

**COMMISSIONER OF INCOME TAX-I, JODHPUR VS. M/S. SHREE
CHOUHARY TRANSPORT
(D.B. INCOME TAX APPEAL NO.49/15)**

Dated:- 6.5.16.

HON'BLE MR. JUSTICE SANGEET LODHA
HON'BLE MR. JUSTICE KAILASH CHANDRA SHARMA

Mr.K.K.Bissa, for the appellant.



1. This appeal is directed against order dated 30.7.14 of Income Tax Appellate Tribunal (ITAT), Jodhpur Bench, Jodhpur, whereby an appeal preferred by the assessee against the order of Commissioner of Income Tax (Appeals) [CIT(A)], Jodhpur, dated 25.11.13, maintaining the disallowance under Section 40(a)(ia) of the Income Tax Act, 1961 (for short "the Act") for Rs.1,15,80,790/- made by the Assessing Officer (AO), has been allowed and the matter has been restored to the file of AO for passing the assessment order afresh, after ascertaining the specified issues before coming to any conclusion about the nature of expenditure and its disallowance under Section 40 (a)(ia) of the Act.

2. The directions issued by the ITAT to AO read as under:

"(i) To ascertain whether any expenditure in the nature of freight payment is claimed by the assessee in its profit & loss account or the assessee's only source of income is from bilty commission.

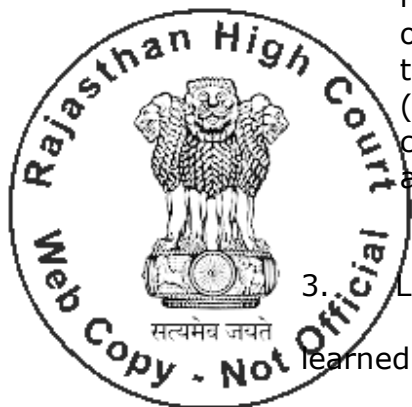
(ii) If it is found that nothing has been claimed as expenditure in the nature of freight payment while computing the income, than no disallowance can be made by invoking provisions of section 40(a)(ia) on the basis of principal laid down by the by Hon'ble Karnataka High Court in the case of CIT vs Balaji Engineering And Construction Works [323 ITR 351 (Kar)].

(iii) To consider the form No 151 obtained by the assessee,

as its non filing with the concerned authority with form No 15J is not a ground for its disallowance as held by Hon'ble Gujrat High Court in the case of CIT vs Valibhai Khanbhai Mankad [92 DTR (Guj) 267].

(iv) If it is held that provisions of section 40(a)(ia) are applicable than the quantum of disallowances is to be restricted only to amount outstanding freight at the end of the year in respect of persons payment to whom disallowed while passing the original as well as set aside assessment order, keeping in view the decision of Hon'ble Allahabad High Court in the case of CIT vs Vector Shipping Services (P) Ltd [357 ITR 642 (All)]. The maximum amount which can be disallowed works out by the AR of the assessee at Rs.6,43,296/-, the AO is directed to verify the same.

(v) statements of truck owners, if recorded, have to be confronted to the assessee before using them against the assessee."



3. Learned counsel appearing for the appellant contended that the learned ITAT has seriously erred in ignoring that the assessee had failed to produce the truck owners and when summoned under Section 131 of the Act, 23 truck owners have denied to issue Form No.15-I as claimed by the assessee. Learned counsel submitted that as per Rule 29D of the Income Tax Rules, the Form No.15-I is to be furnished by the Sub Contractor to the Contractor and in turn, Contractor has to furnish Form No.15J to CIT by the prescribed date, which is admittedly not adhered to and thus, the ITAT has seriously erred in deleting the additions made for violations of provisions of Section 194C.

4. Indisputably, the AO has doubted the genuineness of Form 15-I produced by the assessee. Obviously, the statements of the truck owners, if any recorded, were required to be confronted to the assessee before using them against the assessee. It is pertinent to note that before the CIT (A), an additional ground was raised by the assessee in terms that disallowance made under Section 40(a)(ia)

amounting to Rs.1,15,80,790/- is erroneous inasmuch as, the income of the assessee is of commission on the booking of truck and the freight payment to the truck owners was not claimed as expenses in the profit and loss account. The specific stand of the assessee was that he has been earning only booking charges and is only a conduit in passing the freight to the truck owners who were actually plying trucks and since no expenditure of freight payment is claimed in the computation of business income, no such disallowance can be made. In the considered opinion of this court, the aforesaid relevant aspects of the matter, having not been gone into by the AO appropriately, for the reasons recorded order passed by the ITAT, remanding the matter to the AO to ascertain the issues specified and pass the assessment order afresh, does not give rise to any substantial question of law so as to warrant interference by this court in exercise of its appellate jurisdiction.

5. In the result, the appeal fails, it is hereby dismissed in limine.

(KAILASH CHANDRA SHARMA),J.

(SANGEET LODHA),J.

Aditya/