

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCH "B", HYDERABAD

BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

ITA No.661/Hyd/2019		
Assessment Year: 2013-14		
Manne Hareesh, 103, Sita Mansion, 1-10- 104/14, Mayur Marg, Begumpet, Hyderabad. PAN: ADMPM 6479 L	Vs.	Income Tax Officer, Ward-6(2), Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri T. Ramamurthy, CA	
Revenue by:	Sri Nilanjan Dey, DR	
Date of hearing:	23/09/2019	
Date of pronouncement:	30/10/2019	

ORDER

PER A. MOHAN ALANKAMONY, AM.:

This appeal is filed by the assessee against the order of the Ld. CIT(A)-6, Hyderabad in appeal No. 10116/016-17/A3/CIT(A)-6, dated 07/03/2019 passed U/s. 143(3) r.w.s 250(6) of the Act for the A.Y. 2013-14.

2. The assessee has raised 5 grounds in his appeal, however, the cruxes of the issues are that:-

- (i) The Ld. CIT (A) has erred in upholding the order of the Ld. AO who had disallowed salary expenditure incurred for Rs. 47,50,000/- by treating it as commission paid for selling goods invoking the provisions of section 194H and 40(a)(ia) of the Act.
- (ii) The Ld. CIT (A) has erred in upholding the order of the Ld. AO who had disallowed accounting charges incurred for Rs. 2,40,000/- invoking the provisions of section 194J and 40(a)(ia) of the Act.

3. The brief facts of the case are that the assessee is an individual engaged in wholesale trade of oil and lubricants filed its return of income for the AY 2013-14 on 30.9.2019 admitting taxable income of Rs. 17,02,490/-. The case was selected for scrutiny and finally assessment was completed U/s. 143(3) of the Act on 7/3/2016 wherein the Ld. AO made additions by disallowing the expenditures invoking the provisions of section 40(a)(ia) of the Act with respect to non-deduction of tax towards commission paid for selling products amounting to Rs. 47,50,000/- and towards accounting charges incurred of Rs. 2,40,000/-.

Expenditure incurred for Rs. 47,50,000/-:

4. During the course of scrutiny assessment proceedings, it was observed by the Ld. AO that the assessee has debited in his P & L

Account an amount of Rs. 47,50,000 towards market support expenses. It was further observed that the aforesaid amount was embedded under the head 'current liabilities' in the balance sheet disclosed as Rs. 68,09,952/-. On query, it was explained by the assessee that the outstanding amount of Rs. 47,50,000 were towards annual payment due to marketing staff salary for the relevant previous year 2012-13 which was subsequently paid in the previous year 2013-14. On verifying the payment vouchers, it was observed that the payments were made in cash exceeding Rs. 20,000 and paid within the period April 2013 to June 2013. Further, the assessee could not produce evidence that the expenditure was incurred was towards salary by furnishing attendance register, copies of appointment order etc. Therefore, the Ld. AO presumed that the expenditure was incurred towards marketing commission and since tax was not deducted at source, he invoked the provisions of section 194H and 40(a)(ia) of the Act and thereby disallowed the expenditure of Rs. 47,50,000. On appeal, the Ld. CIT (A) confirmed the order Ld. AO by agreeing with his view.

5. Before us, the Ld. AR submitted that the amount of Rs. 47,50,000 was paid to employees who were selling the products marketed by the assessee. It was further submitted that all these employee's estimated income was below taxable limit and therefore, deduction of Tax U/s. 192 of the Act is not applicable. It was further argued that in any case

the provisions of section 194H of the Act would not be applicable in the case of the assessee because the payments were made in the form of salary to the employees of the assessee who were assigned with the task of marketing the products dealt by the assessee. It was therefore pleaded that the disallowance made by the AO invoking the provisions of section 40(a)(ia) of the Act may be deleted. On the other hand, the Ld. DR relied on the orders of the Ld. Revenue Authorities.

6. We have heard the rival submissions and carefully perused the materials on record. From the orders of the Ld. Revenue Authorities, it is apparent that they have rejected the submission of the assessee for treating the expenditure incurred for Rs. 47,50,000 as salary paid to the employees of the assessee who were assigned with the job of marketing the products dealt by the assessee simply for the reason that the assessee had not maintained the salary register and appointment letters / agreements. It is pertinent to mention that in small business houses such record are not normally maintained and they are not mandatory. The assessee has also produced the vouchers with respect to the payment made to his employees but, they were also rejected by the Ld. Revenue Authorities without valid reasons. The Ld. Revenue Authorities have also not brought out anything on record from the details produced by the assessee to establish that the payments made to the individuals exceeded taxable limits. In this situation, we are of

the considered view that addition made on the basis of presumption is not justifiable. When the assessee had furnished the details of the payment to his employees it cannot be simply rejected without verifying the facts. Therefore, we hereby direct the Ld. AO to delete the addition made for Rs. 47,50,000 invoking the provisions of section 194H and 40(a)(ia) of the Act.

Expenditure incurred for Rs. 2,40,000/-:

7. During the course of scrutiny assessment proceedings, it was observed by the Ld. AO that the assessee has debited in his P & L Account an amount of Rs. 2,40,000 towards Accounting Charges. On query, it was explained by the assessee that the outstanding amount of Rs. 2,40,000 was towards salary due to his Accountant Sri Devaraju, Accountant for the previous year 2012-13 which was subsequently paid in the previous year 2013-14. On verifying the payment vouchers, it was observed by the Ld.AO that the payments were made in cash exceeding Rs. 20,000 and the entire accounting charges were debited on 31/3/2013. Further, the assessee could not produce evidence that the accountant was employed by the assessee by furnishing copies of appointment order, attendance register, etc. Therefore, the Ld. A.O. invoked the provisions of section 194J and 40(a)(ia) of the Act and

thereby disallowed the expenditure of Rs. 2,40,000. On appeal, the Ld. CIT (A) confirmed the order Ld. AO by agreeing with his view.

8. Before us, the Ld. AR submitted that the amount of Rs. 2,40,000 was paid to Mr. Devaraju, for rendering his services as Accountant. It was further submitted that it is only salary paid to the Accountant and there is no obligation for deduction of tax at source as the salary paid is less than taxable limit. Therefore, it was argued that deduction of Tax at source U/s. 192 of the Act is not applicable. It was further argued that in any case the provisions of section 194J of the Act would not be applicable in the case of the assessee because the payments were made in the form of salary to the employee of the assessee who was assigned with the task of preparation of the accounts with respect to the business activities of the assessee. It was therefore pleaded that the disallowance made by the AO invoking the provisions of section 40(a)(ia) of the Act may be deleted. On the other hand, the Ld. DR relied on the orders of the Ld. Revenue Authorities.

9. We have heard the rival submissions and carefully perused the materials on record. From the orders of the Ld. Revenue Authorities, it is apparent that they have rejected the submission of the assessee for treating the expenditure incurred for Rs. 2,40,000/- as salary simply

for the reason that the assessee had not maintained salary register and appointment letters / agreements. It is pertinent to mention that in small business houses such record are not normally maintained and they are not mandatory. The assessee has also produced the vouchers with respect to the payment made to his employee but, they were also rejected by the Ld. Revenue Authorities without valid reasons. The Ld. Revenue Authorities have also not brought out anything on record from the details produced by the assessee to establish that the payments made to the individual exceeded taxable limits. In this situation, we are of the considered view that addition made on the basis of presumption is not justifiable. When the assessee had furnished the details of the payment to the Accountant towards accounting charges it cannot be simply rejected without verifying the facts. Therefore, we hereby direct the Ld. AO to delete the addition made for Rs. 2,40,000 invoking the provisions of section 194J and 40(a)(ia) of the Act.

10. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 30th October, 2019.

Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Hyderabad, Dated: 30th October, 2019

OKK

Copy to:-

- 1) Mnne Hareesh, 103, Sita Manison, 1-10-104/14, Mayur Marg, Begumpet, Hyderabad. (ii) Manne Hareesh C/o. CA Rama Murthy Tejomurtula, 103, Sita Manison, 1-10-104/14, Mayur Marg, Begumpet, Hyderabad – 500 016.
- 2) Income Tax Officer, Ward-6(2), Hyderabad.
- 3) The CIT(A)-6, Hyderabad
- 4) The Pr. CIT-6, Hyderabad
- 5) The DR, ITAT, Hyderabad
- 6) Guard File