

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI D.T. GARASIA (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5678/MUM/2013
Assessment Year: 2005-06**

E-Mech Enterprises (India) Pvt. Ltd. 32J, Laxmi Industrial Estate, New Link Road, Andheri (W) Mumbai-400053 PAN No. AABCE3720M	Vs.	ITO-8(1)(3) Room No. 206, 2 nd floor, Aayakar Bhavan M.K. Road, Mumbai-400020.
Appellant		Respondent

**ITA No. 5679/MUM/2013
Assessment Year: 2006-07**

E-Mech Enterprises (India) Pvt. Ltd. 32J, Laxmi Industrial Estate, New Link Road, Andheri (W) Mumbai-400053 PAN No. AABCE3720M	Vs.	DCIT-8(1) (OSD) Room No. 204, 2 nd floor, Aayakar Bhavan M.K. Road, Mumbai-400020.
Appellant		Respondent

Assessee by : Mr. Ashok J. Patil, AR
Revenue by : Mr. Suman Kumar, DR

Date of Hearing : 10/10/2017
Date of pronouncement : 29/12/2017

ORDER

PER N.K. PRADHAN, A.M.

The captioned appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-16. As common issues are involved, we are proceeding to dispose them off through a consolidated order for the sake of convenience. The issues in these appeals arise out of disallowance made by the Assessing Officer (AO) u/s 40(a)(ia) of the Income Tax Act, 1961, (the 'Act'). Facts being similar, we begin with the AY 2005-06.

ITA No. 5678/MUM/2013
Assessment Year: 2005-06

2. In AY 2005-06, the AO noticed that payment of Rs.20,46,640/- was made to the following parties:

	Shreeji International	Rs.1,95,561/-
	Greenwich	Rs.4,59,153/-
	P.D. Prasad	Rs.34,068/-
	Mahavir Agency	Rs.4,03,373/-
	AMI India Logistics	Rs.5,82,564/-
	Others	Rs.3,99,926/-
	Total	20,46,640/-

2.1 The AO made a disallowance of Rs.15,10,924/- out of the above sum u/s 40(a)(ia) of the Act.

3. The 1st ground raised by the assessee in this appeal is against the order of the Ld. CIT(A) confirming the disallowance of service charges

paid to clearing and forwarding agents M/s Shreeji International and M/s Mahavir Agencies.

4. The Ld. CIT(A), in respect of the above ground of appeal has held:

“In view of the above rulings, where bills for actual reimbursement of expenses are specifically and separately raised, no TDS is liable to be deducted. The rulings would not be applicable to consolidated bills raised including agency charges and reimbursement as a consolidated amount. Thus in respect of Shreeji International and Mahavir Agencies, the AO is directed to verify the actual debit notes/bills raised and if found raised specifically for actual reimbursements, to delete disallowance u/s 40(a)(ia) in respect of such amount.”

5. Before us, the Ld. counsel of the assessee submits that the company during the year had made payment of Rs.1,95,561/- to Shreeji International, comprising of agency charges of Rs.55,233/- and expense reimbursement of Rs.1,40,328/- on account of various heads. Also it is submitted that the company had made payments of Rs.4,03,374/- to Mahavir Agencies comprising of agency and other charges of Rs.18,578/- and reimbursement expenses of Rs.3,84,796/-.

The Ld. counsel submits that C&F Agent is a service contract which has not been specifically included in Explanation III below section 194C. Thus it is stated by him that the provisions of section 194C are not applicable to the payments made to C&F Agents and hence addition of Rs.5,98,934/- be deleted. Reliance is placed by him on the order of the ITAT 'C' Bench Mumbai in the case of *ACIT v. M/s P.P. Overseas* for AY 2006-07 (ITA No. 733/Mum/2010).

6. On the other hand, the Ld. DR relies on the order passed by the Ld. CIT(A).

7. We have heard the rival submissions and perused the relevant materials on record. In *M/s P.P. Overseas* (supra) the Tribunal has held:

“The contract between the assessee and the C&F agent is a service contract which has not been specifically included in Explanation III below section 194C. In this view of the matter, the provisions of section 194C are not applicable to the payments to the C&F agents. If that is so, there was no obligation on the part of the assessee to deduct tax from the payment made to the C&F agents.”

7.1 Facts being similar, we follow the order of the Co-ordinate Bench and allow the 1st ground of appeal.

8. We take up the 2nd, 3rd, 4th and 7th ground of appeal together as they address a common issue. These are against the order of the Ld. CIT(A) confirming disallowance of ocean freight, terminal handling charges and documentation charges to foreign shipping lines.

9. The Ld. CIT(A) observed that the assessee had not filed any certificate u/s 172 or DIT Relief Certificate or certificate u/s 197 of the Act from the concerned AO with regard to the parties to whom payments have been made. Therefore, she confirmed the disallowance made by the AO on the above head.

10. Before us, the Ld. counsel of the assessee submits that the said documents were filed before the AO.

On the other hand, the Ld. DR supports the order passed by the Ld. CIT(A).

11. We have perused the relevant materials on record. We are of the considered view that the matter needs verification at the level of the AO. Therefore, we set aside the order of the Ld. CIT(A) and restore this matter to the file of the AO to make a fresh order after giving reasonable opportunity of being heard to the assessee. We direct the assessee to file all relevant certificate/document before the AO.

Thus the 2nd, 3rd 4th and 7th grounds of appeal are allowed for statistical purposes.

12. The 5th ground raised in this appeal is against the order of the Ld. CIT(A) confirming the disallowance of ocean freight, terminal handling charges of Rs.4,03,893/- paid to Greenwich Meredian Logistics India Pvt. Ltd.

13. The assessee submitted before the Ld. CIT(A) that as per the amended provisions of section 40(a)(ia) w.e.f. 01.04.2013 if the payee has paid taxes on such receipts then for the purpose of allowing deduction of such sum, it shall be deemed that the assessee has deducted and paid the tax.

The Ld. CIT(A) was not convinced with the above explanation of the assessee and held that since the amendment is operative only w.e.f. AY 2013-14, the assessee's contention is not applicable. On that reason, the Ld. CIT(A) confirmed the disallowance made by the AO.

14. Before us, Ld. counsel reiterated the submission made by him before the Ld. CIT(A). On the other hand, the Ld. DR relies on the order passed by the Ld. CIT(A).

In *CIT v. Ansal Land Mark Township P. Ltd.* (2015) 377 ITR 635 (Del.), it has been held that “a second proviso was inserted in sub-clause (ia) of clause (a) of section 40 by the Finance Act, 2012, with effect from April 1, 2013 intended to remove hardship. Keeping in view the purpose behind the proviso inserted by the Finance Act, 2012 in section 40(a)(ia) of the Act, it can be said to be declaratory and curative in nature and therefore, should be given retrospective effect from April 1, 2005, being the date from which sub-clause (ia) of section 40(a) was inserted by the Finance (No. 2) Act, 2004.”

As per the prescribed Form No. 26A, the deduction under amended section will be allowed only if the (i) payee has furnished his return of income under section 139; (ii) payee has taken into account such sum for computing income in such return of income; and (iii) payee has paid the tax due on the income declared by him in such return of income, and the payer furnishes a certificate to this effect from an accountant in the prescribed form.

In view of the above position of law, we set aside the order of the Ld. CIT(A) on the above issue and restore the matter to the file of the AO to make an order in the light of the above observation, after giving reasonable opportunity of being heard to the assessee. We direct the assessee to file the relevant documents/evidence before the AO.

Thus, 5th ground of appeal is allowed for statistical purposes.

15. The Ld. counsel has not pressed the 6th ground of appeal.

16. In the result, the appeal is partly allowed.

ITA No. 5679/MUM/2013
Assessment Year: 2006-07

17. We find that excepting the 2nd ground of appeal in AY 2006-07, the other grounds are similar to AY 2005-06.

The 2nd ground raised by the assessee is against the order of the Ld. CIT(A) confirming the disallowance of amount paid to IAL Shipping Agencies Rs.28,453/-, Sea Load Shipping Agencies Rs.16,431/- and Three Star Forwarders Pvt. Ltd. Rs.6,006/- ignoring the statutory provisions of sub-section 5 of section 194C.

The above payments being below the threshold limit of Rs.30,000/- as per provisions of sub-section 5 of section 194C, we delete the disallowance upheld by the Ld. CIT(A) and allow the 2nd ground of appeal.

18. The other grounds of appeal filed by the assessee being similar to AY 2005-06, our decision in AY 2005-06 shall apply *mutatis mutandis* to AY 2006-07. We order accordingly.

19. To sum up, the appeals are partly allowed.

Order pronounced in the open Court on 29/12/2017

Sd/-
(D.T. GARASIA)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 29/12/2017

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai