

आयकर अपीलीय अधिकरण, "बी" न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
' B' BENCH : CHENNAI

श्री चंद्र पूजारी, लेखा सदस्य एवं श्री  
जी. पवन कुमार न्यायिक सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND SHRI G.PAVAN KUMAR, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.No.219/Mds./16  
निर्धारण वर्ष /Assessment year : 2007-08

M/s.Universal Embroidery,  
No.14, Old No.11/2,  
Valluvar Street, Old  
Washermenpet,  
Chennai 600 021.

**Vs.** Income Tax Officer,  
Business Ward VII(3),  
[New jurisdiction-6(3)]  
Chennai-6

**[PAN AABFU 0671 N ]**  
**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by : Shri R.Padmanabham,C.A  
प्रत्यर्थी की ओर से /Respondent by : Shri Supriyo Pal, JCIT DR  
सुनवाई की तारीख/Date of Hearing : 29-06-2016  
घोषणा की तारीख /Date of Pronouncement : 30-06-2016

**आदेश / ORDER**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER**

This appeal of the assessee is directed against the order of the  
Commissioner of Income-tax (Appeals)-5,Chennai dated 18.01.2016  
pertaining to assessment year 2007-08.

2. The main ground in this appeal is with regard to confirm the addition of ₹15,24,800/- by invoking the provisions of the section 40(a)(ia) of the Act in respect of payments made towards labour charges without deducting TDS u/s.194C of the Act.

3. The brief facts of the case are that the assessee firm is engaged in the business of Embroidery work and filed the return of income on 31.01.2007 admitting a total income of ₹14,256/-. The case was selected for scrutiny and the scrutiny assessment was completed on 30.12.2009 resulted a demand of ₹9,82,240/-. Aggrieved, the assessee carried the appeal before the CIT(A) and CIT(A) dismissed the appeal. The assessee preferred an appeal before ITAT. The ITAT, Chennai vide order dated 11.01.2011 for assessment year 2007-08 had stated that "we set aside the order of the Ld.CIT(A) and in the interest of the justice, restore back the entire issue to the file of the AO with a direction that he shall make an assessment order de nova after hearing the assessee". Consequent to the order of this Tribunal, the AO passed order u/s.143(3) r.w.s.246 of the Act on 30.12.2011 by making disallowance u/s.40(a)(ia) and disallowances of some portion of the expenditures for not producing the supporting bills/vouchers determining the total income at ₹19,11,545/-.

4. Aggrieved by the order of AO, once again, the assessee went on appeal before the Ld.CIT(A). On appeal the Ld.CIT(A) observed in

respect of disallowance u/s.40(a)(ia) of the Act that during the course of second innings of first appellate proceedings, the books of accounts were produced by Id.A.R. On verifying the books of accounts, it was found that although they were named as Labour Charges, the same were in fact paid to 11 Agencies towards the embroidery works. Those Agencies in turn incurred expenditure on various workers who did the embroidery work. However, that does not alter the nature of the payments made by the assessee to the 11 Agencies from 'Embroidery Charges to 'Labour charges'. Hence, CIT(A) came to a conclusion that TDS is attracted on labour charges and upheld the action of the AO to disallow labour charges paid towards Embroider work amounting to ₹15,24,800/- u/s.40(a)(ia) of the Act for not deducting TDS. Aggrieved, the assessee is again in appeal before this Tribunal.

5. We have heard both the parties and perused the material on record. The AO invoked the provisions of the section 40(a)(ia) of the Act on the reason that payments towards labour charges are liable for deduction of TDS u/s.194C of the Act and the assessee made payments without deducting TDS. Before us, Id.A.R submitted that the impugned amount is already paid and nothing is outstanding at the end of the close of the assessment year under consideration. He relied on the judgement of the Special Bench of the Tribunal in the case of

Merilyn Shipping and Transports v. Addl. CIT [2012] 16 ITR (Trib) 1 (Visakhapatnam) [SB]. Ld.D.R relied on the order of CIT(A). The similar issue came before the Co-ordinate Bench of the Tribunal in the case of Shri N.Palanivelu Vs. ITO reported in [2015] 40 ITR (Trib) 325 [Chennai] vide order dated 29.04.2015 wherein held that:-

*"4. We have heard both sides and perused the material on record. We find that the Special Bench of the Tribunal in the case of Merilyn Shipping and Transports v. Addl. CIT [2012] 16 ITR (Trib) 1 (Visakhapatnam) [SB] and judgment of the Gujarat High Court in the case of CIT v. Vector Shipping Services (P.) Ltd. in I. T. A. Nos. 122 of 2013 dated July 9, 2013 [2013] 357 ITR 642 (All) held that section 40(a)(ia) is not applicable when there is no outstanding balance at the end of the close of the year relevant to the assessment year in respect of these payments. However, the assessee has not brought on record, the details of outstanding expenses or schedule of sundry creditors showing whether the impugned amount is outstanding at the end of the close of the previous year relevant to the assessment year either in the name of the party or outstanding expenses. Hence, in the interest of justice, we are remitting the issue back to the file of the Assessing Officer with direction to verify the claim of the assessee and the assessee shall place necessary evidence in support of his claim.*

*5. Further, we make it clear that if the impugned amount is not outstanding at the end of the close of the assessment year in respect of the expenses either as outstanding*

*expenses or as sundry creditors, this amount cannot be disallowed. This ground is remitted back to the Assessing Officer for fresh consideration."*

In view of this we are inclined to remit the issue to the file of AO to examine whether the impugned amount is outstanding at the end of the close of the assessment years under consideration and decide in the light of above order of the Tribunal. This ground is allowed for statistical purposes.

6. No other ground is pressed by the Id.A.R. Accordingly, other grounds are not considered for adjudication.

7. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 30<sup>th</sup> June, 2016, at Chennai.

Sd/-

(जी. पवन कुमार)

**(G.PAVAN KUMAR)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 30<sup>th</sup> June, 2016

**K S Sundaram**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |

Sd/-

(चंद्र पूजारी)

**(CHANDRA POOJARI)**

**लेखा सदस्य /ACCOUNTANT MEMBER**