

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं

श्री वी. दुर्गा राव, न्यायिक सदस्य के समक्ष

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &  
SHRI V. DURGA RAO, JUDICIAL MEMBER

आयकर अपील सं./ **I.T.A. No.618/Mds/2015**

(निर्धारण वर्ष / Assessment Year : 2009-2010)

Shri. N. Palanivelu,  
Prop. M/s. Nagamalai Textiles,  
No.4/78-A, Mampalayam,  
Devanankurichi Post,  
Tiruchengode Taluk  
Namakkal 637 209

The Income Tax Officer,  
Vs Ward II(1),  
Salem.

[PAN:AIGPP 9199K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. A.S. Sriraman, Advocate

प्रत्यर्थी की ओर से / Respondent by : Shri. A.V.Sreekanth, IRS, JCIT.

सुनवाई की तारीख/Date of hearing : 29.04.2015

घोषणा की तारीख /Date of Pronouncement : 29.04.2015

**आदेश / ORDER**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER**

This appeal by assessee are directed against the order of the  
Commissioner of Income Tax (Appeals), Salem, dated 29.01.2015 for  
the assessment year 2009-10.

2. The first ground for consideration is with regard to addition made u/s.40 (a)(ia) of the Act.

2.1 The brief facts of the case the assessee is a proprietor of M/s. Nagamalai Textiles, which concern is indulged in manufacturing of fabrics and had made a total turnover of ₹9,30,49,475/- during the financial year 2008-09. During the course of production the unit has incurred a sum of ₹23,18,855/- towards sizing which process is needed for strengthening the wrap by adding starch to reduce breakage of the yarns. In order to complete the above process the assessee has engaged to various sizing mills who execute the said process for the assessee. The point to be noted in this case is that the whole control of the work was in the hands of the assessee and alleged sub contract work was executed i.e. sizing work under the full control of the assessee itself. There are no such discretion with alleged sub-contractors for executing the above works. They were executing the work as per requirement of tender under full control and supervision of assessee. The Assessing Officer has disallowed an amount of ₹23,18,855/- on the ground that no TDS was made by the assessee as required u/s.194C of the Act. On appeal, the Commissioner of Income

Tax (Appeals) confirmed the order of the Assessing Officer. Against this, the assessee is in appeal before us.

3. We have heard both the sides and perused the material on record. We find that the Special Bench of the Tribunal in the case of *Merilyn Shipping and Transports vs. ACIT (2012) 136 ITD 23 (Visakhapatnam)* and judgment of Gujarat High Court in the case of *CIT vs. M/s. Vector Shipping Services (P) Ltd in ITA No.122 of 2013 dated 09.7.2013* held that sec 40(a)(ia) is not applicable when there is no outstanding balance at the end of the close of the year relevant to the assessment year in respect of these payment. However, the assessee has not brought on record, the details of outstanding expenses or schedule of sundry creditors showing whether the impugned amount is outstanding at the end of the close of the previous year relevant to the assessment year either in the name of the party or outstanding expenses. Hence, in the interest of justice, we are remitting the issue back to the file of the Assessing Officer with direction to verify the claim of the assessee and the assessee shall place necessary evidence in support of his claim.

4. Further, we make it clear that if the impugned amount is not outstanding at the end of the close of the assessment year in respect of the expenses either as outstanding expenses or as sundry creditors, this amount cannot be disallowed. This ground is remitted back to the Assessing Officer for fresh consideration.

5. The next ground is with regard to partially sustaining the disallowance @ 20% on weaving charges. While completing the assessment, the Assessing Officer disallowed 20% of the weaving/coolly paid to the labour on the ground that vouchers are all self-made. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). On appeal, the Commissioner of Income Tax (Appeals) restricted the disallowance to 15%. Against this, the assessee is in appeal before us.

6. We have heard both the sides and perused the material on record. In our opinion, adhoc disallowance made by the Assessing Officer @20% on the ground that supporting vouchers are self-made vouchers is on higher side. In our opinion, it is appropriate to disallow only 10% of weaving charges supported by self made vouchers. This ground is partly allowed.

7. In the result, the appeal of the assessee in ITA No.618/Mds/2015 is partly allowed for statistical purposes.

Order pronounced in the open court at the time of hearing on Wednesday, the 29<sup>th</sup> of April, 2015 at Chennai.

Sd/-  
(वी. दुर्गा राव)  
**V. DURGA RAO**  
न्यायिक सदस्य / **JUDICIAL MEMBER**

Sd/-  
(चंद्र पूजारी )  
**(CHANDRA POOJARI)**  
लेखा सदस्य/ **ACCOUNTANT MEMBER**

चेन्नई/Chennai.

दिनांक/Dated:29.04.2015.

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant 2.प्रत्यर्थी/ Respondent 3.  
आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR  
6. गार्ड फाईल/GF.