passed by the Assessing Officer (AO) Under Section 143(3)/147 of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 19.03.2014.

2. Brief facts of the case qua the assessee are that the assessee filed its return of income for the relevant A.Y.2011-2012 on 28.03.2012 declaring total income of Rs.7,80,555/-. The case of the assessee was selected for scrutiny and the AO framed the assessment u/s.143(3) making various additions.

3. Aggrieved from the order of AO, the assessee filed an appeal before the Id. CIT(A), who has allowed the appeal filed by the assessee observing the followings :-

"I have considered the submissions of the appellant and the facts of the case. The AO has disallowed payment of Rs. 26,31,252/- for non deduction of TDS u/s.40(a)(ia) of the IT.Act towards labour payment. I find force in the contentions of the appellant. The AO in his order has stated that "As per bank statement Bank of India the assessee has made payments of Rs. 26,31,252/- to different persons without deducting TDS which violated section 40(a)(ia) read with-section 194C of the Income Tax Act, 1961". The appellant has submitted that "Labour payment was made to different labourers numbering more than 50 persons per month by withdrawal of cash from bank which was be evident from the enclosed bank statement as 'well, as labour payment sheets for F.Y. 2010-11 corresponding to A. Y. . 2011-12) No payment . was' "made to labour contractor exceeding the permissible limit under the 1 T.Act 1961 and accordingly the TDS was not required to be deducted for such payment u/s.40(a)(ia)". The AO has not said as to how the section 40(a)(ia) was violated by the assessee. Thus I find force in the appellant's submissions and the addition is deleted.

The AO has estimated the NP at 8% of gross receipts of Rs. 2,93,79,070/- . The AO has stated that "Therefore, for non production of supporting evidences. I estimated 8% of the total turnover as the net profit of the assessee". I find that the Assessing Officer has made a general remark which estimating the net profit that due to non production of supporting evidences, but he did not point out any specific bill which was handmade and is not open for verification. Even he has not rejected the books of account, but he estimated the profit at 8% of the total turnover of Rs. 2,93,79,070/- The AO has not found any discrepancy in the accounts maintained by the assessee. The Assessing Officer has made the addition without pointing out any specific defect either in the maintenance of the books of account or bills and vouchers. Therefore, estimation of the net profit by the Assessing Officer cannot be appreciated. I, accordingly delete the addition made by the AO."

4. Not being satisfied with the order of Id. CIT(A), the Revenue is in appeal before us and has taken the following grounds of appeal :-

The Ld. Commissioner of Income Tax (Appeal), 12, Kolkata was not justified in deleting the addition of Rs. 26,31,252/- for non deduction of tax at sources for payment to different persons and difference of profit of Rs.14,58,636/- between estimated of profit of Rs.23,33,818/- @8% on gross turnover of Rs.2,91,72,729/- and profit of Rs.8,75,182/- as disclosed by the assessee without giving opportunity of being heard u/s. 46A of the Income Tax Rules, 1962 on submission of additional ground of appeal to the Ld. Commissioner of income Tax,(Appeal)-12, Kolkata and Tax effect is more than Rs.10 lakh the limit as prescribed in the Circular No 21/2015 dated 10.12.2015.

5. Ld. DR for the Revenue has submitted before us that the Id. CIT(A) has violated the provisions of Rule 46A of the Income Tax Rules, in accepting the additional evidence in respect of TDS and in respect of addition on account of estimate made by the AO. Therefore, these issues should be sent back to the file of CIT(A) to re-adjudicate the same, after taking the proper remand report from the AO and explanations of the assessee on the remand report.

6. Having heard the Id DR for the Revenue, and perused the material on record, we are of the view that there is merit in the submissions of Id. DR for the revenue. The Id. DR for the revenue as submitted before us that the Id. CIT(A) did not give an opportunity to the AO to examine the additional evidence, therefore, it is against the principle of natural justice and violation of Rule 46A of the I.T. Rules. Therefore, we are of the view to remit the case back to the file of Id. CIT(A) to re-adjudicate the issue after taking proper remand report and after giving proper opportunity of being heard to the assessee.

7. In the result, appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open court on this 22/02/2017.

Sd/-

(S.S.VISWANETHRA RAVI)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

(DR. A.L.SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 22/02/2017

प्रकाश मिश्रा/Prakash Mishra,Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-ITO, Ward-41(4), Nadia

2. प्रत्यर्थी / The Respondent.- Md. Abutaleb Surahabali Khan
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता