

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

I.T.A No.425/Kol/2013
Assessment Year: 2009-10

M/s. Lal Trades & Agencies (P) Ltd.
(PAN: AAACL5478J)
(Appellant)

Vs. Joint Commissioner of Income Tax,
Circle-5, Kolkata.
(Respondent)

Date of hearing: 14.03.2016
Date of pronouncement: 16.03.2016

For the Appellant: Shri Soumitra Choudhury, Advocate
For the Respondent: Shri S. M. S. Tauheed, JCIT, Sr. DR

ORDER

Per Shri Mahavir Singh, JM:

This appeal by assessee is arising out of order of CIT(A)-VI, Kolkata vide Appeal No. 225/CIT(A)-VI/Cir-5/2011-12/Kol dated 24.12.2012. Assessment was framed by JCIT(OSD), circle-5, Kolkata 143(3) & 115WE(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for Assessment Year 2009-10 vide his order dated 29.12.2011.

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO in making disallowance of truck loading wages charges paid in cash in excess of Rs.20,000/- in each of the case in violation of provision of section 40(A)(3) of the Act. For this, assessee has raised following six grounds:

“1. For that the Id. CIT(A), VI, erred in confirming the addition of Rs. 10824239.00 on account of Truck loading wages paid during the year without considering the facts apprised in course of hearing of the appeal.

2. For that the Id CIT(A) failed to consider in proper perspective that the payments were made in exceptional circumstances and hence the provisions u/s 40A(3) of the Income Tax Act,1961 has no applicability in this instant case.

3. For that the Id CIT(A)'s assumption of oral agreement with the labourer is unfounded and based on surmises which is arbitrary and uncalled for.

4. For that the Id CIT(A) failed to consider in proper perspective that the payment collected by the group leader of the labourer was meant and on behalf of the other co-labourers.

5. For the exception made in rule 6DD has the applicability in this case as banking facility is far away from the site of job.

6. For that the CIT(A)'s observation that beside the addition u/s 40A(3) the amount is also liable to be disallowed u/s 40(a)(ia) is not correct.”

3. Briefly stated facts are that the assessee is engaged in the business of mining of iron ore. During the course of assessment proceedings for AY 2009-10, the AO noticed from the books of account i.e. ledger and bills and vouchers produced before him that the assessee has made cash payment on account of truck loading wages charges in violation of the provision of section 40A(3) of the Act i.e. the payment in cash above Rs.20,000/- to a single person. Accordingly, the AO made disallowance of expenses incurred on account of truck loading wages charges of Rs.1,08,24,239/-. Aggrieved, assessee preferred appeal before CIT(A), who also confirmed the action of AO. Aggrieved, assessee preferred second appeal before Tribunal.

4. We have heard rival submissions and gone through facts and circumstances of the case. We find that the assessee has incurred expenses in the nature of payment of various wages under the different heads amounting to Rs.11,75,45,466/- and the same is appearing in Schedule 11 forming part of P&L Account under the head 'production & other wages charges'. The assessee before the AO explained the nature of each expenses including the truck loading wages expenses vide letter dated 13.10.2011. Further, explanation was also submitted vide letter dated 05.12.2011 wherein it was submitted that the payment was made to persons for disbursement of wages amongst the labours who executed the truck loading job at different points. During the course of assessment proceedings complete books of account including bills and vouchers were produced and filed copy of ledger account and truck loading wages charges. We find that the assessee company is engaged in mining of Iron ore. The mine is situated at Badampahar in Mayurbhanj Dist. Of Orissa and the area is dominated by tribal people. Truck loading expenses includes viz. bringing the material from raising point to breaking point, removal of soil from different points of mining area on trucks. The job also includes the loading of trucks for the goods sold to the parties. The company in its efforts to buy peace and tranquility in mining operation in the mine area dominated by notorious mafia engaged three groups of labour headed by Duka Purty, Nirakar Nayak and Chandra Shekhar Nanda to undertake Truck loading job in the mining area and paid them wages on weekly basis for the quantity loaded at a fixed rate @Rs.421/- per M T. The payment use to be made to the group leader who in turn distributes the wages earned amongst the other co-workers. While framing the assessment AO has disallowed the expenditure of Rs.1,08,24,239/- being the payment towards wages incurred for loading of trucks on the ground that the payment is in violation of section 40A(3) of the Act as the payment

has been made to a single person above Rs. 20,000/- in cash. We find that the assessee company engaged group of labourers for execution of loading of trucks at various points. The wages payable to them was at a fixed rate basis on the total quantity. The payment also uses to be on weekly of assessment proceeding the ledger copy as well as vouchers, being the evidence of payment were produced and verified by AO. It is also a fact that from all the entries recorded in the ledger, it describes the mode of payment, nature of payment, rate and quantity. The narrations are almost identical and supported by vouchers to the group leader. It seems that the AO has treated the entire amount of payment to a single person. Whereas the facts remain that the payment has been collected by the group leader on behalf of all the labour deployed to undertake the job. The group leader use to distribute the amount of wages earned by each labour during the week. Copies of the ledger as well as few vouchers were produced before AO and before CIT(A) also.

5. In term of the above facts Ld. Counsel for the assessee before us argued that there is no bank facility available in that area and this can be verified at any point of time. According to him, this is totally a tribal area without banking facilities and the assessee's mining business depend upon these labourers who receives only cash and not by cheque or any other mode of payment. Ld. Counsel for the assessee stated that the assessee's case is covered by exception clause (g) of Rule 6DD of the I. T. Rules, 1962, where it is clearly exempted that where the payment is made in a village or town, which on the date of such payment is not served by any bank and payment is made to any person who ordinarily resides or is carrying on any business or profession in any such village or town. We find that the plea of the assessee is quite reasonable and assessee's business falls totally in a tribal area which can be ascertained from the address itself. The nature of the business of the assessee is such that assessee has no other alternative except to make payment to labours in cash because that area is not served by any bank and the labours do not receipt the payments by cheque or any other mode except in cash. Even otherwise the payments are also genuine as AO has verified complete books of account including bills and vouchers and could not find any defect in the same. This issue is also covered by Hon'ble Calcutta High Court vide its order dated 30.07.2008 in the case of CIT Vs. Crescent Export Syndicate in ITA No. 282 of 2008 has held as under:

“It also appears that the purchases have been held to be genuine by the learned CIT (Appeal) but the learned CIT(Appeal) has invoked Section 40A(3) for payment exceeding Rs.20,000/- since it is

not made by crossed cheque or bank draft but by bearer cheques and has computed the payments falling under provisions to Section 40A(3) for Rs.78,45,580/- and disallowed @ 20% thereon Rs.15,69,116/-. It is also made clear that without the payment being made by bearer cheque these goods could not have been procured and it would have hampered the supply of goods within the stipulated time. Therefore, the genuineness of the purchase has been accepted by the Id. CIT (Appeal) which has also not been disputed by the department as it appears from the order so passed by the learned Tribunal. It further appears from the assessment order that neither the Assessing Officer nor the CIT (Appeal) has disbelieved the genuineness of the transaction. There was no dispute that the purchases were genuine.

Accordingly, in our opinion, the learned Tribunal has correctly come to the conclusion by deleting the addition of Rs.15,69,116/- under section 40A(3) of the Act. On the other ground as it appears that the CIT (Appeal) has been directed to reconsider the matter. In view of that we do not think that any substantial question of law is involved in this matter. Hence the appeal being ITA NO. 202 of 2008 is dismissed.”

6. From the above facts and circumstances, it is clear that the assessee's payments are genuine and not doubted by revenue. The revenue could not controvert that the assessee's mine is in tribal area of Orissa where no banking facility is available and labourers do not have any bank account to whom assessee has made payment. Accordingly, in the given facts and circumstances of the case, we delete the disallowance made by AO and confirmed by CIT(A) by invoking the provisions of section 40A(3) of the Act. The appeal of the assessee is allowed.

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

Order pronounced in the open court on 16.03.2016

Sd/-
(M. Balaganesh)
Accountant Member

Sd/-
(Mahavir Singh)
Judicial Member

Dated : 16th March , 2016

Jd. Sr. P.S

Copy of the order forwarded to:

1. Appellant – M/s. Lal Trades & Agencies (P) Ltd., 7, Waterloo Street, 2nd Floor, Kolkata-700 069.
2. Respondent – JCIT, Circle-5, Kolkata
3. CIT(A) , Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.