

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri P. K. Bansal, AM & Shri Mahavir Singh, JM]

I.T.A No.71/Kol/2012
Assessment Year: 2008-09

I.T.O, Ward-10(3), Kolkata. Vs. Shreejee Sarees Pvt. Ltd.
(Appellant) (PAN:AAHCS 3267R)
(Respondent)

Date of hearing: 29.05.2015
Date of pronouncement: 03.07.2015

For the Appellant: Shri Sanjay, Addl. CIT-DR
For the Respondent: Shri V.N.Purohit, FCA &
Shri H.V. Bhardwaj, Advocate

ORDER

Per Shri Mahavir Singh, JM:

This appeal by revenue is arising out of order passed by CIT(A)-XII, Kolkata vide Appeal No. 330/XII/10(3)/10-11 dated 14.10.2011. Assessment was framed by ITO, Wd-10(3), Kolkata u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the Act) for Assessment Year 2008-09 vide his order dated 14.12.2010.

2. The only issue in this appeal of revenue is against the order of CIT(A) deleting the disallowance made by AO by treating the -Karigar charges as payment to supplier for non-TDS of Sec. 194C of the Act by invoking the provision of Section 40(a)(ia) of the Act. For this, revenue has raised following 2 grounds:

“1) Whether on the facts and in the circumstances of the case Ld. CIT(A) is correct in treating ‘Karigar Charges’ as ‘payment to supplier’ in spite of the fact that the assessee failed to substantiate its claim with supporting documents.

2) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) is correct in deleting addition u/s. 40(a)(ia) where the assessee failed to deduct tax at source in terms of section 194C from the ‘Karigar Charges’.”

3. Briefly stated facts are that the assessee is a dealer of sarees and AO while framing the assessment disallowed karigar/embroidery charges by invoking the provision of section 40(a)(ia) of the act for non-TDS of Sec. 194C of the Act. There was a survey operation on the business premises of the assessee u/s 133A of the Act on 28.02.2008 and during survey operation, certain karigar/embroidery slips were found

and impounded from revenue came to know that assessee has paid embroidery charges amounting to Rs.1,14,59,470/- without deducting TDS u/s. 194C of the Act. The assessee claimed these persons are suppliers of goods and relevant details as reproduced in assessment order, which reads as under:-

“The four karigar slips impounded by the department are in the name of Jahir Abbas Sk, Israfil Mallick, Matching Center and Sabir Ali Ghazi. In these slip the Nos. of sarees and rates are mentioned. The assessee in its details claimed them as seller of goods. Their addresses were provided by assessee. In the details of creditors the assessee has disclosed against them opening liability, transaction during the year and closing liability. Since the assessee claims such persons as supplier of goods and the impounded documents reveals them as karigars and assessee did not claim any karigar payment/embroidery payment, in course of assessment proceedings, to ascertain the facts, notices u/s 133(6) were issued to Israfil Mallick, Jahir Abbas Sk. And Matching Centre. All the notices were returned by postal authority as unserved. Similarly notice u/s 131 issued to Israfil Mallick could not be served by the postal authority at the given address supplied by the assessee.

As per assessee’s statement total purchase by assessee from (1) Israfil Mallick is Rs.88,83,395/-, (2) Jahir Abbas Sk of Rs.15,56,995/- (3) Matching Centre of Rs.8,75,080/- and (4) Shabir Ali Gazi is Rs.1,44,000/-. The assessee also disclosed opening and closing liability against them.”

The AO applying the provisions of Sec. 40(a)(ia) of the Act disallowed the karigar and embroidery charges.

4. Aggrieved, assessee preferred appeal before CIT(A), who deleted disallowance by observing in para-4, which is as under:-

“After careful consideration of the assessment order and written submission it is noticed that the main issue relates to whether total transactions of sarees from four persons to the extent of Rs.1,14,59,470/- on the basis of four slips impounded in the survey operation u/s. 133A of the I.T. Act, 1961 is a purchase transaction or is a contractual payment u/s 194C. After examining these four slip (Annex-E) it is observed that these are rough workings written on company’s letter pad where no of sarees and rates are mentioned. At the top of the slips ‘karigar slip’ is printed. The payments for these transactions have been made by account payee cheques. During survey no evidence has been impounded which establishes that assessee was purchasing saree cloth and delivering thee cloth to karigar and who in turn charge the embroidery charges for their works. The assessee has produced detail bills of purchase along with quantity details and payment towards these four parties through account payee cheques to establish the fact that these are purchase transactions and not the embroidery charges. The AO has simply relied upon four rough slips where it is printed of the top ‘karigar slip. Therefore, Sec. 194C is not applicable on these purchase transactions. Hence, the addition of Rs.1,14,59,470/- u/s 40(a)(ia) is deleted. Therefore, the ground no. 1 & 2 are allowed.”

Aggrieved, Revenue is in appeal before us.

5. We have heard rival submissions and gone through the facts and circumstances of the case. We find that assessee before AO as well as CIT(A) has made mere submission that these alleged karigar/embroidery charges are the sellers and assessee has merely

purchased from these persons. We find that assessee before CIT(A) has produced purchase bills along with quantitative details and payments towards these four parties are made through account payee cheques to establish the fact that these are purchase transaction and not embroidery charges. This fact was never before the AO and AO has not gone into details. In terms of above, Ld. counsel for the assessee stated that the issue can be remitted back to the file of AO for verification, whether these four alleged karigar/embroidery charges are suppliers of sarees or material. In case, these are supplier of material or items, no disallowance can be made. But if they are karigars, the assessee has made payment on account of embroidery charges but failed to deduct TDS, the disallowance will be confirmed. In terms of the above, this issue is set aside to the file of AO and appeal of Revenue is allowed for statistical purpose.

6. In the result, appeal of revenue is allowed for statistical.
7. Order is pronounced in the open court on 03.07.2015

Sd/-
(P. K. Bansal)
Accountant Member

Sd/-
(Mahavir Singh)
Judicial Member

Dated : 3rd July , 2015

*Dkp P.S.

Copy of the order forwarded to:

1. APPELLANT ó ITO, Ward-10(3), P-7, Chowringhee Square,
3rd Floor, Room No. 73.Kolkata ó 700 069.
- 2 Respondent ó M/s.Shreejee Sarees Pvt. Ltd.. 113, Poddar Point, 2nd Floor,
Park Street, Kolkata-700 016.
3. The CIT(A), Kolkata
4. The CIT, Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.