

आयकर अपीलीय अधिकरण, 'एच' खंडपीठ मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI "H" BENCH

सर्वश्री राजेन्द्र, लेखा सदस्य एवं राम लाल नेगी, न्यायिक सदस्य

Before S/Sh. Rajendra, Accountant Member & Ram Lal Negi, Judicial Member
आयकर अपील सं./ITA No.7104/Mum/2013, निर्धारण वर्ष/Assessment Year-2009-10

Dy. CIT-17(2) Room No.217, 2 nd Floor Piramal Chambers, Mumbai-400 012.	Vs.	Shri Hemant U. Doke 43/7, Sahakar Nagar, Naigaum X Road, Wadala (W) Mumbai-400 031. PAN:ANUPD 9027 F
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

निर्धारिती ओर से/Assessee by : Shri Ashok L. Sharma-AR

राजस्व की ओर से/ Revenue by : Shri Vachaspati Tripathi-DR

सुनवाई की तारीख/ Date of Hearing : 27.01.2016

घोषणा की तारीख / Date of Pronouncement : 27.01.2016

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dtd.24.09.2013 of the CIT(A)-29, Mumbai the Assessing Officer (AO) has filed the present appeal.

Assessee, an Individual, is engaged in the business of carrying out liasoning work with builders and developers, filed its return of income on 29/09/2009, declaring total income at Rs. 75.84 lakhs. The AO completed the assessment u/s. 143(3) of the Act on 23.12.2011, determining the income of the assessee at Rs. 2.01 Crores.

2. Effective ground of appeal is about deletion of the addition made by the AO, amounting to Rs. 1.22 Crores under the head compensation payment. During the assessment proceedings, the AO found that the assessee had shown total professional fees received at Rs. 2.25 Crores, that he had claimed expenditure of Rs. 1,22,00,000/- on account of payment made to certain parties, that in the earlier year the assessee had paid compensation of Rs. 45 lakhs. He directed the assessee to file original vouchers in support of claim of payment of compensation and also confirmation from the above parties of having received the compensation along with TDS certificates u/s. 194LA of the Act for the compensation paid. The assessee filed copies of the vouchers for the compensation paid. However, the AO did not accept the above arguments of the assessee and held that original vouchers were not filed, that no confirmation for the payment of commission was furnished, that the payments made for compensation to all the parties were beyond the year under consideration i.e. beyond 31.03.2009, that there was no evidence of payment of Rs. 73 lakhs, that the assessee had failed to deduct tax at source u/s. 194LA on the compensation paid, that as per the provisions of section 40(a)(ia) of the Act the expenditure claimed by the assessee was not allowable. Finally, he disallowed the compensation payment of Rs. 1.22 Crores, claimed by the assessee.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). Before him it was contended that provisions of section 194LA was not applicable to his case, that the said section dealt with compulsory acquisition of land by the state, that the AO had wrongly invoked the provisions of Section 40(a)(ia) of the Act, that the assessee had paid compensation to the tenants. After considering the assessment order and the submission of the assessee, the FAA held that the assessee had filed affidavits of the persons to whom commission was paid, that it was accrued liability, that liability was quantified during the year under consideration. He referred to the case of Bharat Earth Movers (245 ITR 428) and allowed the appeal filed by the assessee.

4. During the course of hearing before us, the Departmental Representative (DR) argued that original vouchers were not produced in support of the claim made by the assessee, that bank details did not show payment of Rs.73 lakhs, that there was long time gap (6 months to 30 months) between the liability and payment, that relevant agreement was not furnished for verification. The Authorised Representative (AR) contended that the assessee was following mercantile system of accounting, that the liability had accrued during the year under appeal, that payments were made in subsequent years, that all the necessary details were made available to the AO. He referred to the statement of facts filed before the FAA.

5. We have heard the rival submissions and perused the material on record. We find that the AO had disallowed the commission expenditure as certain details were not filed, that in the statement of facts the assessee had mentioned that he had furnished payment vouchers, that the FAA had admitted the affidavits filed by the assessee on behalf of the recipients of the commission, that he had not forwarded those documents to the AO for verification, that he had not invoked provisions of Rule 41 of the Income tax Rules, 1961 (Rules) while relying upon the affidavits. In these peculiar circumstances we are of the opinion that the matter needs further verification. So, in the interest of the justice, we are restoring back the issue to the file of the AO for fresh adjudication. He is directed to afford a reasonable opportunity of hearing to the assessee. The assessee would file all the relevant details and documents before the AO. Effective ground of appeal filed by the AO, is allowed in his favour, in part.

As a result, appeal filed by the AO stands partly allowed.

फलतः निर्धारित अधिकारी द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है।

Order pronounced in the open court on 27th January, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 27th जनवरी, 2016 को की गई।

Sd/-

(राम लाल नेगी / Ram Lal Negi)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Date: 27.01.2016

व.नि.स./V.Sr.PS.

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

1. Appellant /अपीलार्थी

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

2. Respondent /प्रत्यर्थी

- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
5.DR A Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, ए खंडपीठ,आ.अ.न्याया.मुंबई
6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**