

IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC - B” BENCH : BANGALORE

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA Nos. 1632 & 1688/Bang/2016
Assessment year : 2008-09

**ITA No. 1632/Bang/2016**

The Income Tax Officer Ward-1, Raichur	Vs.	M/s. Sri Seetaramaiah Setty Chigarambatla, Prop. M/s C Seetaramaiah & Co., Pater Road, 11-11-60, Bresthawarpet, Raichur.  <b>PAN: ADLPC9091R</b>
APPELLANT		RESPONDENT

**ITA No. 1688/Bang/2016**

M/s. Sri Seetaramaiah Setty Chigarambatla, Prop. M/s C Seetaramaiah & Co., Pater Road, 11-11-60, Bresthawarpet, Raichur.  <b>PAN: ADLPC9091R</b>	Vs	The Income Tax Officer, Ward-1, Raichur
APPELLANT		RESPONDENT

Appellant by	:	Shri AR.V. Sreenivasan, JCIT(DR)
Respondent by	:	Shri S. Ramasubramanian, CA

Date of hearing	:	23.02.2017
Date of Pronouncement	:	28.02.2017

## **ORDER**

*Per Vijay Pal Rao, Judicial Member*

These cross appeals are directed against the order dated 15.07.2016 of CIT(A) for the assessment year 2008-09.

2. The assessee is an individual and carrying on business of wholesale dealer in rice, bran, edible oil etc. While completing the scrutiny assessment u/s. 143(3), the AO made disallowance on account of freight charges as well as addition on account of unexplained cash deposits in banks. The assessee challenged the action of the AO before the CIT(A). The CIT(A) while passing the impugned order confirmed the disallowance made by the AO on account of freight charges. However, the addition made on account of unexplained cash deposits was deleted by the CIT(A). Thus both assessee as well as revenue are aggrieved by the impugned order of the CIT(A) and filed these cross appeals. The assessee has raised the following grounds.

*“A. The disallowance of lorry freight expenditure incurred by the appellant and addition of the total lorry freight expenses amounting to Rs. 14,38,158/- is opposed to law and facts of the case.*

- B. The appellant submits that the expenses are incurred by him but paid by the customer on his behalf. This can be seen from the purchase settlement advice sent by the customer. Entries are made as per the purchase settlement advice debiting the lorry freight account and crediting the customer account.*
- C. The learned assessing officer has not mentioned name of the bank and branch account where the assessee has deposited the cash, whereas, assessee has six bank accounts. All the bank balances are reconciled and tallied.*
- D. The learned assessing officer in 1<sup>st</sup> paragraph of page no. 4 of the order says that the deposits are reconciled with the cash book whereas the entries ought to have been reconciled with bank book of the assessee and bank statements.*
- E. For these and other grounds that may be adduced at the time of hearing this appeal may be allowed.”*

The only issue in the assessee's appeal is regarding disallowance of freight charges of Rs. 14,38,158/-. The AO noted that the assessee has claimed expenditure under the head lorry freight. On query the assessee explained that the freight charges were borne by the purchaser and the same has been accounted for in the sale bill raised. The AO found that the sale bills are accounted at net i.e. after deduction of freight charges and VAT. Thus the AO was of the view that further allowing freight charges in the Profit & Loss account will lead to double deduction of the same expenditure. Accordingly, the AO disallowed the claim of freight charges. Before the CIT(A) the assessee submitted that the purchase settlement advise contains details such as exact weight, percentage of oil content, rate and correct value of goods, cost of packing materials and

VAT payable. The purchasers send the payment after deducting VAT and actual lorry freight paid by him. Thus, it was contented that the sales shown in the Profit & Loss account is inclusive of freight charges and therefore when the purchaser is making the payment after deducting the freight charges then the claim of the assessee is justified. The CIT(A) was not impressed with the submissions of the assessee and again referred to the observation of the AO that the representative of the assessee expressed his inability to explain the claim of freight charges. Thus, the CIT(A) observed that the explanation submitted by the assessee is not sufficient as the assessee has not mentioned anything about the accounting of sales price whether it is without freight charges or included in the accounted sales price. Hence the CIT(A) confirmed the disallowance made by the AO.

2. Before the tribunal the ld. AR has referred to the purchase advice and invoice at page no. 17 & 18 of the paperbook and submitted that the invoices are inclusive of freight charges. He has also referred to the ledger accounts of the purchasers and submitted that the amount shown in the invoice has been taken to the Profit & Loss account and therefore when the sale shown in the Profit & Loss account is inclusive of freight charges then even if the freight charges are paid by the purchaser and assessee receive net amount,

the claim of freight charges is allowable. On the other hand, the Id. DR has submitted that the AO has given a finding that the assessee has failed to explain the claim of freight charges when the net amount was received by the assessee. Further, even before the CIT(A), the assessee has not explained about the accounting of sale price whether it is without freight charges or with freight charges. He has relied upon the orders of the authorities below.

3. Having considered the rival submissions as well as relevant material on record it is noted that there is no dispute that the assessee issued the tax invoices inclusive of freight charges. However, the freight charges have been paid by the purchaser and the assessee received the payment net of freight charges. The AO disallowed the claim of freight charges on the ground that the assessee has failed to explain the claim of freight charges. The CIT(A) has also confirmed the disallowance on a similar reasoning. It appears that the issue has not been properly considered and examined in the light of relevant record as produced by the assessee. Therefore, the relevant record i.e. tax invoices, ledger account as well as Profit & Loss account are required to be properly examined for deciding this issue.

Accordingly, in the facts and circumstances of the case and in the interest of justice this issue is set aside to the record of the AO for fresh consideration and adjudication after examination of the relevant record. Needless to say the assessee may be given an appropriate opportunity of hearing.

4. The revenue has raised the following grounds.

- "1. On the facts & circumstances of the case, the order of the learned Commissioner of Income Tax (Appeals) is opposed to law and fact of the case.*
- 2. On the facts & circumstances of the case, the learned CIT(A) has erred in allowing relief to the assessee in respect of the undisclosed cash deposits of Rs. 8,81,250/- in the bank account of the assessee relying upon additional submission made by the assessee during appellate proceedings without giving any opportunity to the Assessing Officer under Rule 46A of the IT Rules.*
- 3. On the facts & circumstances of the case, the learned CIT(A) has erred in challenging the provisions of Rule 46A of the IT Rules in not remanding the matter back to the AO for cross verification of additional submissions made by the assessee during appellate proceedings which was not submitted during assessment proceedings.*
- 4. Though the tax effect involved in this appeal is Rs. 2,99,537/- which is below the prescribed limit to file further appeal before the Hon'ble ITAT. Further appeal is being filed in this case for the reasons that the case falls under the exception of Board's Circular No. 21/2015 dated 10/12/2015 which says where the constitutional validity of the provisions of an Act or Rule are under*

*challenge, adverse judgments should be contested on merits notwithstanding the tax effect is less than the monetary limits specified or there is no tax effect, as in the present case the validity of provisions of Rule 46A of the IT Rules are under challenge.*

*5. The appellant craves leave to add, amend or alter any of the grounds of appeal either before or at the time of hearing?"*

5. The only issue arises in the appeal of the revenue is deletion of an addition of Rs. 2,99,537/- on account of deposit in bank. At the outset, the ld. AR of the assessee has raised an objection about the maintainability of revenue appeal due to low tax effect in the light of the circular no. 21/2015 dated 10.12.2015 as per which the revenue cannot file an appeal before the tribunal when the tax effect does not exceed the monetary limit of Rs. 10 Lakhs. On the other hand the ld. DR has submitted that the CIT(A) has violated the rule 46(A) of the IT rules by considering the additional submissions made by the assessee during the appeal at proceedings. Therefore, this case falls in the exception provided under the circular no. 21/15. He has relied upon the decision of the Hon'ble Supreme Court in the case of CIT vs Century park 373 ITR 32 of the Supreme Court.

6. Having considered the rival submissions and careful gone through the record it is found that undisputedly the tax effect in the appeal of the revenue is less than monetary limit of Rs. 10 Lakhs for filing the appeal by the revenue before this tribunal. The ld. DR has contented that the appeal of the revenue falls in the category of exception as provided under para 8 of the circular under clause (a) of the said para and therefore the appeal has to be decided on merits. It is noted that there is no question of validity of constitutional validity of provisions of act or rule challenged by the revenue in this appeal. The only issue raised by the revenue in this appeal is deletion of addition made by the AO of Rs. 2,99,537/- on account of unexplained cash deposits in bank account. The revenue had challenged the order of the CIT(A) on the ground that the CIT(A) has admitted the additional submissions made by the assessee without remanding the matter to the AO for cross verification. Thus, the very reason of challenging the order of the CIT(A) of qua this issue does not involve the constitutional validity of any provision or any rule of the Act. Accordingly, when the tax effect in the appeal of the revenue is less than the monetary limit of Rs. 10 Lakhs then the appeal of the revenue is

not maintainable as per the circular no. 21/2015 and the same is dismissed.

7. In the result, the appeal of the assessee is allowed for statistical purposes and the appeal of the revenue is dismissed.

Pronounced in the open court on this 28<sup>th</sup> day of February, 2017.

Sd/-  
(VIJAY PAL RAO)  
Judicial Member

Bangalore,  
Dated, the 28<sup>th</sup> February, 2017.

/ MS/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore.