

**IN THE INCOME TAX APPELLATE TRIBUNAL, HYDERABAD BENCHES
CIRCUIT BENCH "A" AT TIRUPATI**

BEFORE SHRI D. MANMOHAN, VICE PRESIDENT
AND
SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER

ITA. Nos. 1223/Hyd/2017 (A.Y.2008-2009)

Smt. M.S. Nirmala L/R of Late M.B. Sivanandam, Prop: Andhra Starch Manufacturing Company, D.No. 5-7-2, Rly Goods Shed Road, Hindupur – 515201. PAN: AACHS 8351 N	Vs	The Income Tax Officer, Ward-2, Hindupur.
Appellant		Respondent

Assessee by	Shri K.A. Sai Prasad
Revenue by	Smt. Komali Krishna, DR

Date of hearing	17.05.2018
Date of pronouncement	23.05.2018

ORDER

PER D. MANMOHAN, VP:

This appeal by the assessee is directed against the order passed by Ld. CIT(A), Kurnool and it pertains to Assessment Year 2008-2009.

2. Assessment made by the A.O. u/s 143(3) r.w.s 263 of the Act, having been confirmed by the Ld. CIT(A), assessee is in appeal before the Tribunal.

3. Assessee is engaged in the business of purchase and sale of tamarind seeds and seed power. Assessee paid "export and shipping charges" to the Cargo handling agents, who incurred the expenses on behalf of the assessee. According to the assessee, it is a common practice in this line of business that the expenses are incurred by agents and the amounts are paid by the assessee to the agents. In fact the

amount was to be paid to the Government Organisations like Indian Railways, Shipping Corporation etc. Instead of assessee directly paying the amount to Government Organisations, it is paying through agents who are entitled to some nominal commission.

4. The Assessing Officer was of the opinion that the assessee is duty bound to deduct tax at source u/s 194C of the Act. In the absence of deducting tax and remitting it to the Government account, the expenditure of Rs. 4,00,662/- was disallowed u/s 40(a)(ia) of the Act.

5. On an appeal filed by the assessee, Ld. CIT(A) observed that none appeared for the assessee and therefore, it deserves to be dismissed. However, he also decided the issue on merits wherein he admitted that the assessee had submitted all the details of “export and shipping forward” and the charges were paid to the agents but he was of the opinion that the charges having not been paid to the Government agencies directly, the same is attracted by the provisions of section 194C of the Act. He therefore confirmed the order of the A.O. Further aggrieved, assessee is in appeal before us.

6. Learned Counsel, appearing on behalf of the assessee, submitted that though there are justifiable reasons for non-appearance but since assessee has a strong case on merits he limited his arguments to the merits of the issue i.e., the correctness of invoking the provisions of section 40(a)(ia) of the Act. In this regard, he relied upon the order of the ITAT Mumbai Bench in the case of Smt. Madhu Mehta vs. DCIT (48 ITR (Trib) 246) wherein it was held that reimbursement of expenses paid by the assessee to the clearing and forwarding agents cannot be disallowed by invoking the provisions of section 40(a)(ia) of the Act as there is no liability on the assessee to deduct tax at source u/s 194C of the Act since the clearing and forwarding agents are merely discharging

functions on behalf of the assessee. Learned Counsel for the Assessee submitted that the payments made to Government Agencies do not attract the provisions of section 194C of the Act. At best, commission, if any, paid by the assessee to the middlemen can be considered for disallowance whereas the Tax Authorities have taken the total amount into consideration for the purpose of invoking the provisions of section 40(a)(ia) of the Act.

7. On the other hand, Learned Departmental Representative, submitted that in the fitness of things the matter deserves to be verified by the Assessing Officer as to whether the assessee has paid any commission to the agents.

8. In the light of the decision cited (supra) and having regard to the rival submissions, we are of the opinion, that in the fitness of things the matter deserves to be set aside to the file of the Assessing Officer, who is directed to re-consider the issue in accordance with law, in the light of the decision cited (supra).

9. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 23rd May, 2018.

Sd/-
(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER

Sd/-
(D. MANMOHAN)
VICE PRESIDENT

Hyderabad, Dated: 23rd May, 2018.

OKK, Sr.PS

Copy to

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2.	The Income Tax Officer, Ward-2, Hindupur-515201.
3.	CIT(A), Kurnool.
4.	Principal Commissioner of Income Tax, Kurnool
5.	DR, ITAT, Hyderabad.
6.	Guard File.