

**XZIN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No. 837/H/2017 Assessment Year: 2013-14		
Durga Crane Services, Hyderabad PAN - AAefd 3239N (Appellant)	Vs	Income-tax Officer, Ward - 6(2), Hyderabad. (Respondent)
Assessee by:		Shri S. Rama Rao
Revenue by:		Shri Rohit Mujumdar
Date of hearing:		11/08/2021
Date of pronouncement:		15/09/2021

ORDER

PER L.P. SAHU, A.M.:

This appeal filed by the Assessee is directed against CIT (A) - 6, Hyderabad's order dated 10/02/2017 involving proceedings u/s 143(3) of the Income- Tax Act, 1961; in short "the Act", on the following grounds of appeal:

" 1) *The order of the learned Commissioner of Income Tax (Appeals) is erroneous to the extent it is prejudicial to the appellant.*

2) *The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in disallowing Rs.38,62,442/- by applying the provisions u/s 40(a)(ia) of the I.T.Act. The learned Commissioner of Income Tax (Appeals) failed to see the fact that neither the provisions u/s 194A nor the provisions u/s 40(a)(ia) of the I.T.Act are applicable to the facts of the case.*

3) *The learned Commissioner of Income Tax (Appeals) erred in confirming the action of the Assessing Officer in disallowing Rs.8,01,000/- by applying the provisions u/s 40(a)(ia) of the I.T.Act. The learned Commissioner of Income Tax (Appeals) ought to have considered the fact that neither the provisions u/s 194C nor the provisions u/s 40(a)(ia) of the I.T.Act are applicable to the facts of the case.*

4) *The learned Commissioner of Income-Tax (Appeals) ought to have held that the amounts actually paid during the year cannot be disallowed u/s 40(a)(ia) of the I.T.Act.*

5) *The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.43,01,600/- made by the Assessing Officer by applying the provisions u/s 40A(3) of the I.T. Act.*

6) *The learned Commissioner of Income Tax (Appeals) erred in confirming the addition of Rs.2,61,081/- being demurrage charges disallowed by the Assessing Officer.*

7) *The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs.2,01,595/- made by the Assessing Officer by applying the provisions u/s 43B of the I.T.Act.*

8) *Any other ground or grounds that may be urged at the time of hearing."*

2. Briefly the facts of the case are that the assessee firm in the business of providing crane services filed its return of income on 30/09/2013 admitting taxable income at Rs. 19,41,860/-. Subsequently, the assessee firm revised its return of income on 03/10/2013⁴ revising its income to Rs. 10,09,610/-. Subsequently, the case was selected for scrutiny and accordingly, statutory notices were issued, against which, the AR of the assessee furnished the information. After verifying the details filed by the assessee, the AO completed the assessment assessing the total income of the assessee at Rs. 1,17,10,440/- by making the following disallowances:

1. Disallowance of interest expenditure paid to NBFCs - Rs. 38,62,442/-
2. Disallowance of hire charges - Rs. 8,01,000/-
3. Disallowance of expenditure u/s 40A(3) - Rs. 43,01,600/-
4. Disallowance of demurrage charges paid - Rs. 2,61,081/-
5. Disallowance of unpaid PF u/s 43B - Rs. 2,01,595/-

3. When the assessee preferred an appeal before the CIT(A), the CIT(A) partly allowed the appeal of the assessee.

4. Aggrieved by the order of the CIT(A), the assessee is in appeal before the ITAT.

5. As regards ground No. 2 relating to the disallowance of Rs. 38,62,442/- u/s 40(a)(ia) of the Act, from information obtained during the scrutiny proceeding, the Assessing Officer observed that Finance charges amounting to Rs.38,62,442/- was paid to M/s SREI Finance Limited and M/s Sri Ram Transport Limited towards the loans borrowed for acquiring the assets. The payment of interest to those companies warranted deduction u/s 194A of the LT. Act. It was informed that no TDS was made on those amounts. According to the Assessing Officer, on failure to deduct tax at source, the provisions of Section 40(a)(ia) were applicable and an opportunity was provided to the assessee to explain why the amount in question should not be disallowed. In response to the same, the assessee replied that the interest amount was paid without deduction of tax as there was tremendous pressure from those lenders and since the amount in question was paid during the year and did not remain payable at the end of the year, the provisions of Section 40(a)(ia) had no application on the payment made. The Assessing Officer rejected the contention of the assessee and disallowed the amount of Rs.38,62,447/- invoking the provisions of section 40(a)(ia) of the Act. The CIT(A) confirmed the disallowance made by the AO.

5.1 As regards ground Nos. 3 & 4 relating to the disallowance of Rs. 8,01,000/-, the AO observed that the

assessee had debited an amount of Rs.10,27,500/- towards hire charges without deduction of tax as required u/s 194C of the I.T. Act. According to the assessee, out of the hire charges paid, an amount of Rs.8,01,000/- only warranted deduction of tax u/s 194C as the remaining payments were less than Rs.75,000/-. It was also contended that the provisions of section 40(a)(ia) had no application as the amounts were paid before the end of the financial year. The Assessing Officer did not accept the contention of the assessee and disallowed the amount of Rs.8,01,000/- u/s 40(a)(ia) of the Act. The CIT(A) confirmed the said disallowance.

6. With regard to the above ground Nos. 2 to 4, the Id. AR of the assessee submitted that assessee should not be treated as default u/s 201 for the reason that the recipient has included the receipts in the total income while computing total tax, which may be verified from the Form No. 26A.

7. The Id. DR, on the other hand, relied on the orders of authorities below and submitted that the assessee did not deduct TDS and, therefore, the authorities below have rightly disallowed u/s 40(a)(ia) of the Act.

8. After hearing both the parties and perusing the material on record as well as the orders of revenue

authorities, the Id. AR submitted that the recipient has included receipts in the total income, which is evident from Form No. 26A. Therefore, considering the submissions of the assessee, we remit these issues back to the file of AO with a direction to examine with correctness of the submissions made by the Assessee and decide the issue in accordance with law. While deciding the issue, the AO can calculate interest u/s 201(1A), which has to be paid by the assessee. Accordingly, ground Nos. 2 to 4 are treated as allowed for statistical purposes.

9. As regards ground No. 5 relating to the addition of Rs. 43,01,600/-, the AO observed that on behalf of the assessee Sri. R. Srinivasa Rao, Managing Partner of the firm had incurred expenses in cash exceeding Rs. 20,000/-, the details of which were extracted by the AO at page 3 of his order. The assessee was asked to produce the relevant vouchers for verification, but the same was not produced. On being asked to explain as to why the said expenditure debited to Profit & Loss Account should not be disallowed u/s 40A(3) of the LT. Act, the assessee submitted that the amount spent by Sri R. Srinivasa Rao was only Rs.16,80,600/- towards SRC - Bridge construction expenses and since the construction site was at a remote place where no banking facilities were available, the amount was incurred in cash. The assessee also contended that cash payments made by the Managing Partner, Sri R. Srinivas

Rao could not be considered as cash payments made by the firm and therefore were not liable' for disallowance u/s 40A(3). The Assessing Officer observed that the assessee had given no explanation with regard to expenses, other than SRC-Bridge construction expenses, which were incurred in cash. Even for the SRC-Bridge construction expenses of Rs.16,80,600/-, in spite of being provided a number of opportunities, no vouchers were produced to verify its contention that the construction site was at a remote place. The argument of the assessee that cash payments made by the Managing Partner could not be considered as cash payments of the firm, was rejected by the Assessing Officer as not acceptable, as according to him, revenue expenditure incurred by the firm by way of cash was credited to the partners account and was in turn debited towards the expenditure incurred by the partner. He therefore disallowed the amount of Rs,43,01,600/- u/s 40A(3) of the Act. The CIT(A) confirmed the same.

10. Before us, the ld. AR of the assessee submitted that the payments were made in the remote areas where banking facilities are not available, therefore, rule 6DD(j) will apply. Further, he submitted that the amount was transferred to Sri. R. Srinivasa Rao, Managing Partner, whose ledger account is submitted and Sri. R. Srinivasa Rao has paid the cash for smooth carrying out the necessary expenditure of the assessee company.

11. The ld. DR, on the other hand relied on the orders of authorities below and submitted that the assessee could not produce circumstantial evidences before the revenue authorities that the rule 6DD(j) will apply to the case of the assessee.

12. After hearing both the parties and perusing the material on record as well as the orders of revenue authorities, we find that the assessee could not justify with necessary evidences regarding all the payments made by him at the remote places. We observe from the CIT(A)'s order at page 7 the details of expenses incurred by the assessee in the tabular form, the payments made on 02/04/2012, 03/04/2012 and on 05/04/2012 towards purchase of tyres and spares at the village where banking facilities are not available is not correct, as the assessee had paid huge amounts to the companies, namely, Cherry Agencies Pvt. Ltd. Jaggs & Company and Premier Marketing Agencies, which are not located in the villages. Even the assessee could not produce the relevant vouchers so that the location of the company can be identified. The arguments of the ld. AR with regard to payments made by the partners is not acceptable because partner Srinivasa Rao has incurred the expenditure for the assessee. Therefore, the first three payments are not covered under

rule 6DD(j) and we confirm the disallowances made by the AO on the said dates.

12.1 In respect of Sl. No. 4 to 6 i.e. on payments made on 10/01/2013, 08/02/2013 and 12/03/2013, these expenses are related to Bridge construction expenses, but, the details were not filed by the assessee and argued that the payments were made at the remote places through Sri. R. Srinivasa Rao. Therefore, for want of details regarding exact nature of payments and considering the submissions of the assessee, this issue is remitted back to the file of the AO to enquire the exact place where the payments were made. Therefore, the disallowances of Rs. 9,30,600/-, Rs. 6,00,000/- and Rs. 1,50,000/- made by the AO are remitted back to him for redeciding the same as per law.

12.2 At sl. No. 7, i.e. on 31/03/2013, the assessee had incurred the expenses towards transportation and the amount paid to Stone Carriers Pvt. Ltd. The argument of the assessee in this regard is also not acceptable that the payment was made at the remote place and to this effect, the assessee could not produce any evidence, whether the said company was situated at the remote place and exact location of payments. Therefore, the disallowance of expenditure of Rs. 10,00,000/- is confirmed.

12.3 Accordingly, ground No. 5 is partly allowed in above terms.

13. As regards ground No. 6 relating to addition of Rs. 2,61,081/- being demurrage charges, the AO observed that the assessee had incurred an amount of Rs.10,74,721/- towards demurrage charges. When the assessee was asked to produce the details, assessee could produce evidences for Rs. 8,13,640/- only, which were incurred at various sites and could not produce the balance details for the amount of Rs. 2,61,081/-. The AO, therefore, disallowed the same. On appeal, the CIT(A) confirmed the disallowance.

14. Before us, the ld. AR of the assessee submitted that the demurrage charges paid was part of transport charges which was incurred by the assessee.

15. The ld. DR, on the other hand, submitted that the assessee could not produce any evidence, therefore, the authorities below ere justified in making the disallowance.

16. After considering the submissions and perusing the material on record as well as the orders of revenue authorities, since the assessee could not substantiate its claim by way of documentary evidence before the authorities below, the disallowance was made. Even before us, the assessee failed to substantiate its claim by way of

documentary evidence. Therefore, we uphold the addition made on this count. Thus, this ground is dismissed.

17. As regards ground No. 7 relating to disallowance of Rs. 2,01,595/- u/s 43B, the AO noticed that an amount of Rs. 2,01,595/- shown as payment of PF remained outstanding as on 31/03/2013, When asked to produce the proof of its remittance before 30/09/2013, it was submitted that it was not paid before 30/09/2013. The AO, therefore, disallowed the same u/s 43B of the Act. The CIT(A) confirmed the same.

18. Before us, the ld. AR of the assessee submitted that the amount towards PF was paid before filing of the return of income i.e. on 30th September, 2013, but, the proof of which was not submitted before the AO. He reiterated the submissions made before the CIT(A).

19. The ld. DR, on the other hand, submitted that the assessee failed to produce the proof of payment made before filing of the return before the AO, hence, the disallowance made u/s 43B by the AO was justified.

20. After considering the submissions and perusing the material on record as well as the orders of revenue authorities, we remit the issue back to the file of the AO with a direction examine whether the assessee has paid the

amount towards PF before filing of the return of income, if so the disallowance made may be deleted. This ground is allowed for statistical purposes.

21. In the result, appeal of the assessee is party allowed for statistical purposes in above terms.

Pronounced in the open court on 15th September, 2021.

**Sd/-
(P. MADHAVI DEVI)
JUDICIAL MEMBER**

**Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER**

Hyderabad, Dated: 15th September, 2021.

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Copy to :

1	<i>Durga Crane Services, 327/2RT, 7-1-621/411, SR Nagar, Hyderabad - 500 038</i>
2	<i>ITO, Ward - 6(2), IT Towers, AC Guards, Hyderabad</i>
3	<i>CIT(A) (6), Hyderabad.</i>
4	<i>Pr. CIT - 6, Hyderabad.</i>
5	<i>ITAT, DR, Hyderabad.</i>
6	<i>Guard File.</i>

.No.	Details	Date
1	Draft dictated on	
2	Draft placed before author	
3	Draft proposed & placed before the Second Member	
4	Draft discussed/approved by Second Member	
5	Approved Draft comes to the Sr. PS/PS	
6	Kept for pronouncement	
7	File sent to Bench Clerk	
8	Date on which the file goes to Head Clerk	
9	Date on which file goes to A.R.	
10	Date of Dispatch of order	