

*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH "A" KOLKATA*

Before **Shri P.K.Bansal, Accountant Member** and
Shri Mahavir Singh, Judicial Member

ITA No.503/Kol/2012
Assessment Year:2008-09

ITO Ward-9(1), Kolkata	बनाम / V/s.	M/s Talwar Brothers Pvt. Ltd., 12, Mayfair Road, Kolkata ó 700 019 [PAN No.AABCT 1261C]
अपीलाथ /Appellant	..	पूयथ /Respondent

अपीलाथ क ओर से/By Appellant	Shri Kanhiya Lal Kanak, SR-DR
पूयथ क ओर से/By Respondent	None
सुनवाई क तारख/Date of Hearing	22-05-2015
घोषणा क तारख/Date of Pronouncement	01-07-2015

आदेश /O R D E R

PER Mahavir Singh, Judicial Member:-

This appeal by Revenue is arising out of Commissioner of Income Tax (Appeals)-VIII, Kolkata in appeal No.177/CIT(A)-VIII/Kol/10-1 dated 10-02-2012. Assessment was framed by Addl. CIT, Range-9, Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 27-12-2010 for assessment year 2008-09.

2. The first issue in this appeal of Revenue is against the order of CIT(A) deleting the addition of reimbursement of legal charges amounting to 5.90 lakhs without deduction of tax at Source u/s 194J of the Act thereby applying the provisions of Sec. 40(a)(ia) of the Act. For this, Revenue has raised following ground No.1:-

“On the facts and in the circumstances of the case, the Ld. CIT(A)-VIII erred in law in deleting the addition of Rs.5,90,000 on account of Legal charges where tax was not deducted as per provision u/s. 194J..”

3. We have heard Ld. SR-DR and gone through the facts and circumstances of the case. We find that the Assessing Officer has disallowed the legal charges of 5.90 lakhs paid to legal professional as the assessee failed to deduct TDS u/s 194J of the Act and thereby he invoked sec. 40(a)(ia) of the Act. Aggrieved, assessee preferred appeal before CIT(A), who deleted the disallowance by noting that these payments are reimbursement of expenses and assessee has not claimed the deduction of the same. For this, CIT(A) observed as under:-

“Before me, it is argued that during the course of assessment proceedings, it was explained that the total expenses of Legal Charges of Rs.5,90,000/- was paid to some legal professionals, who have been paid to different persons on behalf of the company for representing their cases and/or for completing so many statutory obligations and after completing those obligations, such Legal practitioners had furnished their bills at lump and for that no TDS have been deducted. The appellant has filed a copy of the letter dated 21.12.2010 furnished before the Assessing Officer. The contention of the appellant is that the amount paid is not chargeable to tax in the hands of the recipient. Apparently, the payments are reimbursement of the expenses incurred. Further, in the case of Teja Constructions v. CIT [2010] 39 SOT 12 (Hud) (URO), it has been observed that section 40(a)(ia) is applicable only in respect of TDS defaults if amount is payable. If amount is actually paid and tax is not deducted under the sec. 194J and other sections, section 40(a)(ia) is not applicable. Section 40(a)(ia) has to be subjected to strict interpretation. Going by the rule of strict interpretation, the default with reference to actual ‘payment’ of expenditure would not entail disallowance. In view of the facts and the emerging legal position, the addition on account of disallowance of legal charges expenses at Rs.5,90,000/- is hereby deleted.”

We find that CIT(A) has categorically observed that these expenses are for the purpose of business and expenses are genuine. The AO has disallowed merely on conjuncture and surmise just on the basis estimate. We find no infirmity in the order of CIT(A) deleting the same and same is confirmed. This issue of Revenue's appeal is dismissed.

4. Next issue is against the order of CIT(A) deleting the disallowance of processing charges disallowed by AO as the assessee failed to deduct TDS u/s

194C of the Act thereby invoked the provisions of Sec. 40(a)(ia) of the Act. For this, Revenue has raised following ground No.3:-

“On the facts and in the circumstances of the case, the Ld. CIT(A)-VIII erred in law in deleting the addition of Rs.9,22,160 on account of processing charges where tax was not deducted as per provision u/s 194C”

5. We have heard Ld. DR and gone through the facts and circumstances of the case. We find that AO has made the disallowance of sewing and processing charges as the assessee failed to deduct TDS on a sum of 9,22,160/- thereby invoked the provision of Sec. 40(a)(ia) of the Act for making this disallowance. Aggrieved, assessee preferred appeal before CIT(A), who deleted the disallowance after considering the submission of the assessee which observed as under:-

“I have perused the material placed on record. The Assessing Officer has not brought on record any material to show that the payments have been made under any agreement of contract to any contractors or sub-contractors. The nature of payments, in my opinion, did not warrant either deduction of tax at source or the consequential disallowance under sec. 40(a)(ia) or any other provisions of the Act. The addition of Rs.9,22,160/- by way of disallowance is hereby deleted.”

We find that CIT(A) has simply considered the submission of assessee that there is no agreement or contract and we find that once the labour payments are made there is a clear-cut contract exist between the parties. This issue has been considered by the co-ordinate bench in the case of DCIT Vs. Kamal Mukherjee & Co. (Shipping) (P) Ltd. ITA No. 199/Kol/2010, wherein it is held as under:

(From Head notes)

“.....Undoubtedly, these decisions do indicate that there is a workman employer relationship between the dock workers and the stevedores like assessee when they employ those workers, but be that as it may, the fact remains that the assessee has made payments to the CDLB for supply of labour, even when this labour may be treated as employed by the assessee for all practical purposes, the provisions of section 194C are clearly attracted. In such a situation, i.e. when labour hired by the assessee through

CDLB is considered to be in assessee's employment, the payments made to CDLB cannot be treated as payments for any work, but nevertheless these payments could still be covered by the provisions of section 194C because these are payments made for supply of labour which are specifically covered by section 194C(1). CDLB is an agent of the stevedores like the assessee in the sense that the labour is recruited by the assessee through CDLB, but when this fact does not affect the nature of payment by the assessee to the CDLB which is admittedly in the nature of payment for supply of labour. The reasoning adopted by the Commissioner (Appeals), though somewhat impressive at first glance, is fallacious. There is no cause and effect relationship between workers assigned by the CDLB having employer workman relationship with the assessee, and the payments being made by the assessee to CDLB being not in the nature of 'payment for supply of labour'".

4. Since the facts and circumstances are exactly identical, what was before us in Kamal Mukherjee & Co. (Shipping) (P.) Ltd. (supra) and also that in the case of Smt. J. Rama of Hon'ble Karnataka High Court (supra), respectfully following the same, we are of the view that even oral contract is sufficient and admittedly the assessee has taken the dumpers on hire and he has paid charges for the same. Respectfully following the same, we confirm the disallowance made by the Assessing Officer and reverse the order of CIT(Appeal).

We find that the issue is squarely covered against the assessee and in favour of Revenue by the co-ordinate Bench decision in the case of Kamal Mukherjee & Co. (Shipping) (P) Ltd. (supra) . Respectfully following the same, we reverse the order of CIT(A) and deletion made by him is restored back. This issue of Revenue's appeal is allowed.

6. In the result, Revenue's appeal is partly allowed.

Order pronounced in open court on 01/07/2015

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

Sd/-
(Mahavir Singh)
Judicial Member

*Dkp

दिनांक:- 01/07/2015

कोलकाता

आदेश क०० तालम अपेक्षत / Copy of Order Forwarded to:-

1. अपीलार्थी/ Appellant- ITO Ward-9(1), P-7, Chowringhee Square, Aayakar Bhawan, 5th Floor, Room-14, Kol-69
2. प्रत्यर्थी/ Respondent ó M/s Talwar Brothers Pvt. Ltd. 12, Mayfair Road, Kol-19
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. व्रभागीय प्रतमधि, आयकर अपीलार्थ अधकरण कोलकाता / DR, ITAT, Kolkata
6. गार्डफाइल / Guard file.

/True Copy/

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलार्थ अधकरण,
कोलकाता