

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES “B”, HYDERABAD**

**BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER  
AND  
SHRI K. NARSIMHA CHARRY, JUDICIAL MEMBER**

| <b>ITA No.</b> | <b>Asst. Year</b> | <b>Appellant</b>  | <b>Respondent</b>   |
|----------------|-------------------|---|---|
| 1461/Hyd/12    | 2007-08           | M/s. India Public Travels,<br>HYDERABAD<br><b>[PAN: AAAFI9005P]</b> | Income Tax Officer,<br>Ward-7(2),<br>HYDERABAD                      |
| 1627/Hyd/12    | 2007-08           | Income Tax Officer,<br>Ward-7(2),<br>HYDERABAD                      | M/s. India Public Travels,<br>HYDERABAD<br><b>[PAN: AAAFI9005P]</b> |

For Assessee : NONE  
For Revenue : Smt U. Minichandran, DR

Date of Hearing : 31-05-2017  
Date of Pronouncement : 31-05-2017

**ORDER**

**PER B. RAMAKOTAIAH, A.M. :**

These cross-appeals are by Assessee and Revenue against the order of the Commissioner of Income Tax (Appeals)-VI, Hyderabad, dated 17-08-2012. In spite of giving various notices, none appeared on behalf of assessee. Since cross-appeals are pending, notices were sent through the DR even in assessee's appeal. Accordingly, the cases were posted on 27-02-2017, 09-03-2017, 17-04-2017 and 17-05-2017. Even though the address to which notices are being sent, is that of Chartered Accountant, notices were also sent

to assessee's address as available in the record of the department. In spite of issuing various notices, none appeared when the case was called-upon to-day i.e., on 31-05-2017. Accordingly, the appeals are considered *ex-parte*-assessee on merits, after hearing the Ld.DR.

2. Brief stated facts are that the assessee filed return of income for AY.2007-08 declaring total income at Rs. 1,46,228/-. Subsequently, assessment was reopened u/s. 147 of the Income Tax Act [Act] and notice u/s. 148 was issued. The reasons were also communicated by the letter dt. 12-09-2011, however, after passing the assessment order. In the assessment, the total income was determined at Rs. 46,63,244/-. Ld.CIT(A) after considering the objections of assessee, relying on various case law held that assessment has been reopened validly and so there can be no reason to hold that the notice u/s. 148 was invalid. One of the additions made u/s. 40(a)(ia) to an extent of Rs. 60,56,048/- is with reference to payment made towards hire charges which are tax deductible under Chapter-XVII B. Ld.CIT(A) following the decision of the Special Bench in the case of Marilyn Shipping and Transport Ltd., Vs. ACIT reported as 136 ITD 23 (SB) [16 ITR 1] (SB)(Visakha.)(Trib.) directed the AO to restrict the disallowance to an extent of amounts outstanding and payable as on 31-03-2007 out of the total hire charges claimed. The ground was partly allowed. With reference to disallowance of Rs. 72,000/- of insurance charges paid, since assessee failed to furnish any proof of such payment, the disallowance was upheld. The other disallowance is with reference to Rs. 8,22,020/- debited towards RTA taxes which were allowed by the Ld.CIT(A). 20% disallowance

of diesel expenses to an extent of Rs. 2,76,584/- was also upheld. Like-wise, 20% disallowance of own bus maintenance to an extent of Rs. 5,40,215/- was however allowed. Addition of Rs. 7,71,386/- being Sundry Creditors was deleted by the CIT(A). CIT(A) also allowed the depreciation claim made by assessee which was disallowed by the AO in the order. Both the parties are aggrieved on that order.

3. In assessee's appeal, assessee is contesting the reopening of assessment u/s. 147 along with invocation of provisions of Section 40(a)(ia), and that provisions of Section 194C are not applicable. Assessee is also contesting the disallowance of Rs. 72,000/- and Rs. 2,76,584/- which are confirmed by the Ld.CIT(A). Revenue, however, in its appeal contesting the direction of Ld. CIT(A) about the amount of disallowance u/s. 40(a)(ia), restricted to outstanding amount 'payable' by assessee.

4. Assessee has not placed any further evidence in support of the contentions. Hence, on perusing the order of the CIT(A), we do not find any reason to interfere with the detailed order of the CIT(A). Accordingly, the grounds raised by assessee are rejected.

5. Coming to the ground raised by Revenue on the issue of amount of disallowance to the outstanding amount payable, the CIT(A) has relied on order of the Special Bench in the case of *Merilyn Shipping and Transport Ltd., Vs. ACIT* reported as [136 ITD 23 (SB)] [16 ITR 1] (SB)(Visakha.)(Trib.) which has since been reversed by the Hon'ble Supreme Court in the case of *Palam Gas Services Vs. CIT* in Civil Appeal No. 5172 of 2017 dt. 03-05-2017.

In view of that, the order of the CIT(A) to that extent needs modification. AO has disallowed an amount of Rs. 60,56,048/- u/s. 40(a)(ia). Whether the amounts are to be covered u/s. 194C or 194-I does not make any difference as contended in assessee appeal, as assessee has not made any TDS on the impugned amounts. There is no evidence on record that assessee has deducted any tax either u/s. 194C or u/s. 194-I. In view of that even though assessee raised the issue in Ground No. 4, whether amounts are covered u/s. 194C or 194-I that dispute is not material for disallowing the amount u/s. 40(a)(ia), as assessee has not made any TDS on the amounts paid. In view of that, the disallowance *per se* u/s. 40(a)(ia) is warranted. Accordingly, the order of AO is restored by setting aside the directions of CIT(A) to that extent. Revenue ground is allowed.

6. In the result, appeal of Assessee is dismissed and appeal of Revenue is allowed.

*Order pronounced in the open court on 31<sup>st</sup> May, 2017  
upon conclusion of hearing*

Sd/-  
**(K. NARSIMHA CHARRY)**  
**JUDICIAL MEMBER**

Sd/-  
**(B. RAMAKOTAIAH)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated 31<sup>st</sup> May, 2017

TNMM

*Copy to :*

- 1. M/s. India Public Travels, Hyderabad. C/o. Samuel Nagadesi, Chartered Accountant, 302, Golden Green Apartments, Erram Manzil Colony, Punjagutta, Hyderabad.*
- 2. The Income Tax Officer, Ward-7(2), Hyderabad.*
- 3. CIT (Appeals)-VI, Hyderabad.*
- 4. CIT-VI, Hyderabad.*
- 5. D.R. ITAT, Hyderabad.*
- 6. Guard File.*