

ITAT affirms sanctity of CA certificate; no disallowance for TDS default relying upon such certificate

Summary – The Kolkata ITAT in a recent case of Koley Construction., (the Assessee) held that where assessee had paid labour charges without TDS, since in relevant Form 26A Chartered Accountant clearly confirmed that recipient had included said sum in his gross receipt and computed its income, disallowance of said expenses could not be made in hands of assessee

Facts

- The assessee partnership firm was engaged in the business of executing construction contracts. In the course of assessment proceedings under section 143(3), the Assessing Officer noticed that the assessee had paid a sum as labour charges to KC, sole proprietor of BK. The payment in question was in the nature of payment for carrying out work and the assessee was bound to deduct tax at source in terms of section 194C and since the assessee failed to deduct tax at source the Assessing Officer disallowed the sum which was claimed as expenses by the assessee in the profit and loss account by invoking the provision of section 40(a)(ia).
- Before Commissioner (Appeals), the assessee submitted that as the second proviso to section 40(a)(ia) read with proviso to section 201(1) inserted by Finance Act, 2012 with effect from 1-4-2013 and 1-7-2012 respectively clears that if it was established that the person to whom the payments made are disallowed under section 40(a)(ia) has furnished return of income under section 139 and has also taken into account the sum received from the assessee in computing in such return of income and if he had paid tax on the income declared by him on such income and furnished the certificate to the above effect to the accountant in Form No. 26A, then the assessee could not be deemed to be an assessee in default under section 201(1) and no disallowance under section 40(a)(ia) should be made. The assessee filed certificate in Form No. 26A as required by the proviso to section 201(1) and prayed that the additions made by the Assessing Officer to be deleted. The Commissioner (Appeals) held that failure of BK to produce the necessary documents and details to show that the sum was accounted for and taken into account in computing the income declared in the return filed under section 139(1) was fatal and in the said circumstances it could not be said with certainty that the assessee was entitled to the benefit of second proviso to section 40(a)(ia). He also held that even if a certificate of an accountant was furnished in Form No. 26A, the Assessing Officer had the right to make further enquiries to verify the correctness of the aforesaid certificate. Since the Assessing Officer could not make the required verification due to failure of BK to give the required details, Commissioner (Appeals) was of the view that the assessee could not be given the benefit of second proviso to section 40(a)(ia).
- On second appeal:

Held

- The short point that arose for consideration is as to whether filing of Form No. 26A namely the certificate of the Chartered Accountant as prescribed under the proviso to section 201(1) can be

taken as a conclusive proof that recipients of the payment from the assessee had taken into account the sum received from an assessee on which no tax had been deducted at source for computing his income in such return of income.

- In the present case the assessee has filed a certificate in Form No. 26A of a Chartered Accountant. In the first part of the certificate there appears to be a mistake inasmuch as instead of mentioning the name of BK the assessee has mentioned his own name. Nevertheless to Form No. 26A which is a certificate given by a Chartered Accountant clearly confirms that BK had included the sum received as labour charges from the assessee in the gross receipt accounted for by him in his books of account. In the remand proceedings the Assessing Officer had called for information from BK under section 133(6) namely the details with documents regarding inclusion of Rs. 1.69 crores in his return of income filed for assessment year 2012-13. BK had pointed out that the same Assessing Officer had completed his assessment for assessment year 2012-13 under section 143(3) and the complete books of account, bills and vouchers, bank statements and other documents were submitted before the Assessing Officer in such proceedings. This fact is not disputed by the revenue.
- On a perusal of the aforesaid stand taken by the Assessing Officer in the remand report, the stand taken by the Assessing Officer is found to be quite vague. Form No. 26A clearly specifies that the sum was part of the gross contract amount declared by BK as his contract receipts in return of income filed for assessment year 2012-13. It was also clear from remand report of the Assessing Officer that it could not be said that assessee had not included the sum received from the assessee in his gross receipts. The Assessing Officer did not examine BK, if he had any doubts in this regard. He has however not chosen to do so but has given a remand report which is very vague. In the given circumstances the certificate in Form No. 26A has to be accepted as correct. In that view of the matter disallowance sustained by Commissioner (Appeals) under section 40(a)(ia) should be deleted. In the light of the above conclusions, it is unnecessary to decide the question whether Form No. 26A namely certificate of a Chartered Accountant is conclusive in the matter of applicability of proviso to section 201(1) and second proviso to section 40(a)(ia). The addition sustained by Commissioner (Appeals) is accordingly directed to be deleted. The appeal of the assessee is allowed.