

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH, "SMC" AT KOLKATA

(समक्ष) श्री ऐ. टी. वर्की, न्यायीक सदस्य)

[Before Shri A. T. Varkey, JM]

I.T.A. No. 726/Kol/2018**Assessment Year: 2010-11**

M/s. Sachi Sarees [PAN: ABJFS 3174 R]	Vs.	ACIT, Circle – 45, Kolkata
Appellant		Respondent

Date of Hearing	15.01.2019
Date of Pronouncement	10.04.2019
For the Appellant	Shri Soumitra Choudhury, Advocate
For the Respondent	Md. Ghayas Uddin, Addl. CIT

ORDER

This appeal has been preferred by the assessee against the order of the Ld. Commissioner of Income-tax (Appeals)-13, Kolkata ['Ld. CIT(A)] dated 18.12.2017 the Assessment Year 2012-13.

2. Briefly stated the facts of the case that the appellant is a partnership firm engaged in the business of dealing in sarees and salwar suits. In the assessment completed u/s 143(3), the AO had disallowed the advertisement charges of Rs.10,20,144/- on the ground of non-deduction of tax u/s 40(a)(ia) of the Act. The AO had further disallowed the remuneration/commission to the extent of Rs.2,65,884/- paid to two partners out of four partners on the ground of not being reasonable. The appellant preferred an appeal before the Ld. CIT(A) who confirmed both the disallowances made by the AO. Aggrieved, the appellant is now in appeal before us.

3. In the original grounds taken in the appeal, the appellant had objected to the disallowance of advertisement charges u/s 40(a)(ia) of the Act. The Id. Counsel for the appellant also filed an application for admission of additional grounds objecting to the merits of the disallowance of remuneration paid to the partners u/s 40(b) of the Act. It is noted that the facts concerning these additional grounds are already on record and the issue involved is legal in nature. Therefore, in view of the Hon'ble Supreme Court in the case of

National Thermal Power Co. Ltd. vs. CIT 229 ITR 383 (SC), these additional grounds are being admitted.

4. The first issue to be decided in this appeal is as to whether the LdCIT(A) was justified in upholding the disallowance u/s 40(a)(ia) of the Act in respect of the sum of Rs.10,20,144/- for non-deduction of tax u/s 194C of the Act in the given facts and circumstances of the case. The AO observed that the assessee paid advertisement charges of Rs.10,20,144/- on various dates during the year. Since the amount paid in aggregate exceeds the limit prescribed u/s 194C of the Act, the AO noted that the assessee was liable to deduct tax at source u/s 194C thereon. Since the appellant failed to deduct tax u/s 194C, the AO disallowed the expenditure of Rs.10,20,144/- u/s 40(a)(ia) of the Act. Before the Ld.CIT(A), the assessee relying on the decision of this Tribunal in the case of Merylyn Shipping & Transport (146 TTJ 1) submitted that since the amount was paid during the year, the provisions of Section 40(a)(ia) was not applicable as it applied only to those instances where the amount remained payable at the year-end. This contention was rejected by the Ld. CIT(A) in view of the judgment of the Hon'ble Supreme Court in the case of Palm Gas Services Vs CIT (81 Taxman 43). Aggrieved by this order, the appellant is now in appeal before us.

5. We have heard the rival submissions. Before us, the Ld AR argued that let this issue be restored back to the file of the AO to verify the fact of inclusion of the subject mentioned receipts in the income of the payees and once it is done, the assessee should not be fastened with disallowance u/s 40(a)(ia) of the Act in the light of second proviso to [section 40\(a\)\(ia\)](#) read with [section 201\(1\)](#) of the Act which although was introduced by the [Finance Act 2012](#) has been held to be retrospective in operation by the decision of Hon'ble Jurisdictional High Court in the case of Pr. CIT Vs Tirupati Construction (GA No. 2146 of 2016) dated 23.8.2016. Hence in the interest of justice and fair play, I deem it fit and appropriate to remand this issue to the file of AO for de novo adjudication in the light of second proviso to [section 40\(a\)\(ia\)](#) read with [section 201\(1\)](#) of the Act. The assessee is also at liberty to furnish additional evidences, if any, in support of his contentions. These grounds accordingly stand allowed for statistical purposes.

6. Next in the additional grounds raised, the question is whether the Ld. CIT(A) was justified in partially confirming the AO's action disallowing the remuneration/commission paid to two women partners who also derived remuneration from another firm viz. M/s Lal Fashion. In the impugned order the Ld. CIT(A) noted that the assessee had paid commission of Rs.83,089/- to Smt. Angura Devi Agarwal & Smt. Bina Agarwal each and Rs.49,853/- each to Smt. Manju Agarwal and Smt. Rekha Agarwal. The Ld. CIT(A) allowed the deduction for amounts paid to Smt. Manju Agarwal and Smt. Rekha Agarwal but the commission paid to Smt. Angura Devi Agarwal & Smt. Bina Agarwal amounting to Rs.83,089/- each was disallowed solely on the ground these two ladies also derived commission/remuneration from another partnership firm, namely M/s Lal Fashion. Aggrieved by this order, the appellant is now in appeal before us.

7. We have heard the rival submissions of the parties. It is noted that the authorities below have proceeded to make the disallowance merely on conjectures. It is not in dispute that Smt. Angura Devi Agarwal & Smt. Bina Agarwal were partners of the appellant-firm besides being partner of another partnership by the name M/s Lal Fashion. Both the firms were engaged in the similar business and that Smt. Angura Devi Agarwal & Smt. Bina Agarwal were active & working partners has not been denied by the Ld. CIT(A) in as much as the remuneration paid to these two ladies was allowed as a business expenditure by the Ld. CIT(A) while disposing the appeal of M/s Lal Fashion. In the circumstances I find that Ld. CIT(A) per se has not disputed or disbelieved the fact that the said two lady partners are working partners and they have working knowledge of the business in which the assessee firm was engaged. I therefore find that there was no material for the authorities below to doubt the capacity of the lady partners to render services for carrying on assessee's business, which was intimately connected with selling sarees & salwar suits. The only ground on which the Ld. CIT(A) has upheld the disallowance is that he did not believe that the two lady partners could simultaneously work for two partnerships and draw remuneration/commission. However there is no law which prohibits a person to work in more than one partnership firms and draw remuneration therefrom. All that Section 40(b) requires is that the remuneration should be paid to a working partner and there is no prohibition either in the Income-tax Act, 1961 or the Indian Partnership Act, 1932 debarring a partner to draw remuneration from more than one partnership firms. In the circumstances,

I do not find any reason to uphold the disallowance merely because two working partners of the assessee firm were also working partners of another firm namely M/s Lal Fashion and in that capacity derived remuneration from two firms. The disallowance of commission/remuneration paid to Smt. Angura Devi Agarwal & Smt. Bina Agarwal is therefore deleted. Accordingly the additional grounds taken by the appellant stands allowed.

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

Order is pronounced in the open court on 10th April, 2019

Sd/-

(Aby T. Varkey)
Judicial Member

Dated : 10 April, 2019
Biswajit (Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – M/s. Sachi Sarees, P-58, CIT Road, Scheme VIIM, Kolkata – 700 054.
2. Respondent – ACIT Circle – 45, Kolkata.
3. The CIT(A),
4. CIT ,
5. DR,

/True Copy,

By order,

Assistant Registrar/H.O.O
ITAT, Kolkata