

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH
KOLKATA

BEFORE SHRI N.V. VASUDEVAN, JM & DR. A.L.SAINI, AM

आयकर अपीलसं./ITA No.502/Kol/2011

(निर्धारणवर्ष / Assessment Year: 2006-07)

Jamuna Transport Corporation Ltd. C/-Vinod Kumar Jain & Associates, 5 Clive Row, 1 st Floor, Room No.24, Kolkata – 700 001.	Vs.	D.C.I.T, Circle-6, Kolkata 7, Chowringhee Square, Kolkata – 700 069.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. : AAACJ6665R		
(APPELLANT)	..	(RESPONDENT)

Appellant by
Respondent by

: Shri AkkalDudhwewala, FCA
: Shri Saurabh Kumar, Addl. CIT, DR

सुनवाईकीतारीख/ **Date of Hearing** : **14/08/2017**

घोषणाकीतारीख/**Date of Pronouncement** : **11/10/2017**

आदेश / ORDER

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2006-07, is directed against the order passed by the Ld. Commissioner of Income Tax (Appeals), Kolkata, in Appeal No.644/CIT(A)-VI/Cir-6/08-09, dated 15.12.2010, which in turn arises out of an order passed by the Assessing Officer U/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'), dated 22.12.2008.

2. The assessee has raised the following grounds of appeal:

“1.The order of Learned Commissioner of Income Tax (Appeals)-VI/Kolkata confirming the addition of Rs.83,58,931/- made by the Deputy Commissioner of Income Tax, Circle-6, and Kolkata in computing the business income of the appellant is contrary to law and the facts of the Case.

2.On the facts brought on record the Learned Commissioner of Income Tax (Appeal) ought to have held that the discrepancies in transaction as stated by MarutiUdyog Ltd, and as in reported by the appellant are due to reconciliations of accounts and difference in methodology to recognize freight bills and the difference is not a short credit in the books of the appellant.

3.On the facts brought on record the learned commissioner of income tax (appeals) ought to have considered the fact that as there are no discrepancies in the account of tax deducted at source on freight bills by MarutiUdyog Ltd, there could not be in short credit of freight income by the appellant.

4.The Order of Learned Commissioner of Income Tax (Appeal)-VI/Kolkata confirming the addition of Rs. 22,84,500 made by the Deputy Commissioner of Income Tax, Circle-6, Kolkata in pursuant of section 40(a)(ia) of the Act is contrary to law and the facts of the case.

5. The appellant craves leave to add or amend any ground of appeal.”

3.The Ground No.1, 2 and 3 raised by the assessee relate to only one addition of Rs.83,58,931/- made by the Assessing Officer on account of discrepancies of tax deducted at source in transaction withMarutiUdyog Ltd.

3.1 The brief facts qua the issue are that assessee had raised bills for Rs.6,94,25,283/- on MarutiUdyog Ld.,which it credited as income for the

year. It was also claimed that it received Rs.6,75,78,497/- during the year which included deductions from bills on account of claims and damages, high way tracking charge and also included TDS received on unpaid bills. The Assessing Officer observed that as per ITS Data, it was seen that MarutiUdyog Ltd. had deducted tax at source and deposited to Governmentaccount, on account of payments made to Jamuna, for a sum of Rs.88,929/- corresponding to income credited for Rs.7,57,45,136/-. The Assessing Officer noted that the figures were widely varied from claim of the assessee, copy of the ledger for the full year was sought from the assessee. On the other hand, an enquiry was also made with MarutiUdyog Ltd. U/s.133(6) to seek details of transaction during the year with the assessee. MarutiUdyog Ltd. replied to the Assessing Officer through letter dated 04.11.2008, stating reconciliation which was not tallied with the figures submitted by the assessee from its own books of account. The Assessing Officer asked the assessee to reconcile the discrepancy between assessee's books of accounts and the books of MarutiUdyog Ltd. Since the assessee did not explain the reconciliation between its own books of account and the MarutiUdyog's books of account, therefore, Assessing Officer made the addition of Rs. 83,58,931/-.

3.2. Aggrieved by the order passed by the Assessing Officer, the assessee filed an appeal before the Id. CIT(A) who has dismissed the assessee's appeal because neither assessee himself nor his authorized representative

attended the hearings before the Id. CIT(A). The Ld. CIT(A) sent the notices for hearing on 13.10.2009, 07.12.2009, 28.12.2009, 19.10.2010 and 14.12.2010 but there was no replies from the assessee. Therefore, the Id. CIT(A) dismissed the appeal of the assessee and confirmed the additions made by the Assessing Officer.

3.3 Before us, the Id. Counsel for the assessee has submitted that assessee got the reconciliation from MarutiUdyog Ltd. wherein the MarutiUdyog Ltd. corrected the entry based in his books of account. This correction letter dated 24th September 2011 was received by the assessee after passing the order of Id. CIT(A). Therefore, it is an additional evidence, which the assessee could not submit before the IdCIT(A) because the said evidence was not available to the assessee when the appellate proceedings were going on.

3.4 On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

3.5 Having heard the rival submissions and perused the material available on record, we are of the view that this issue requires a fresh examination at the end of the Assessing Officer because the assessee has submitted before us a correction letter from MarutiUdyog Ltd. dated 24th

November 2011, which has neither been submitted before the Assessing Officer nor before the Id. CIT(A). Therefore, we direct the Assessing Officer to examine the correction letter of MarutiUdyog Ltd. and pass an order after taking into account the provisions of the I. T. Act. Therefore, we allow the Ground No.1, 2 and 3 for statistical purposes.

3.6 In the result, the appeal filed by the assessee (in Ground No.1,2& 3) is allowed for statistical purposes.

4.The Ground No.4 raised by the assessee relates to addition of Rs.22,84,500/- made by the Assessing Officer under section 40(a)(ia) of the Income Tax Act.

4.1 The brief facts qua the issue are that the assessee had hired vehicles to comply with its contractual obligations of transporting goods. The assessee had submitted the details of lorry hire charges. The Assessing Officer found that all payments were made in cash to hire such vehicles and most of the times cash of Rs.19,000/- was paid to the driver of the truck, and on reaching destination the balance sum was paid. The Assessing Officer observed that the assessee did not deduct the TDS at source on the charges paid and the assessee always paid cash. However, the assessee during the assessment proceedings submitted that the trucks were hired by the assessee through agents who in turn, arrange the vehicle by catching them from the roads as and when vehicles are required and found.

Therefore, assessee submitted that as per Rule 6-DD Clause-(k) of I.T. Rules,1962, where payments are made by a person to his agent who is required to make payment in cash for goods or services on behalf of such person, in that situation section 40A(3) is not attracted. The assessee also submitted before the Assessing Officer that the assessee was not the owner of the vehicles. The assessee also stated before the Assessing Officer that most of the times the assessee used vehicles as available on road, were hired and these were small payments made by the assessee to various truck operators. However, the Assessing Officer rejected the contention of the assessee and made the addition of Rs.22,84,500/-.

4.2Aggrieved by the addition made by the Assessing Officer, the assessee filed an appeal before the Id. CIT(A) who has dismissed the appeal of the assessee because none was present before him on the date of hearings.

4.3Before us, the Id. Counsel for the assessee has submitted that there was no contract between the assessee and the vehicle owners, therefore, provisions of section 194C relating to TDS will not applicable to the assessee. The Id. Counsel also submitted that these were cash transactions and the payments were made below Rs.20,000/-, therefore, section 40A (3) does not attract, since the assessee is not owner of the trucks and there was no contract between the assessee and the vehicle owners, therefore,

provisions of section 194C relating to TDS will not applicable to the assessee.

4.4. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the AO, which we have already noted in our earlier para and is not repeated for the sake of brevity.

4.5 We have heard both the parties and perused the materials available on record, we are of the view that assessee has not properly demonstrated, neither before AO nor before CIT(A) that there was no contract between him and the truck owners. The assessee also submitted before us that he is owner of two trucks/vehicles. The Assessing Officer also did not ascertain that whether the assessee is an owner of two vehicles or not. Besides, the Assessing Officer did not examine the contract between assessee and the truck owners. The Assessing Officer also did not examine whether the payments have been made by the assessee in cash. Therefore, we are of the view that this issue requires a fresh examination at the end of the Assessing Officer and therefore, we direct the Assessing Officer to examine the contract between the assessee and the truck owners and also examine the claim of the assessee that these were cash transactions, between the assessee and the truck owners, and adjudicate the issue as per the provisions of the Income Tax Act, therefore, we allow this ground for statistical purposes.

4.6 In the result, the appeal filed by the assessee (in Ground No.4), is allowed for statistical purposes.

Order pronounced in the open court on this **11/10/2017**.

Sd/-
(N. V. VASUDEVAN)
न्यायिक सदस्य / JUDICIAL MEMBER
कोलकाता /Kolkata; दिनांक Dated **11/10/2017**
[RS SPS]

Sd/-
(DR. A.L.SAINI)
लेखा सदस्य / ACCOUNTANT MEMBER

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant – **Jamuna Transport Corporation Ltd**
2. प्रत्यर्थी/ The Respondent- **D.C.I.T, Circle-6, Kolkata**
3. आयकरआयुक्त(अपील) / The CIT(A), :Kolkata.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, **कोलकाता/ DR, ITAT, Kolkata**
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Senior Private Secretary,
Head of Office/D.D.O,
I.T.A.T, Kolkata Benches,
Kolkata.