

Court No. - 32

Case :- INCOME TAX APPEAL No. - 122 of 2013

Appellant :- Commissioner Of Income Tax, Muzaffarnagar

**Respondent :- M/S Vector Shipping Services(P)
Ltd,Muzaffarnagar**

Counsel for Appellant :- Shambhu Chopra

Hon'ble Sunil Ambwani,J.

Hon'ble Surya Prakash Kesarwani,J.

We have heard Shri Shambhu Chopra, learned counsel for the appellant.

This income tax appeal under Section 260 (A) of the Income Tax Act, 1961 arises out of the judgment and order of the Income Tax Appellate Tribunal in ITA No.5219/Del/2012 for the assessment year 2009-10.

The department has pressed the only question of law as follows:-

"(a) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has rightly confirmed the order of the CIT (A) and thereby deleting the disallowance of Rs.1,17,68,621/- made by the Assessing Officer under section 40 (a) (ia) of the I.T. Act, 1961 by ignoring the fact that the company M/s Mercator Lines Ltd. had performed ship management work on behalf of the assessee M/s Vector Shipping Services (P) Ltd. and there was a Memorandum of Understanding signed between both the companies and as per the definition of memorandum of understanding, it included contract also."

In the present case the A.O. disallowed expenses on the ground that under Section 40 (a) (ia) expenses could not be allowed as no tax was deducted at source under Chapter XVII (B).

The CIT (A) reversed the findings, which have been affirmed by the Tribunal in para 7 as follows:-

"7. We have considered the submissions of both the parties and have perused the record of the case. The submissions made before ld. CIT (A), as noted earlier, have not been controverted by the Department. It is not disputed that M/s Mercator Lines Limited had deducted TDS on salaries paid by it on behalf of assessee. Under such circumstances assessee was not required to deduct TDS on reimbursement being made by it to M/s Mercator Lines Limited. Further in any view of the matter, since it is not disputed that no amount remained payable at the year end, therefore, in view of the Special Bench decision in the case of Marilyn Shipping and Transport Ltd., (136 ITD 23) (SB), addition could not be made. In this case, it was held as under:-

"Section 40 (a) (ia) was introduced in the Act, by the Finance Act, 2004 with effect from 1.4.2005 with a view to augment the revenue through the mechanism of tax deduction at source. This provision was brought on statute to disallow the claim of even genuine and admissible expenses of the assessee under the head 'Income from Business and Profession' in case the assessee does not deduct TDS on such expenses. The default in deduction of TDS would result in disallowance of expenditure on which such TDS was deductible."

On the remaining questions the Tribunal remanded the matter to the A.O.

Shri Shambhu Chopra, learned counsel for the department states that the A.O. had recorded findings that on the services for which assessee was claiming allowance of the expenses, tax was not deducted at source and thus the expenses on salaries to the employees could not be claimed. He submits that expenses were clearly disallowable under Section 40 (a) (ia) of the Act.

We find that CIT (A) has recorded finding that the allowance was claiming for salaries on which TDS was deducted by M/s Mercator Lines Ltd. for the assessee. The circumstances in which salaries were paid by M/s Mercator Lines Ltd. were sufficiently explained and the explanation was accepted by CIT (A). The CIT (A) held:-

"In the light of the above facts and following the ratio decidende of the Hon'ble Courts (supra), it is held that firstly, the provisions of section 194C read with sec 40 (a) (ia) of the Act are not applicable to the case of the appellant. Secondly, nature of expenses incurred by the assessee do not form part of expenses disallowable under section 40 (a) (ia) of the Act. Thirdly, when such type of expenses incurred by the appellant were totally paid and not remained payable as at the end of the relevant accounting period, provisions of section 40a (ia) of the Act are not applicable. Further, the appellant has clarified all the five questions raised as above and its clarifications are found satisfactory and convincing. Thus no adverse inference could be drawn on the issues even after making intrusive inquiries in respect of the transition of business made by the appellant. Thus it is held that the AO was not justified in making addition of Rs.1,17,68,621/- on account of disallowance made under section 40 (a) (ia) of the I.T. Act, 1961. The same is directed to be deleted. Grounds Nos.2 & 3 are allowed."

We do not find that the revenue can take any benefit from the observations made by the Special Bench of the Tribunal in the case of Merilyn Shipping and Transport Ltd. (136 ITD 23) (SB) quoted as above to the effect Section 40 (a) (ia) was introduced in the Act by the Finance Act, 2004 with effect from 1.4.2005 with a view to augment the revenue through the mechanism of tax deduction at source. This provision was brought on statute to disallow the claim of even genuine and admissible expenses of the assessee under the head 'Income from Business and Profession' in case the assessee does not deduct TDS on such expenses. The default in deduction of TDS would result in disallowance of expenditure on which such TDS was deductible. In the present case tax was deducted as TDS from the salaries of the employees paid by M/s Mercator Lines Ltd., and the circumstances in which such salaries were paid by M/s Mercator Lines Ltd., for M/s Vector Shipping Services, the assessee were sufficiently explained.

It is to be noted that for disallowing expenses from business and profession on the ground that TDS has not been deducted, the amount should be payable and not which has been paid by the end

of the year.

We do not find that the Tribunal has committed any error in recording the finding on the facts, which were not controverted by the department and thus the question of law as framed does not arise for consideration in the appeal.

The income tax appeal is **dismissed**.

Order Date :- 9.7.2013

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