

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.64(Asr)/2016
Assessment Year:2005-06

M/s PMS Diesels,
Village:-Jamalpur,
G.T.Road, Phagwara

PAN:AAAFR9505H

(Appellant)

Vs. Asst. CIT
Phagwara Range
Phagwara

(Respondent)

Appellant by: Sh. Tarun Bansal (Ld. Adv.)
Respondent by: Sh. Rajeev Gubgotra (Ld. DR)

Date of hearing: 07.03.2018
Date of pronouncement: 28.03.2018

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee/Appellant, on feeling aggrieved against the order dated 16.11.2015 passed by the Ld. CIT(A), Jalandhar, u/s 250(6) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The facts of the case are already on record and hence are not repeated herein for the sake of convenience and brevity. However, the crux of the order under challenge is that the Ld.

CIT(A) was directed by the ITAT, Amritsar Bench, vide its order dated 26.06.2009 (ITA No. 457(Asr)/2008) to decide afresh the addition of Rs.40,98,544/-, which was disallowed by invoking the provision of Sec.40(a)(ia) of the Act by the Assessing Officer and confirmed by the Ld. CIT(A).

3. The Ld. AR submitted that parties against whose amounts, disallowances have been made under section 40(a)(ia) of the Act, have already incorporated the amounts involved in the instant case in their Income Tax Return by paying the due tax, therefore amounts involved qua 13 parties are required to be send back to the file of AO for verification from the parties as to whether they have incorporated the amounts involved in their Income Tax Return and due tax was paid or not.

It was further submitted that the Ld. AR that addition qua shipping expenses, fright & forwarding expenses be also directed to decide in accordance to Sec.172 of the I.T. Act.

4. On the other hand, the Id. DR has not raised any specific objection except relying upon the order passed by the Ld. CIT(A).

5. We have gone through the facts and circumstances of the case as the assessee has taken the stand that parties involved in the instant case on whose basis, the addition has been made and confirmed qua disallowances of expenses for non deduction of TDS by invoking the provisions of Sec.40(a)(ia) of the Act have already deposited the due tax by including the amounts involved in the instant case in their Income Tax Return. In the said circumstances, we set aside the addition as confirmed by the Id. CIT(A) and restore back to the file of Ld. AO to decide afresh in view of the proviso of Sec.40(a)(ia) read with Sec.201(1)(A) of the Act as well as in vie of the *Hindustan Coco Cola Beverage Pvt. Ltd. vs. CIT (supra)*.

With regard to the addition of shipping expenses and Freight & Forwarding charges, we feel it appropriate to direct the Ld. AO to decide afresh in view of the para meters as prescribed under Section 172 of the Act and rest disallowances qua legal expenses, advertising and publicity expenses, freight & forwarding expenses and IHC/THC/C&F expenses in accordance with law.

The onus, either way, i.e. whether falling under section 40(a)(i) or 40(a)(ia), i.e., to show that the same is not attracted in the facts and circumstances of the case, is on the assessee.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 28 .03.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated:28.03.2018

/PK/ Ps.

Copy of the order forwarded to:

- (1) M/s PMS Diesels, G.T. Raod, Phagwara
- (2) The Addl. CIT, Phagwara
- (3) The CIT(A), Jalandhar
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

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By order