

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Ms. Suchitra Kamble, Judicial Member and
Shri Waseem Ahmed, Accountant Member**

**ITA No. 1426/Ahd/2017
Assessment Year 2009-10**

Kalpesh Ganpatlal Patel, 222, Platinum Plaza, Opp. Judges Bunglow Road, Bodakdev, Ahmedabad PAN: AEHPP5719E (Appellant)	Vs	The ITO, Ward-2(2)(2), Ahmedabad (Respondent)
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**Assessee by: Shri Palak Pavagadhi, A.R.
Revenue by: Shri Ashok Kumar Suthar, Sr. D.R.**

Date of hearing : 04-09-2023
Date of pronouncement : 27-09-2023

आदेश/ORDER

PER : WASEEM AHMED, ACCOUNTANT MEMBER:-

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax, CIT(A)-10, Ahmedabad, in the proceeding u/s 250 of the Act vide order dated 07/03/2017 passed for the assessment year 2009-10.

2. The assessee has raised as many as six grounds of appeal but the effective issue on merit of the case revolves towards the disallowance of Rs. 16,15,291/- on account of non-deduction of TDS u/s 194C r.w.s. 40(a)(ia) of the Act.

3. Briefly stated facts are that the assessee in the present case is an individual and engaged in the trading business of Gypsum Board. The Assessing Officer in the present case has made the disallowance of Rs. 16,15,291/- representing the inward freight expenses on account of non-deduction of TDS u/s 194C r.w.s. 40(a)(ia) of the Act and added to the total income of the assessee.

4. Aggrieved assessee preferred an appeal before the Id. CIT(A) who has also confirmed the order of the Assessing Officer by observing that the assessee has disclosed the expenses for the purchases and inward freight expenses separately in the financial statements. As such, the Id. CIT(A) rejected the contention of the assessee that the inward freight expense was part and parcel of the purchase of the materials.

5. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us. The Id. Authorized Representative before us has filed a paper book running from pages 1 to 77 and drawn our attention to the purchase bills demonstrating that the inward freight expenses were part and parcel of purchase of the goods. As per the Id. Authorized Representative, there was no separate and independent contract subsisting between the assessee and the contractor for the freight charges incurred by the assessee.

It was also submitted that since in the purchase bills, the transportation charges were shown separately, therefore, the assessee recorded such transportation charges separately in the books of accounts but that does not mean that there was a separate contract between the assessee and the transporters. On the other hand, Id. Departmental Representative vehemently supported the order of the authorities below.

6. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the contention of the assessee that the inward freight charges were part of purchase of materials was nowhere doubted by the authorities below. Besides the above, we have also perused copies of the invoices placed in the paper book and note that the party (supplier of the materials) has given the break-up of the gross sale bill raised to the assessee which is inter-alia comprising of purchase cost as well as transportation charges. From the invoice, it becomes crystal clear that the freight inward charges were part and parcel of the purchase of the goods. It is settled law that the provisions of the TDS cannot be attracted on the transaction of purchase and sale of the goods. Thus, in the absence of any contract between the assessee and the transporter, we hold that the assessee was not under the obligation to deduct TDS of inward freight expenses incurred for Rs. 16,15,291/- under the provisions of section 194C of the Act. Accordingly, the question of making the disallowance under the provisions of section 40(a)(ia) of the Act is not warranted. Hence, we set aside the order of Id. CIT(A) and direct the Assessing Officer to delete the addition made by him. Thus, the grounds of appeal of assessee are allowed.

7. The assessee in ground Nos. 1 to 4 has challenged the validity of assessment framed u/s 144 r.w.s. 147 of the Act. However, at the time of hearing, the Id. Authorized Representative has not advanced any arguments on the issues challenged in ground Nos.1 to 4, therefore, we dismiss the same as infructuous.

8. The issue raised in ground No. 6 is premature and is not required to be decided at this stage, therefore, we dismiss the same as infructuous.

9. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 27-09-2023

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER
Ahmedabad : Dated 27/09/2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद