

आयकर अपीलिय अधीकरण, न्यायपीठ – “D” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “D” KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.982/Kol/2015
Assessment Year:2007-08

Income Tax Officer, Ward-3(4), Port Blair, MB-210, Shadipur, Port Blair-744 106	बनाम / V/s.	M/s Andaman Express Agency, Aberdeen Bazar, Port Blair,A&NI 744 101 [PAN No. AAFFA 4938 C]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Arindam Bhattaerjee, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	None
सुनवाई की तारीख/Date of Hearing	02-11-2017
घोषणा की तारीख/Date of Pronouncement	17-11-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-I, Kolkata dated 16.03.2015. Assessment was framed by ITO Ward-3(4), Port Blair u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) vide his order dated 31.12.2009 for assessment year 2007-08.

2. None appeared on behalf of assessee nor filed any adjournment application though the notice of hearing sent to assessee through RPAD. So we decided to hear the present appeal without the appearance of assessee or by Ld. AR.

3. At the outset the Id. DR brought to our notice that the part relief was granted by the Id. CIT-A on the basis of additional evidences which were admitted by him in

contravention to the provisions of Rule 46A of Income Tax Rules. Therefore the Id. DR prayed to restore the matter to the file of AO.

4. After hearing the Id. DR and perusal of the records we note that the AO has made the addition of Rs.40,94,462/- and Rs.3,92,955/- only on account of non deduction of TDS on the Freight Charges and transport charges respectively. It was also observed by the AO that the assessee failed to file the requisite details as desired by the AO vide letter no. ANI/2009-10/1037 dated 9.10.2009. The relevant extract of the AO order is reproduced below :-

“The assessee firm was requested to submit bills for freight charges, transportation charges, pacing, loading & unloading charges vide this office letter No.ANI/2009-10/1037 dated 09.10.2009.However, no details could be produced.

The assessee firm had debited a sum of Rs.40,94,462/-on account of Freight charges and Rs.3,92,955/- on account of transporting charges. As per the tax audit report no income tax was deducted at source from such payments as required under the provisions of section 194C of the Act. I, therefore, disallow the amounts claimed under the heads “Freight Charges” and “Transporting charges” amounting to Rs.40,94,462/- and Rs.3,92,955/-respectively in the assessment.”

However, the Id. CIT(A) deleted the addition made by the AO by observing as under:-

*“3.3 The submissions of the Appellant as above have been considered. It is seen that the AO has disallowed transport charges aggregating to rs.40,94,462/- on the ground that no TDS was deducted on such payments. It is however seen from the **details filed in Appeal including copies of certain bills raised by the Appellant** in respect of the services provided by it that the Appellant was in fact an Agent of its clients for shipment their goods from Kolkata to Port Blair, etc for which bills had been raised by it and against the same payments had been made on freight charges to the shipping companies. It is seen from the bills raised by the Appellant that apart from the freight charges raises by the shipping companies as per its bills of loading, the Appellant has also made payment to Doct & Custom Duty on behalf of its clients as well as labour charges at Kolkata/Port Blair against the same the Appellant has charged Service Charges towards services being provided by it. The Appellant has also submitted copies of bills of loading raised by the various shipping agencies in which the name of the client has been mentioned. Therefore, from the same it is apparent that the Appellant has not been paying freight charges for services being rendered to it, business in respect of shipping of the goods of its clients, the Appellant has also given full details in respect of the bills raised by it on its clients, the Appellant has also given full details in respect of the bills raised by it on its clients out of which Rs.40,94,462/-*

considered by the AO towards freight charges. It is therefore clear that these freight charges were in fact the reimbursement of expenses and was only acting as an Agent for the concerns whose goods were being transported by the shipping companies. Therefore, it is clear that the Appellant as an Agent was not liable for deduction of TDS on freight payments to such shipping companies.

33.1 Further the Appellant being a C & F agent was a mere intermediary and not liable to deduct TDS u/s. 194C. This is also apparent from the Tax Audit Report Point-27(a) wherein it has been mentioned that the assessee was not liable for deduction of TDS. Accordingly, it is held that the AO was not justified in disallowing the payments towards freight debited by the Appellant aggregating to Rs.40,94,462/- as the pros of Sec. 194C were not applicable on such payments. The Appellant has submitted that out of Rs.40,94,462/-, Rs.18,37,069/- had been paid to Shipping Corpn. Of India and Rs.22,57,393/- to ITT Shipping (P) Ltd. In respect of payment to Shipping Corpn. of India, it is seen that the Appellant had provided copy of Certificate u/s. 197I for non-deduction of tax. Therefore this payment is either way not subject to TDS. In respect of the payments of the remaining amount to the other Shipping company, i.e. ITT Shipping (P) Ltd., also since the Appellant was the shipping Agent as mentioned above, provisions of Sec. 194C could not be applicable in this case. Accordingly the disallowance of Rs.40,94,462/- is deleted.

3.4 With respect to the transportation charges of Rs.3,92,955/-, the Appellant has provided the details of transportation charges to four transporters as under:-

Sr.	Name of Transporter	Amount paid
1	Sangram Singh	Rs.42,872/-
2	Jayshiv Roadways	Rs.49,378/-
3	Pppu Road Carrier	Rs.48,894/-
4	Bacha Roadways	Rs.45,927/-

From the same, it is seen that since the payments were below Rs.50,000/- in each of the four cases for the entire year, provisions for TDS were not applicable on the same.

With regard to remaining amount of Rs.2,06,884/-, the payments are of petty cash amount to various transporters, however since the evidences of these payments had not been submitted before the AO, it would be appropriate to disallow 1/5th of the same, i.e. 1/5th of Rs.2,06,884/- for non-submissions of details/vouchers, i.e. the disallowance is restricted to Rs.41,377/-.

As a result, the appeal is "Partly Allowed."

On perusal of the appellate order, we note that the Id. CIT(A) has admitted the additional evidences without calling for the remand report from the AO. Thus, in our considered view the provisions of rule 46A of Income Tax Rules has been contravened by the Id. CIT(A) which reads as under :

⁹²/⁹³Production of additional evidence before the ⁹⁴[Deputy Commissioner (Appeals)]⁹⁵[and Commissioner (Appeals)].

46A . (1) The appellant shall not be entitled to produce before the ⁹⁴[Deputy Commissioner (Appeals)]⁹⁵[or, as the case may be, the Commissioner (Appeals)], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the ⁹⁶[Assessing Officer], except in the following circumstances, namely :—

- (a) where the ⁹⁷[Assessing Officer] has refused to admit evidence which ought to have been admitted ; or
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the ⁹⁷[Assessing Officer] ; or
- (c) where the appellant was prevented by sufficient cause from producing before the ⁹⁷[Assessing Officer] any evidence which is relevant to any ground of appeal ; or
- (d) where the ⁹⁷[Assessing Officer] has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the ⁹⁸[Deputy Commissioner (Appeals)]⁹⁹[or, as the case may be, the Commissioner (Appeals)] records in writing the reasons for its admission.

¹(3) The ²[Deputy Commissioner (Appeals)]³[or, as the case may be, the Commissioner (Appeals)] shall not take into account any evidence produced under sub-rule (1) unless the ⁴[Assessing Officer] has been allowed a reasonable opportunity—

- (a) to examine the evidence or document or to cross-examine the witness produced by the appellant, or
- (b) to produce any evidence or document or any witness in rebuttal of the additional evidence produced by the appellant.

In view of above, we are inclined to restore the matter to the file of AO for fresh adjudication in accordance with the law. Thus, ground of raised by Revenue is allowed for statistical purposes.

5. In the result, for statistical purpose, the appeal of Revenue is treated as allowed.

Order pronounced in open court on 17/11/2017

Sd/-
(न्यायिक सदस्य)
(S.S.Viswanethra Ravi)
Judicial Member

Sd/-
(लेखा सदस्य)
(Waseem Ahmed)
Accountant Member

*Dkp, Sr.P.S

दिनांक:- 17/11/2017 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITO, Ward-3(4), MB-210, Shadipur, Port Blair, 744106
2. प्रत्यर्थी/Respondent-M/s Andaman Express Agency, Aberdeen Bazar, Port Blair,
A & NI 744101
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

Sr. Private Secretary
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता