

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V.DURGA RAO, JUDICIAL MEMBER
AND SHRI G.MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.2356 & 2357/Chny/2017

(निर्धारणवर्ष / Assessment Year: 2013-14 & 2014-15)

M/s. Yem Q Cargo 10/17D, Anaikar Complex, M.V.Badran Street, Periamet, Chennai-600 003.	Vs	The Deputy Commissioner of Income Tax, Non-Corporate Circle-6 Chennai.
PAN: AAAFY 3261F		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. S.Sridhar, Advocate
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. G.Johnson, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	15.06.2021
घोषणाकीतारीख /Date of Pronouncement	:	21.06.2021

आदेश / ORDER

PER G.MANJUNATHA, AM:

These two appeals filed by the assessee are directed against separate, but identical orders of the learned CIT(A)-5, Chennai dated 03.07.2017 and pertain to assessment years 2013-14 & 2014-15. Since, facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed off by this consolidated order.

2. The assessee has more or less raised common grounds of appeal for both assessment years, therefore, for the sake of

brevity, grounds of appeal filed for the assessment year 2013-14 in ITA No.2356/Chny/2017 are reproduced as under:-

"1. The order of the Commissioner of Income Tax (Appeals) 5, Chennai dated 03.07.2017 in I.T.A.No.67/CIT(A)-5/2016-17 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.

2. The CIT (Appeals) erred in confirming the action of the Assessing Officer in disallowing the claim of direct expenses/clearing and forwarding charges to the extent of Rs.3,58,19,809/- for want of TDS on the application of section 40(a)(ia) of the Act and consequently erred in adding back such sum in the computation of taxable total income without assigning proper reasons and justification.

3. The CIT (Appeals) failed to appreciate that the provisions prescribing deduction of tax at source had no application for the said payments and ought to have appreciated that consequently applying the provisions of section 40(a)(ia) of the Act for adding back the said sum in the computation of taxable total income was wholly unjustified and erroneous.

4. The CIT (Appeals) failed to appreciate that the collection of freight charges from the customers/exporters and the consequential payment of such sum to the respective airlines having been not disputed, the presumption of the applicability of the TDS provisions was wholly unjustified on the factual matrix of the case.

5. The CIT (Appeals) failed to appreciate the second proviso to section 40(a)(ia) of the Act in proper perspective and further ought to have appreciated the binding judgments cited in that regard thus vitiating his action in confirming the disallowance.

6. The CIT (Appeals) went wrong in recording the findings in this regard in para 7 of the impugned order without assigning proper reasons and justification.

7. The CIT (Appeals) erred in confirming the disallowance of Rs.2,27,876/- being the rent payments for want of TDS on the application of section 40(a)(ia) of the Act in the computation of taxable total income without assigning proper reasons and justification.

8. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law.”

3. Brief facts of the case are that the assessee is a partnership firm engaged in the business of clearing and forwarding agents for sea and air imports & exports filed its return of income for assessment year 2013-14 on 30.09.2013 declaring total income of Rs.20,12,800/-.The case was taken up for scrutiny and during the course of assessment proceedings, the Assessing Officer noticed that assessee has paid clearing & forwarding charges to various parties without deduction tax at source, as required under the law and hence, called upon the assessee to explain as to why expenditure incurred under the head clearing and forwarding charges cannot be disallowed u/s. 40(a)(ia) of the Act. In response, the assessee submitted that it has incurred clearing and forwarding expenditure as intermediary on behalf of importers & exporters, which is

nothing but reimbursement of expenses incurred by various companies and hence, question of deduction of TDS on the said payment does not arise. The Assessing Officer, however, not convinced with explanation furnished by the assessee and according to him, the assessee ought to have deducted TDS as required under the law on clearing and forwarding charges and hence, made disallowance of a sum of Rs.3,58,19,809/- u/s. 40(a)(ia) of the Act for non-deduction of TDS.

4. The assessee carried matter in appeal before learned CIT(A), but could not succeed. The learned CIT(A) has dismissed appeal filed by the assessee and upheld additions made by the Assessing Officer towards disallowance of clearing and forwarding charges u/s.40(a)(ia) of the Act by holding that word “payable” occurring in section 40(a)(ia) not only covers cases where amount is yet to be paid, but also those cases where amount has actually been paid. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

5. The learned AR for the assessee submitted that the learned CIT(A) has erred in confirming additions made by the

Assessing Officer towards disallowance of clearing and forwarding charges u/s.40(a)(ia) on the issue of paid and payable without considering alternative submissions made by the assessee in light of second proviso to section u/s.40(a)(ia) of the Act, that if the payee has included receipts in return of income, then it shall be deemed that assessee has deducted and paid taxes under the law on the date of furnishing of return by the payee referred to in the said proviso. However, the learned CIT(A), without considering alternative arguments of the assessee has dismissed appeal filed by the assessee. Therefore, issue may be set aside to the file of the Assessing Officer to give another opportunity to the assessee to file necessary evidence to prove that payees have included sum paid by the assessee in their return of income and paid taxes and hence, same cannot be disallowed u/s.40(a)(ia) of the Act.

6. The learned DR, on the other hand, fairly agreed that issue may be set aside to the file of the Assessing Officer to give one more opportunity to the assessee to file necessary evidences.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The Assessing Officer has disallowed clearing and forwarding charges paid u/s.40(a)(ia) of the Act for non-deduction of TDS. It was claim of the assessee before the lower authorities that payees have included sum paid by the assessee in their return of income and paid taxes and as per second proviso to section 40(a)(ia) of the Act, if payees paid taxes on the sum paid by the assessee, then assessee shall not be deemed to be in default and consequently, sum cannot be disallowed u/s. 40(a)(ia) of the Act. We find that the Hon'ble Delhi High Court in the case of CIT Vs. Ansal Land Mark Township P.Ltd. 289 CTR 384(Del) had considered second proviso to section 40(a)(ia) of the Act and held that it is declaratory and curative and it has retrospective effect from the date of provisions of section 40(a)(ia) was inserted to the statute. As per second proviso where assessee is deemed not to be an assessee in default in terms of first proviso to sub-section (1) of section 201 of the Act, then in such event it shall be deemed that assessee has deducted and paid taxes on

such sum on the date of furnishing of return of income by the resident payee as referred to in the said proviso. In this case, the assessee claims that it has paid clearing & forwarding charges to various entities, which have included sum paid by the assessee in the return of income. The assessee further claimed that it can furnish necessary evidence/certificates to prove that sum paid by the assessee was suffered to tax in the hands of payees. Therefore, considering fact that the learned CIT(A) has not considered alternative plea made by the assessee, we are of the considered view that issue needs to go back to the file of the Assessing Officer to give one more opportunity to the assessee to file necessary evidences. Hence, we set aside appeal to the file of the Assessing Officer and direct him to reconsider issue in light of second proviso to section 40(a)(ia) of the Act, in accordance with law.

8. In the result, appeal filed by assessee is treated as allowed for statistical purposes.

ITA No.2357/Chny/2017(A.Y.2014-15):

9. The facts and issues involved in ITA No. 2357/Chny/2017 are identical to the facts and issues which we have already considered in ITA No.2356/Chny/2017 for the assessment year 2013-14. The reasons given by us in the preceding paragraphs of ITA No.2356/Chny/2017 shall equally apply to this appeal as well. Therefore, for similar reasons, we set aside this appeal also to the file of the Assessing Officer and direct him to reconsider issue in light of second proviso of section 40(a)(ia) of the Act, in accordance with law.

10. As a result, both appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 21st June, 2021

Sd/-
(वी.दुर्गा राव)
(V.Durga Rao)
न्यायिक सदस्य /Judicial Member

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 21st June, 2021

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.