

IN THE INCOME TAX APPELLATE TRIBUNAL

HYDERABAD “A” BENCH, HYDERABAD

BEFORE SHRI G.C. GUPTA, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA No.80/H/2011

Assessment year :2005-06

The ACIT, Circle 3(1)
Hyderabad

Vs M/s Seaways Shipping
Limited, Secunderabad.

Appellant

(PAN AADCS 0845 B)
Respondent

Appellant by : Shri T. Diwakar Prasad

Respondent by : None

ORDER

PER CHANDRA POOJARI, A.M:

This appeal preferred by the Revenue is directed against the order passed by the CIT(A) –IV, Hyderabad dated 29.10.2010 and pertains to the assessment year 2005-06.

2. The revenue raised the following grounds in its appeal:

- 1. The CIT(A) erred in law and allow the assessee's appeal.*
- 2. The CIT(A) ought to have upheld the penalty levied by the Assessing Officer as the assessee had understated the income by not deducting tax at source on certain payments made which attracts TDS and by not addition certain expenditure to total income on which TDS was made beyond due dates.*

3. Brief facts of the case are that the assessee is engaged in the business of shipping intermediary services. As assessment u/s 143(3) had been made in the assessee's case for the assessment year 2005-06 by way of an order dated 24.12.2007 wherein the total income was assessed at Rs.2,15,78,933, as against the return of income of Rs.1,86,95,703/-. During the assessment proceedings, it was observed that the assessee had made the following payments by deducting tax at source beyond the due dates stipulated u/s 200(1) of the Act.

Amount pertaining to section 194 C :	Rs.1,89,380
Amount pertaining to section 194 J :	Rs.3,03,050
Amount pertaining to section 194 I :	Rs.68,22,868

3.1. Further, it was noticed that the assessee had added back the amounts pertaining to section 194C and 194J totalling Rs.4,92,430/- in the computation of income. However, the Assessing Officer noted that the amount pertaining to section 194I included payments of Rs.11,14,253/- pertaining to payments made towards 'equipment hire charges'. The Assessing Officer noted that the meaning of the term 'rent' was enlarged by way of explanation with effect from 3.7.2006 only. He concluded that in respect of equipment hire charges paid earlier TDS was to be made u/s 194C and not u/s 194I. He further concluded that since these charges were remitted to the Central Govt. account beyond the due dates prescribed u/s 200(1) read with rule 30 of the IT Rules, 1962 the provisions of section 40(a)(ia) were attracted and

accordingly a disallowance of Rs.11,14,253/- was made u/s 40(a)(ia).

3.2. The Assessing Officer also noticed that the assessee had not deducted TDS on payments made to M/s Shiv Shakti Lorry Suppliers, while making the payment of Rs.12,88,649/-, stating that 'the company received such cargo on 'to pay' basis and had paid the amount on behalf of the exporters the amount payable as on 31.3.2005 to M/s Shiv Shakti Lorry Transport was debited to various clients accounts'. It was pleaded that the assessee was under an impression that TDS was not applicable on 'to pay basis'. However, in view of the CBDT's Circular No.715 dated 8.8.1995 in F.No.133/101/95-TPL, the Assessing Officer concluded that there was an obligation to deduct tax at source out of payment of freight even when the goods are received on 'freight to pay basis', irrespective of the actual payment. Considering that the assessee had violated the provisions of section 200(1) by not deducting tax on such payments, the Assessing Officer made disallowance of Rs.12,88,649/- u/s 40(a)(ia) of the Act. In view of the above disallowance, penalty proceedings u/s 271(1) (c) were initiated by the Assessing Officer.

4. On appeal the CIT(A) deleted the Penalty. Against this the Revenue is in appeal before us.

5. At the time of hearing on 16.6.2011, none appeared on behalf of the assessee. We heard the Departmental Representative. In this case, penalty is levied for disallowance of expenditure u/s 40(a) (ia) of the Income Tax

Act. Non deduction of TDS by the assessee was resulted in disallowance of expenditure u/s 40(a) (ia), that itself cannot be construed as furnishing inaccurate particulars of income or concealment of income. The assessee has failed to deduct TDS which resulted in disallowance of expenditure. In our opinion, the mistake committed by the assessee was compensated by disallowing the expenditure. Further, the Revenue cannot penalise the assessee by levying penalty u/s 271(1) (c) of the Act. In order to levy penalty u/s 271 (1) (c) of the Act, there has to be concealment of particulars of income of the assessee or the assessee must have furnished inaccurate particulars of its income. Present is not the case of concealment of income or it is not the case of Revenue that the assessee has furnished inaccurate particulars of income. The department has not found out that the assessee has furnished any factual incorrect information and the assessee is not guilty of furnishing of inaccurate particulars of income. In our opinion, the conditions laid down in section 271(1) (c) of the Act is not complied with. Being so, levy of penalty is not justified merely because the assessee has claimed certain expenditure that expenditure is not eligible in view of the provisions of section 40(a)(ia) of the Act and for that reason, expenditure is disallowed. Penalty cannot be levied for mere making of a claim of the expenditure which is not sustainable and deletion of penalty by the CIT(A) is justified. We place reliance on the judgement of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products (P) Ltd. (322 ITR 158) (SC). Accordingly the ground raised by the revenue holds no merit.

8. In the result, the appeal of the Revenue stands dismissed.

Order pronounced in the Open court on 17.6.2011

SD/-
G.C. GUPTA
VICE PRESIDENT

SD/-
CHANDRA POOJARI
ACCOUNTANT MEMBER

Dated the 17th June, 2011

Copy forwarded to:

1. The ACIT, Circle 3 (1), Hyderabad
2. M/s. Seaways Shipping Limited, 405 & 406, 4th Floor, Ashoka Bhoopal Chambers, SP Road, Hyderabad.
3. The CIT(A) IV, Hyderabad
4. The CIT, Hyderabad
5. The DR, ITAT, Hyderabad

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