

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM
(through web-based video conferencing platform)**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.179/Viz/2020
(निर्धारण वर्ष/Assessment Year:2010-11)**

M/s Tummidi Brothers Jewellery
Shop No.196, MGWCC
Thadithota
Rajamahendravarm
[PAN :AAFFT5256N]
(अपीलार्थी/ Appellant)

Vs. Income Tax Officer
Ward-3
Rajamahendravaram
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri G.V.N.Hari, AR
: Shri B.Rama Krishna, DR

सुनवाई की तारीख / Date of Hearing : 26.11.2020
घोषणा की तारीख/Date of Pronouncement : 23.12.2020

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)], Vijayawada in Appeal No.10149/CIT(A)/VJA/2019-20 dated 30.07.2020 for the Assessment Year (A.Y.) 2010-11.

2. Ground No.1 and 6 are general in nature which does not require separate adjudication.

3. During the appeal hearing, the assessee did not press ground No.2 which is related to disallowance of Rs.4,70,309/- made u/s 40(a)(ia) of the Income Tax Act, 1961 (in short 'Act'). Therefore ground No.2 is dismissed as not pressed.

4. Ground No.5 is related to the addition of Rs.2,16,124/- made by the Assessing Officer (AO) towards disallowance of municipal taxes which was not pressed by the assessee. Therefore, ground No.5 is dismissed as not pressed.

5. Ground No.3 is related to the addition of Rs.18,84,836/- made by the AO towards the disallowance of making charges u/s 40(a)(ia) of the Act. During the assessment proceedings, the AO found that the assessee had debited the sum of Rs.19,95,454/- towards the making charges and out of which a sum of Rs.18,84,836/- was paid in amounts exceeding Rs.20,000/- on each occasion. Therefore the AO made the order sheet noting to disallow the said expenditure for which the AR of the assessee had expressed no objection, accordingly, the AO made the addition of Rs.18,84,836/- u/s 40(a)(ia) of the Act.

6. Against which the assessee went on appeal before the CIT(A) and the Ld.CIT(A) confirmed the addition. The Ld.CIT(A) found that out of the total sum of Rs.18,84,836/-, the assessee has filed the explanation and furnished the additional evidence to the extent of Rs.14,81,351/-. For the balance the assessee did not furnish the details, hence the sum of Rs.4,03,485/- was confirmed by the Ld.CIT(A).

6.1. In respect of the remaining amount of Rs.14,81,351/-, the Ld.CIT(A) observed that the assessee has furnished the information stating that the sum was paid to the Heads goldsmiths of various groups of goldsmiths for distribution among the individual members of goldsmiths of the group and hence submitted that no TDS provisions are attracted, since, the amount paid to each individual was below the threshold limit as prescribed u/s 194C of the Act. The Ld.CIT(A) further observed that each payment was shown below Rs.20,000/- and the aggregate of such payment during the year was shown below Rs.50,000/- in the case of each goldsmith, thus viewed that the payment was below the threshold limit specified u/s 194C and consequently, no disallowance is called for on account of payment of making charges. However, the Ld.CIT(A) further observed that the assessee failed to furnish the documentary evidence in support of the said

explanation during the appellate proceedings, by way of copies of work bills raised by individual gold smiths who were stated to have been paid the making charges through the head goldsmith. Therefore the Ld.CIT(A) upheld the disallowance of Rs.14,81,351/- u/s 40(a)(ia) of the Act.

7. Against the order of the Ld.CIT(A), the assessee is in appeal before us.

8. We have heard the rival contentions and find that the payment was made to goldsmiths for making charges. The Ld.CIT(A) also observed that the entire payment was made to three heads of goldsmiths which was in turn distributed to other goldsmiths and each payment was less than Rs.20,000/- and, the aggregate amount paid throughout the year was below Rs.50,000/-,thus, the payment does not attract TDS u/s 194C of the Act. However, the Ld.CIT(A) confirmed the disallowance for want of evidences such as work bills, confirmations from the individual goldsmiths etc. Goldsmiths are moving labour force, works with head goldsmiths and does the work wherever the work is available, thus it is ambitious to expect the work bills, confirmations from the goldsmiths for their work. They are unorganized sector, makes the work and receives the daily payment. It is also common that the head goldsmith brings the group of labour along with him and collect the charges and distributes to the remaining labour force.

Since the assessee has furnished the details of head goldsmiths and the payment was not suspected, there is no reason to apply the provisions of section 194C and the 40(a)(ia) of the Act. The payment made was less than Rs.20,000/- and aggregate payment does not exceed the sum of Rs.50,000/- as per the details furnished by the assessee. This fact was not disputed by the Ld.CIT(A). Therefore, we set aside the order of the Ld.CIT(A) and delete the addition of Rs.14,81,351/- made by the AO u/s 40(a)(ia) of the Act.

7.1. In respect of the remaining amount of Rs.4,03,485/-, since the assessee failed to furnish the details either before the AO or before the Ld.CIT(A), we do not find any reason to interfere with the order of the Ld.CIT(A) and the same is upheld. Appeal of the assessee on this ground is partly allowed.

8. Ground No.4 is related to the addition of Rs.1,72,705/- made by the AO towards the difference between the purchases reported in VAT returns and purchases recorded in the books of accounts. The AO during the assessment proceedings found that as per the VAT return, there was difference of Rs.1,72,705/- between the VAT returns and the books of accounts maintained by the assessee in respect of purchases. The assessee

has shown excess purchases as per the books compared to VAT returns. During the assessment proceedings, the assessee did not reconcile the difference, hence the AO made the addition.

9. On appeal, the Ld.CIT(A) confirmed the addition observing that though the assessee has stated that the difference was on account of exempted purchases, but not furnished the evidence to support the said contention. Hence, the assessee is in appeal before us.

10. During the appeal hearing, the Ld.AR contended that the difference was due to exempt purchases which were not reflected in the VAT returns. Therefore, requested to allow the appeal of the assessee and delete the addition.

11. On the other hand, the Ld.DR supported the orders of the lower authorities.

12. We have heard both the parties and perused the material placed on record. The assessee produced the books of accounts, bills and vouchers and the AO did not find any inflation of purchases. There is no dispute that the purchases were duly accounted in the books of accounts. The assessee explained that the difference was due to exempted purchases which were

not reflected in the VAT returns. Since there was no defect found in the books of accounts and the AO did not make out a case that the assessee has over stated the purchases, there is no reason to make the addition. Hence, we set aside the order of the Ld.CIT(A) and delete the addition made by the AO. The assessee's appeal on this ground is allowed.

13. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on 23rd December, 2020.

<p>Sd/- (वी.दुर्गा राव) (V. DURGA RAO) न्यायिकसदस्य/JUDICIAL MEMBER दिनांक /Dated : 23 .12.2020 L.Rama, SPS</p>	<p>Sd/- (डि.एस. सुन्दर सिंह) (D.S. SUNDER SINGH) लेखा सदस्य/ACCOUNTANT MEMBER</p>
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आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee-M/s Tummidi Brothers Jewellery, Shop No.196, MGWCC, Thadithota, Rajamahendravarm
2. राजस्व/The Revenue –Income Tax Officer, Ward-3, Rajamahendravaram
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals), Vijayawada
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

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आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam