

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'B, DELHI)

Before Shri S. V. Mehrotra, Accountant Member
And
Shri Kul Bharat, Judicial Member

ITA No.3570/Del / 2012
(Assessment Year-2001-02)

ACIT
Circle -3(1),
New Delhi.

Vs. Calcutta Test House (P) Ltd.
K-1/30,
Chitranjan Park,
New Delhi

(APPELLANT)

PAN: AAACC0991K
(RESPONDENT)

ASSESSEE BY : Shri Anoop Kr Sinha, Sr. DR
REVENUE BY :Shri Prakash Yadav, Adv.

Date of hearing : 06.09.2012
Date of pronouncement :14/09/2012

ORDER

PER S.V. Mehrotra, Accountant Member

This is an appeal filed by the Revenue against the order dated 12.04.2012 of CIT (A)-VIII, New Delhi relating to assessment year 2001-02 on following grounds of appeal:

“1. The Ld. CIT (A) on fact in law on deleting the addition of Rs.20,75,953/- made u/s 40 (a) (i) of the I.T. Act.

2. The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.”
2. Brief facts of the case are that the assessee had hired machinery on lease from UK Company and paid hiring charges to such foreign company. The said UK Company had business connection with the assessee. Considering the provisions of Section 195 and Section 40 (a) (i), the AO held that the assessee was liable to deduct the TDS on hiring charges of Rs.20,75,953/- paid to the foreign company. Since the assessee did not deduct the TDS and also failed to submit the original agreement with the OIGA, he disallowed the hiring charges paid by assessee.
3. Ld. CIT (A) following the order of ITAT for assessment year 2000-2001 Vide ITA No. 1782/Del/2011 dated 28th October, 2011, deleted the disallowance. Being aggrieved the department is in appeal before us.
4. We have considered both the parties and have perused the record of the case. There is no dispute that the facts in the present assessment year are identical to the facts as obtaining in assessment year 2000-01.
5. We find that Tribunal in para 7 of its order for A.Y-2000-2001, observed as under:

“The addition in the present case has been made only on the ground that assessee has not deducted tax at source from the payments made b it to OIAG. It has already been mentioned that there is not material on record on the basis of which it can

be said that OIAG was having any presence in India, by which it could be said that the said concern has maintained its PE in India. The obligation to deduct tax on the payments made by a person to a non-resident is described in Section 195 of the Act, which stipulate of any amount paid which is chargeable under the provisions of this Act. Unless the payment made to non-resident is chargeable to tax in India, there is no obligation on the payer to deduct tax at source according to the provisions of Section 195. There is no material on record to suggest that the income of the payee was chargeable to tax in India in any manner. Therefore, the question of deduction at source from such payment does not arise. Hence, we hold that Ld. Commissioner of Income Tax (Appeals) has rightly held that impugned disallowance u/s 40 (a) (ia) could not be made. Accordingly, we confirm the order of the Ld. Commissioner of Income Tax(Appeals) and decide the issue in favour of the assessee.”

6. Respectfully following the decision of Tribunal in assessee’s own case for assessment year 2000-01, the department’s appeal is dismissed.

In the result Department’s appeal is dismissed.

Order pronounced in open court on 14 /09/ 2012.

Sd/-
(Kul Bharat)
Judicial member

Sd/-
(S.V.Mehrotra)
Accountant Member

Dated the 14th day of September, 2012
S.Sinha

- Copy forwarded to
1. APPELLANT
 2. RESPONDENT
 3. CIT
 4. CIT (A)
 5. CIT(ITAT), New Delhi.

AR,ITAT
NEW DELHI.

By Order
Dy. Registrar

// C O P Y //

1. Date of Dictation:
2. Draft placed before the Author on:
3. Draft proposed and placed before second member on:
4. Draft discussed/approved by the second member on:
5. Approved draft came to Sr. P.S on:
6. Date of Pronouncement:
7. File sent to Bench clerk on:
8. Date on which file given to Head clerk on:
9. Date of dispatching the order on: