

IN THE INCOME TAX APPELATE TRIBUNAL
DELHI BENCH "SMC-3": NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 6592/Del/2014

A.Y. : 2010-11

INCOME TAX OFFICER,
WARD 23(3), ROOM NO. 226,
C.R. BUILDING,
NEW DELHI

(Appellant)

vs. M/S SHREE MAA ROLL WRAP PVT. LTD.
C-173, ANAND VIHAR,
DELHI – 110 092

(PAN: AAKCS6594A)

(Respondent)

Department by : None

Assessee by : Sh. Manoj Gupta. CA

Date of Hearing : 14-07-2016

Date of Order : 02-08-2016

ORDER

PER H.S. SIDHU, JM

This appeal is filed by the Revenue is directed against the Order dated 24.9.2014 of the Ld. CIT(A)-XI, New Delhi relevant to assessment year 2010-11 on the following grounds:-

- "1. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 44,03,023/- made by the AO u/s. 40(a)(i) on account of payments made to shipping companies/ agents without deducting TDS.*

2. *The appellant craves to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.*

2. The brief facts of the case are that the assessee is engaged in the business of manufacturing of co-extruded multilayer plastic film used as packaging material for packing different goods. The main raw material component is Poly granuals and master batch which are mostly imported from outside the country. The return declaring Rs. NIL income was filed by the assessee on 12.9.2010. The return was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act). Later the case was selected for scrutiny and the AO completed the assessment u/s. 143(3) of the Act, after making disallowance of Rs. 44,03,023/- on account of non-deduction of tax at source vide his order dated 28.3.2012.

3. Aggrieved by the aforesaid addition, assessee appealed before the Id. CIT(A), New Delhi who vide his impugned order dated 24.9.2014 has partly allowed the appeal of the assessee.

4. Against the order of the Id. CIT(A), Revenue is in appeal before the Tribunal.

5. In this case, Notice of hearing for 14.7.2016 was sent to both the parties and in response to the same, assessee's Authorised Representative appeared, but none appeared on behalf of the Department, nor filed any application for adjournment from the Department side. Keeping in view the facts and circumstances of the

present case and the issue involved in the present Appeal, I am of the view that no useful purpose would be served to issue notice again, therefore, I am deciding the present appeal *ex parte qua* Revenue, after hearing the Ld. A.R. of the assessee and perusing the records.

6. On the contrary, Ld. Authorised Representative of the Assessee relied upon the order of the Ld. CIT(A) and requested that the order of the Ld. CIT(A) may be upheld.

7. I have heard Ld. A.R. of the Assessee and perused the records available with me, especially the order of the Ld. First Appellate Authority Ld. CIT(A) has elaborately dealt with the issue in dispute *vide* his impugned order dated 24.9.2014 and held as under:-

"8.4. I have carefully considered the facts of the case as well as submissions made by the appellant. Admittedly, the provisions of section 172 of the Act is a code in itself which governs the scheme of taxation of shipping companies. The various sub-sections of section 172 prescribe the procedure which is to be adopted by the shipping companies taking care of payment of taxes, making satisfactory arrangements for filing of return. It has also been ensured that the Custom authorities shall permit ship to depart only after obtaining clearances from all other authorities including Income Tax Authorities. Further, the CBDT Circular No.

723 dated 19.09.1995 clearly lays down that in case of payments made to foreign shipping companies, provisions of section 172 shall apply and those of section 194C and 195 will not apply. It appears that the AO has mistaken the NOC for TDS as conditions prescribed u/s. 172(6) of the Act wherein there is a provision of obtaining clearance from Income Tax Authorities before permission for departure is granted by the Custom Authorities. It appears that such obtaining of clearance was mis-interpreted by the AO as obtaining of NOC. Incidentally, since the appellant was already having NOCs in respect of three companies namely M/s NYK Line (India) Ltd., M/s Hapag Lloyd India (Pvt.) Ltd. and M/s OOCL India (Pvt.) Ltd., the AO got encouraged in asking the appellant to furnish NOC in respect of non-deduction of tax at source from the appellant in respect of remaining companies/agents. This, in fact, was not requirement under the law and AO's requirement was completely misplaced and hence not justified. The facts being so, the AO's action in making disallowance on the basis of wrong notion/premise cannot be sustained under the law. The disallowance of Rs. 44,03,023/- made by the AO on account of non-deduction of tax is, therefore, not

justified and the same is directed to be deleted. Since the appellant gets relief on its main ground, the alternative argument forwarded by it need not to be considered. Ground No.2 of appeal is allowed.”

7.1 After going through the aforesaid finding of the Ld. CIT(A), I am of the view that CBDT's Circular No. 723 dated 19.09.1995 clearly stipulates that in case of payments made to foreign shipping companies, provisions of section 172 shall apply and those of section 194C and 195 will not apply. However, in the instant case AO has mistaken the NOC for TDS as conditions prescribed u/s. 172(6) of the Act wherein, there is a provision of obtaining clearance from Income Tax Authorities before permission for departure is granted by the Custom Authorities. It reveals that such obtaining of clearance was mis-interpreted by the AO as obtaining of NOC. However, as per records the assessee was already having NOCs in respect of three companies namely M/s NYK Line (India) Ltd., M/s Hapag Lloyd India (Pvt.) Ltd. and M/s OOCL India (Pvt.) Ltd., the AO got encouraged in asking the assessee to furnish NOC in respect of non-deduction of tax at source from the assessee in respect of remaining companies/agents. I am of the considered view that Ld. CIT(A) has rightly observed that this was not the requirement under the law and AO's requirement was completely misplaced and hence was not justified and not sustainable in the eyes of law. Therefore, the disallowance of Rs. 44,03,023/- made by the AO on account of non-deduction of tax was rightly deleted by the Ld. CIT(A), which does not need any interference

on my part, hence, I uphold the order of the Ld. CIT(A) on the issue in dispute and dismiss the Appeal filed by the Revenue.

8. In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the Open Court on 02-08-2016.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date: 02/08/2016

SRBhatnagar
Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4. CIT (A) 5. DR, ITAT
TRUE COPY By Order,

Assistant Registrar, ITAT, Delhi Benches