

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri Partha Sarathi Chaudhury, JM]

I.T.A No.257/Kol/2013
Assessment Year: 2009-10

Assistant Commissioner of Income-tax Vs. **Devendra Kumar Dugar**
Circle-34, Kolkata. (PAN : ADEPD7349E)
(Appellant) (Respondent)

Date of hearing: 28.02.2017
Date of pronouncement: 03.03.2017

For the Appellant: Md. Ghayas Uddin, JCIT, Sr. DR
For the Respondent: S/Shri S. Jhajharia, FCA & Sujoy Sen, Advocate

ORDER

Per Shri Partha Sarathi Chaudhury,, JM:

This appeal by revenue arises out of the order of CIT(A)-XX, Kolkata vide appeal No. 296/CIT(A)-XX/Wd-34(3)/2011-12/Kol dated 19.11.2012 on the following grounds:

“1. The order of the Ld. CIT(A) is erroneous both on question of law and facts.

2. Ld. CIT(A) has failed to appreciate that even if the expenses made by CECO Electronics (P) Ltd. on behalf of Control Engineering Co. is considered to be genuine, it does not change the nature of payment made by the assessee to M/s. CECO Electronics (P) Ltd. The nature of payment is contractual and the assessee is required to deduct TDS on it. So without being prejudice about the genuineness of the expenses, the payment of Rs.49,53,046/- made to CECO is not reimbursement but contractual.

3. The appellant craves for leave to add, delete or modify and grounds of appeal.”

3. The brief facts of the case are that the assessee is an individual having business where income from manufacturing of inverter drives and control panel and trading of switchgear items. The return of income for AY 2009-10 was filed on 03.02.2010 disclosing total income of Rs.39,88,290/-. The case has been processed u/s. 143(1) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) and thereafter selected for scrutiny. Accordingly, notices u/s. 143(2) and 142(1) of the Act were issued and served upon the assessee. In response to the said notices, the Ld. AR of the assessee appeared on different dates and explained the return with regard to details filed and books of account produced. The assessment was completed u/s. 143(3) of the Act with the assessed income being at Rs.96,21,224/-.

4. The sole grievance of the revenue is that whether the payment of Rs.49,53,046/- made to CECO Electronics Pvt. Ltd. (CECO) is a reimbursement or contractual in nature and whether TDS to be deducted on it. The AO has disallowed a sum of Rs.49,53,046/- u/s. 40(a)(ia) of the Act broadly the reason being that the assessee was liable to deduct TDS on it u/s. 194C or 194J of the Act. The AO in his order has stated that the submission of the assessee being considered but is not acceptable to the AO due to the following reason:

(i) the payment of Rs.49,53,046/- made by the assessee to CECO is reimbursement of expenses as shown by CECO in its P&L Account as receipt or income and expenses are claimed against this income by CECO;

(ii) the Ld. AR of the assessee did not able to give any supporting bill raised by CECO for reimbursement of the expenses to the assessee;

(iii) all legal requirements regarding payment as deduction of TDS etc. are done by the CECO;

(iv) till AY 2007-08 all payment made by the assessee to CECO is shown by the assessee as contractual payment.

(v) From AY 2008-09 assessee changed the nomenclature of the payment to CECO but Ld. AR of the assessee was unable to explain why the nomenclature of expenses is changed inspite of the fact that the services rendered by CECO was same as in the previous year.

5. The AO observed that CECO gives some services as claimed by assessee and the assessee makes payment against it. The AO came to the conclusion that the nature of payment is contractual payment or payment for managerial support and the assessee was required to deduct TDS on it and, therefore, the payment of Rs.49,53,046/- shown by the assessee as reimbursement of the expenses to CECO is not a reimbursement but a contractual payment or payment made for managerial support for which the assessee was liable to deduct TDS u/s. 194C of the Act. As the assessee did not deduct TDS on this payment so Rs.49,53,046/- was disallowed by the AO u/s. 40(a)(ia) of the Act. That at the

appellate stage the assessee has submitted that the AO in his assessment order has written on page 4 para 7 which is as under:

“All legal requirements regarding payment as deduction of TDS etc. are done by the CECO only.”

CECO ELECTRONICS PRIVATE LIMITED

STATEMENT OF EXPENSES INCURRED DURING THE YEAR ENDED 31.3.2009 & REIMBURSABLE BY M/S. CONTROL ENGINEERING CO.

1	Advertisement: (Paid to:)	Amount (Rs.)	Total TDS (Rs.)
	Chapte Chapte	15000.00	155.00
	Citi Bank	8988.00	---
	Getit Infoservices	15169.00	172.00
	IED Communications	60000.00	618.00
	Infoware Ltd.	25000.00	---
	Info Edge (India) Ltd.	11236.00	1157.00
	IPF Online Ltd.	174905.00	3966.00
	Mark Advertising	896254.00	9233.00
	Praj Advertising & Display	55080.00	567.00
	Seam View Information Systems Ltd.	18000.00	185.00
	The Marc Communication	38202.00	394.00
		1317834.00	16447.00
2	Courier Charges: (Paid to:)	Amount (Rs.)	Total TDS (Rs.)
	Speeding Services	156735.00	3551.00
	Sunrise Courier & Cargo	49396.00	1120.00
	Trackon Courier, Hyderabad	29248.00	---
	CITI Bank	7867.00	---
	Sairam Enterprise	12541.00	---
		255787.00	4671.00
3	Exhibition Expenses: (Paid to:)	Amount (Rs.)	Total TDS (Rs.)
	India ITME Society	542699.00	51014.00
	IED Communications Ltd.	412586.00	84993.00
	Misc. Expenses	10000.00	---
	Electricity Expenses	11236.00	---
		976521.00	136007.00
4	Rent : (Paid to:)	Amount (Rs.)	Total TDS (Rs.)
	V. Swaminathan (Chennai)	152000.00	23484.00
	Jamal Ahmed (Bangalore)	161987.00	25025.00
	Kamal Ahmed (Bangalore)	161987.00	25025.00

Soubhagya Madam (Delhi)	120000.00	---
(Hyderabad)	120000.00	---
(Cal)	134000.00	---
	849974.00	73534.00

5	Electricity Charges: (Paid to:)	Amount (Rs.)	Total TDS (Rs.)
	Kolkata	255840.00	N. A.
	Factory	76258.00	N. A.
	Ahmedabad	16899.00	N. A.
	Delhi	44310.00	N. A.
	Mumbai	150290.00	N. A.
	Pune	2300.00	N. A.
	Bangalore	5731.00	N. A.
		551628.00	N. A.

6	Office Maintenance Expenses:(Paid to)	Amount (Rs.)	Total TDS (Rs.)
	Vikram Tower Maintenance Group (Delhi Office)	116911.00	N. A.
	Everest Chambers Premises Co.Op. Society Ltd.	224000.00	N. A.
		340911.00	N. A.

7	Travelling Expenses:(Paid to)	Amount (Rs.)	Total TDS (Rs.)
	Monarc Travels for private car hire charges	100640.00	
		100640.00	N. A.

8	Telephone Expenses: (Paid to:)	Amount (Rs.)	Total TDS (Rs.)
	Ahmedabad	20382.00	
	Bangalore	46124.00	
	Coimbatore	111554.00	
	Chennai	49517.00	
	Delhi	155562.00	
	Mumbai	52186.00	
	Pune	28969.00	
	Hyderabad	13591.00	
	Kolkata	81866.00	
		559751.00	0.00

Total Expenditure:	4953046.00	
Total TDS deducted:		291441.00

6. It was submitted before the Ld. CIT(A) by the assessee that TDS was duly deducted and paid to government account wherever it was applicable. Since it is a reimbursement case only one time tax deduction is required on each expenditure and that was done. There is no provision in the Income Tax Act for deduction of income tax twice on same expenditure. The assessee further submitted that many of the reimbursed expenditure like electricity payment, telephone bill payment, local conveyance expenditure are out of the provision of TDS but the AO has added all such expenditure also. It was further argued that the AO has stated the reimbursement was shown in the P&L Account by CECO so, it should be treated as income of the company. In case, it is not shown like this, tax deducted by CECO cannot be claimed. To the issue, the AO has contended that the expenditure were contractual payment covered u/s. 194C of the Act. The assessee submitted that no amount has been paid to CECO over and above the actual amount of expenditure. The reimbursements are not to be treated as payment which constitutes receipts in the hands of the recipient. The assessee on this issue relied on two Tribunal decisions (i) ITO Vs. K. M. Varghese & Co., ITA No. 4091/Mum/2010 and (ii) ACIT Vs. Minpro Industries, ITA No. 394/Jodh/2008. The Ld. CIT(A) in his order after considering the assessment order and submission of the assessee observed that certain payments were made by the assessee to CECO in respect of expenses incurred by CECO on behalf of the assessee. The AO has considered these payments being made for managerial support on which the assessee was required to deduct TDS while the assessee had argued that these expenses were incurred on its behalf for which they duly deducted TDS. The Ld. CIT(A) opined that as per the judgments cited by the ITAT wherein it was held that expenditure made on behalf of the assessee and the assessee only reimbursed the expenses. In such circumstances, no deduction of tax can be made at source. The Ld. CIT(A) in view of the judgment of the ITAT held that section 40(a)(ia) of the Act is not applicable in respect of expenses reimbursed by the assessee and hence, the addition of Rs.49,53,046/- was deleted. That being further aggrieved, the revenue is in appeal before us.

7. The Ld. DR submitted that as had been put forth before the subordinate authorities and relied on the order of the AO. The Ld. AR reiterated the submissions made before the Ld. CIT(A) and relied on his order. That furthermore, the Ld. AR referred to the decision of ITAT, Delhi Bench in the case of ITO Vs. Dr. Willmar Schwabe India (P) Ltd. (2005) 3 SOT 71 (Del) wherein the issue was that the assessee company had been procuring backing materials from various suppliers as per its specification - required raw material for manufacture of said packing material was purchased by concerned suppliers on their own - concerned suppliers also paid sales tax and excise duty on packing material supplied to assessee. The issue was whether ownership of said material was entirely with concerned suppliers till its supply to assessee company and contract between assessee company and those suppliers was for sale of goods and not for work as envisaged in section 194C of the Act. It was held yes, whether, therefore, section 194C was not applicable and assessee was not required to deduct tax at source under that section-held yes. The ITAT, Delhi Bench in this case has held that here was the situation where various packing materials were procured by the assessee company during the year under consideration from several manufacturers where regularly manufacturing such materials. It was also observed that even though the said packing material was manufactured by the concerned suppliers as per the specification given by the assessee company and even some printing was also done as per the assessee's requirement, the required raw material for the purpose of manufacturing the said packing material was purchased by the concerned suppliers on their own. Thus, the ownership of the said material was entirely with the concerned manufacturers till its supply to the assessee company and the contract between the assessee company and those manufacturers was that for supply of material and not for carrying out any particular work as envisaged in section 194C. It was a clear case of sale of goods by the said suppliers to the assessee and that was evident from the fact that sales tax as well as excise duty was paid by the concerned suppliers on the packing material supplied to the assessee company wherever applicable. The CBDT itself in clause 7(b) of its Circular No. 681 issued on 08.03.1994 has clarified that where the contractor undertakes to supply and article or thing fabricated according to the specifications, the property in such article or thing passes to the purchaser only after such article or thing is delivered and the contract thus being for sale of such article or thing would be outside the purview of section 194C. Therefore, the Ld. CIT(A) was right in holding that provisions of

section 194C of the Act were not applicable in respect of the payments made by the assessee to the suppliers of packing material.

8. We have perused the case records, facts and circumstances of the case and heard the rival contentions. We observed at the time of hearing as our attention was drawn by the Ld. AR to the fact that there existed a royalty-cum-reimbursement agreement between the assessee and CECO and as per the said agreement certain service charges for contract job work were to be reimbursed by the assessee to CECO e.g. (i) royalty for use of the name of CECO, (ii) reimburse of direct expenses made exclusively by CECO for the business of the assessee and (iii) payment for services and reimbursement will be based on practical aspect and requirement of funds. Therefore, this clause is clear about the fact that all direct expenses made by CECO have to be reimbursed by the assessee. At the same time, we observe from the order of the Ld. CIT(A) itself wherein there is a chart of statement of expenses where for all expenses paid TDS was deducted and i.e. evident from the chart. Therefore, there is no loss to the revenue in the entire transaction. Further in the judgment of the Delhi ITAT in case of Dr. Willmar Schwabe India (P) Ltd., supra it is crystal clear proposition of law that when there is no element of income and there is mere reimbursement made there is no question of deduction of TDS. In the instant case, we arrive at our considered view that assessee made payment to CECO by way of reimbursement only. Therefore, we find no infirmity with the findings of the Ld. CIT(A) and the relief granted to the assessee is sustained. This ground of appeal of revenue is dismissed.

9. Ground Nos. 1 and 3 are general in nature and hence, need no adjudication.

10. In the result, the appeal of revenue is dismissed.

Order is pronounced in the open court on 03.03.2017

Sd/-

(M. Balaganesh)
Accountant Member

Sd/-

(Partha Sarathi Chaudhury,
Judicial Member

Dated : 3rd March, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – ACIT, Circle-34, Kolkata
2. Respondent –Shri Devendra Kumar Dugar, 18, R. N. Mukherjee Road, Kolkata-700 001.
3. The CIT(A), Kolkata
4. CIT , Kolkata.
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.