आयकर अपीलीय अधिकरण, हैदराबाद पीठ

IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.173/Hyd/2020		
Assessment Year:2014-15		
M/s.Diwakar Logistics Tadipatri PAN:AAHFD0549E	Vs.	A.C.I.T Circle – 1 Anantapur
(Appellant)		(Respondent)
Assessee by:	Shri K.C. Devdas	
Revenue by:	Shri T. Sunil Goutam, DR	
Date of hearing:	02/06/2022	
Date of pronouncement:	05/08/2022	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 23.12.2019 of the learned CIT (A)-Kurnool, relating to A.Y.2014-15.

2. Fact of the case, in brief, are that the assessee is a partnership firm engaged in the business of transportation of goods and filed its return of income on 29.11.2014 declaring total income of Rs.31,90,390/-. The case was selected for scrutiny. During the course of assessment proceedings, the Assessing Officer noted that the assessee has debited finance charges of Rs.2,81,642/- and transportation charges paid to others of Rs.74,57,350/-. The Assessing Officer asked the assessee to

furnish the details of payment made as well as the TDS compliance thereon. From the various details furnished by the assessee, the Assessing Officer noted that all the payments of finance charges are made to non-banking financial institutions and provisions of section 194A apply in such cases. The assessee submitted that the companies would have admitted the income for taxes and therefore, the provisions of section 40(a)(ia) could not be invoked. Since the assessee did not file the copy of the return filed by the deductees and certificate from the Chartered Accountant in the prescribed form, the Assessing Officer disallowed the finance charges of Rs.2,81,642/- and added the same u/s 40(a)(ia) of the Act.

3. The Assessing Officer further noted that the finance charges aggregated to Rs.4,76,533/- whereas the assessee has debited an amount of Rs.2,81,642/- in the profit & loss a/c. The balance amount of Rs.1,94,891/- has not been charged to P&L A/c but forms part of closing balance. Therefore, he held that this sum is also subject to TDS and provisions of section 40(a)(ia) are applicable. The Assessing Officer accordingly made addition of the same u/s 40(a)(ia) besides being unexplained expenditure.

4. During the course of assessment proceedings, the Assessing Officer also noted that the assessee has not deducted TDS from the transport charges made to various parties. Rejecting the various explanations given by the assessee and applying the provisions of section 40(a)(ia), the Assessing Officer made an addition of Rs.74,57,350/-.

4.1 Similarly, during the course of assessment proceedings, the Assessing Officer noted that the assessee has

debited an amount of Rs.10,81,000/- as check post mamulu and Rs.9400/- as police charges. According to the Assessing Officer, prima facie these expenses are not legal in nature and therefore, inadmissible u/s 37 of the I.T. Act. In absence of any vouchers or any other evidence to establish the legality of such payment and nexus to earning of income, the Assessing Officer added the same to the total income of the assessee and accordingly determined the total income of the assessee at Rs.1,22,14,680/-.

5. In appeal, the learned CIT (A) dismissed the appeal filed by the assessee.

6. Aggrieved with such order of the learned CIT (A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

> *"1) The order of the Learned Commissioner of Income Tax (Appeals)-6, Hyderabad ICIT (A)] in confirming the disallowance of Rs. 4,76,533 U/s. 40(a)(ia) of the Income Tax Act, 1961 is wholly unsustainable on facts and in law.*
>
> *i) The Ld. CIT (A) failed to note that the entire amount of Rs. 4,76,533/- was paid as finance charges on hire purchase loans taken for purchase of vehicles and therefore erred in holding it as interest and sustained the disallowance of Rs. 4,76,533/- on the ground no tax was deducted at source U/s. 194A of the Act.*
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> *ii) The Ld CIT (A) having found as a matter of fact that the finance charges paid at Rs. 4,76,533/- was paid to Reliance Capital Limited and India Bulls Financial Services under hire purchase agreement aggregating to Rs. 4,76,533/- for purchase of vehicles is the Appellant's road transport business and therefore erred in holding that the provisions of section 194C were applicable and in the process erred in confirming the addition of Rs. 4,76,533/-.*
>
> *2) The Ld. CIT (A) erred in upholding the disallowance of transportation charges of Rs. 74,57,350/- U/s. 40(a)(ia) of the Act.*
>
> *(i) The Ld. CIT (A) failed to note that there was no contract between the appellant-assessee and the vehicle owners and as held by the ITAT in the*

appellant's own case for the AY 2013-14 the provisions of section 194C was not applicable.

(ii) The Ld. CIT (A) failed to note non-compliance with the provisions of section 194C(7) was not fatal to the appellant's claim that it was not entitled to deduct tax at source as enjoined in section 194C(6) of the Act and therefore fell into error in confirming the addition of Rs. 74,57,350/-

(iii) The Ld CIT (A) failed to note that under the "principle of consistency" the appellant is to be allowed the deduction claimed at Rs. 74,57,350/- as the ITAT in the appellant's own case for the AY 2013-14 had allowed the same.

(iv) The fact that the appellant did not raise the plea that it had no contract between the vehicle owners and therefore the observations of the Ld CIT (A) that the appellant cannot raise this plea for the AY 2014-15 is totally contrary to the findings of the Appellate Tribunal in the appellant's own case for the AY 2013-14 and that there was no change in the facts as the assessee never had any contract with the vehicle owners as they were requisitioned whenever necessary in the interest of its business.

(v)The Ld CIT (A) failed to note that the CBDT in Circular No.19/2015 dated 27/11/2015 explained the provisions of section 194C r.w.s 194C(6) and 194C(7) of the Act wherein under the rigors of the section vis-à-vis the transporters was scaled down to a great extent and therefore the order of the Ld CIT (A) in confirming the disallowance of Rs. 74,57,350/- is unsustainable in law. (3) The Ld. CIT (A) erred in confirming the disallowance of Rs. 10,90,400/- claimed U/s. 37 of the Income Tax Act, 1961 which relates to expenditure incurred at check-post and Rs. 9,400/- towards Police charges as a gesture of goodwill in the course of carrying on of the business.

(4) The Ld. CIT (A) failed to note that the expenditure of Rs. 10,90,400/- was not an illegal expenditure but the expenditure incurred wholly and exclusively in the course of carrying on its business so that it may have easy access for its vehicles to pass the respective check-posts.

(5) The Ld CIT (A) failed to note that the provisions of expenditure U/s. 37 of the Act were not applicable to the expenditure incurred at Rs. 10,90,400/- and at Rs. 9400 therefore erroneously confirmed its disallowance.

(6) Any other ground or grounds that may be urged at the time of hearing of the appeal".

7. The learned Counsel for the assessee strongly challenged the order of the learned CIT (A) in confirming the addition/disallowance made by the Assessing Officer. So far as the disallowance of finance

charges of Rs.2,81,642/- and Rs.1,94,891/- are concerned, he submitted that these are finance charges and cannot be subject matter of TDS liability in view of CBDT instruction No.1425, dated 16.11.1981. In his alternate contention he submitted that the deductees are reputed companies and must have filed their returns of income regularly. Therefore, given an opportunity, the assessee is in a position to substantiate that they have filed their return of income and also file a certificate from the Chartered Accountant in the prescribed form. He however, submitted that the cooperation of the Assessing Officer is required by calling for information u/s 133(6) of the Act from those companies.

7.1. So far as the transportation charges are concerned, the learned Counsel for the assessee referring to various decisions including the decision of the Coordinate Bench of the Tribunal in assessee's own case for the A.Y 2013-14 submitted that the Tribunal has deleted such addition on the ground that sub-section (6) of section 194C provides that TDS need not be made if the aggregate value of the amount does not exceed Rs.75,000/-p.a and there is no agreement between the assessee and truck owners for which provision of section 194C are not applicable. So far as the addition of Rs.10,90,400/- is concerned, he submitted that the same is for commercial expediency and therefore, should be allowed.

8. The learned DR, on the other hand, heavily relied on the order of the learned CIT (A).

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides.

The first issue raised in the grounds of appeal relates to the order of the learned CIT (A) in sustaining the addition of Rs.4,76,533/- on account of non-deduction of TDS from the finance charges. Admittedly, the amounts have been paid to Reliance Capital Ltd and India Bulls Financial Services Ltd, the details of which have been given at page 2 of the order of the learned CIT (A). It is the submission of the learned Counsel for the assessee that the TDS provisions are not applicable to interest paid on hire purchase agreement. It is his alternate contention that once the deductee has declared the income and paid taxes thereon, no disallowance can be made. It is his submission that given an opportunity, he is in a position to substantiate that the deductees have declared such income in their return of income filed and also he can file the certificate of the Chartered Accountant in the prescribed form. Considering the totality of the fact of the case and in the interest of justice, we deem it fit and proper to restore the issue to the file of the Assessing Officer with a direction to adjudicate the issue afresh after giving due opportunity of being heard to the assessee. While doing so, the Assessing Officer shall keep in mind the instruction No.1425 dated 16.11.1981 issued by CBDT and also the certificate to be obtained from the Chartered Account and the returns filed by the deductees declaring such income in their return of income. The ground raised by the assessee is accordingly allowed for statistical purposes.

10. So far as the addition of Rs.74,57,350/- on account of non-deduction of tax from the transportation charges is concerned, we find the assessee could not substantiate with evidence that none of the persons to whom transportation charges have been paid do not own more than 10 vehicles at a time.

Therefore, the exception in provisions of sub-section 6 of section 194C are not applicable to the assessee. Further, it is also an admitted fact that the assessee did not file e-TDS statement within the time along with the details of PAN Nos. name and amount of credit etc., due to non- availability of the same. The provisions of section 194C(7) makes it clear that the person responsible for paying or crediting any sum to the person referred to in sub-section (6) shall furnish, to the prescribed income-tax authority or the person authorized by it, such particulars, in such form and within such time as may be prescribed. Further, the assessee, as mentioned by the Assessing Officer has categorically mentioned that the PAN Nos. are not available at the point of credit or payment to the transporters and hence such details were not incorporated in the e-TDS statement. The data was not available with the assessee till 30.12.2015 i.e. well beyond the end of the financial year 2013-14. The assessee has filed the e-TDS statement only on 2nd August, 2016 after the initiation of the scrutiny proceedings for the A.Y 2014-15 and reminder notice. Further, the Hon'ble Supreme Court in the case of Shree Choudhary Transport Co. Vs. ITO reported in 426 ITR 289 has held that In the overall scheme of the provisions of the Income-tax Act, 1961, relating to collection and recovery of tax, it is evident that the object of the Legislature in introduction of provisions such as sub-clause (ia) of clause (a) of section 40 was to ensure strict and punctual compliance with the requirement of deducting tax at source. In other words, the consequences as provided therein have the underlying objective of ensuring compliance with the requirements of tax deduction at source. In view of the above discussion, we hold that the ground raised by the assessee is liable to be dismissed for non-deduction of tax at source from payments to the transport contractors to the extent of

Rs.74,57,350/-. Accordingly, the ground raised by the assessee on this issue is dismissed.

11. So far as the third issue is concerned, the same relates to the addition of Rs.10,90,400/- sustained by the learned CIT (A) being the payment made at check post and police charges. The learned Counsel for the assessee could not substantiate as to how the same is not covered under Explanation (1) to section 37 of the I.T. Act. Since the amounts paid at the check post and the Police charges are expenditure incurred by the assessee which is in the nature of an offence or which is prohibited by law, therefore, we do not find any infirmity in the order of the learned CIT (A) in sustaining the addition. Therefore, the 3rd issue raised by the assessee in the ground of appeal is dismissed.

12. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the Open Court on 5th August, 2022.

Sd/-	**Sd/-**
(LALIET KUMAR) **JUDICIAL MEMBER**	**(R.K. PANDA)** **ACCOUNTANT MEMBER**

Hyderabad, dated 5th August, 2022.

Vinodan/sps

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2	ACIT, Cifcle-1 Anantapur
3	CIT (A)- Kurnool
4	Pr. CIT- Tirupati
5	DR, ITAT Hyderabad Benches
6	Guard File

By Order