

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

**BEFORE SHRI A. T. VARKEY, JM & DR. A.L.SAINI, AM**

**आयकरअपीलसं./ITA No.1071/Kol/2015**

**(निर्धारणवर्ष / Assessment Year: 2009-10)**

<b>ACIT, Circle-29, Kolkata</b>	<b>Vs.</b>	<b>ANS Leather Company</b>
Aayakar Bhawan Dakhin, 2, Gariahat Road (South), Kol-700 068.		24, Bright Street, Kolkata – 700 017.
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No. :AAGFA 1002 L</b>		
<b>(Appellant)</b>	<b>..</b>	<b>(Respondent)</b>

Appellant by :Shri Soumyajit Dasgupta, Addl. CIT(Sr. DR)  
Respondent by :Shri Subash Agarwal, Advocate

सुनवाईकीतारीख/ **Date of Hearing** : **01/05/2018**

घोषणाकीतारीख/**Date of Pronouncement** : **30/05/2018**

**आदेश / ORDER**

**Per Dr. A. L. Saini:**

The captioned appeal filed by the Revenue, pertaining to Assessment Year 2009-10, is directed against an order passed by the Ld. Commissioner of Income Tax (Appeals)-8, Kolkata, in Appeal No.16/CIT(A)-8/R-29/Kol/14-15, dated 01.05.2015, which in turn arises out of an assessment order passed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 30.12.2011.

2. The grievances raised by the Revenue as follows:

*"1. That the Ld. CIT(A) failed to appreciate that the notices u/s 133(6) has not been served upon the parties, raising serious doubts about the very existence of the said parties and hence has erred in deleting the additions in respect of Bogus Sundry Creditors and Bogus Purchase.*

*2. That the Id. CIT(A) has erred in deleting the additions in respect of Clearing & Forwarding Charges of Rs.9,87,600/- u/s 40(a)(ia), for non-deduction of tax, where the assessee has failed to establish that the shipping companies to whom payments has been made are assessed u/s 172 of the Act.*

3. *That the appellant craves leave to add, alter, modify, delete or include any of the grounds of appeal."*

**3. Ground No.1 raised by the Revenue relates to bogus purchase to the tune of Rs.87,77,365/- and bogus creditors to the tune of Rs.14,84,385/-.**

4. The facts of the case which can be stated quite shortly are as follows: The assessee filed his Return of Income on 30.09.2009, declaring total income at Rs. 2,41,360/-.The case of the assessee was selected for scrutiny under section 143(2) of the Act. During the assessment proceedings, the assessing officer sent notices u/s 133(6) of the Act, to different parties to verify the genuineness of Sundry Creditors. The assessing officer issued the notices to the following parties viz:(1). Raj Deo Ram (2). Md. Akeel Ahmed (3). Surendra Ram (4). Abdur Rahim (5). Md. Wasi (6).Hasibur Rahman and(7). Md. Naushad. But the notices issued to these parties were returned back by the postal authorities unserved with the remarks "Not known":

Thereafter, a Letter was issued by the assessing officer, on 13.12.2011 to the assessee, asking him to produce the above parties before him on 20.12.2011. On 20.12.2011, in response, the assessee submitted a letter to assessing officer, stating that it was not possible to produce these parties by this short span of time and also the parties are not interested to come before the Income-Tax Authority. The Xerox of ledger of the party's invoice, Way Bill and Transport document were furnished by the assessee along with the said letter.

On perusal of the ledger copies it was observed by the assessing officer that in some of the cases, the opening balance and closing balance are the same and there is no transaction during the year. In some cases there is a single purchase and no payment during the year and in other cases there is a single purchase and a number of cash payments, all below Rs. 20,000/-. The AO noted that all the parties were belong to state of Uttar Pradesh and the relevant details of the party's ledger are as follows:

Name of party	Opening Balance	Purchases(Rs.)	Payment(Rs.)	Closing Balance (Rs.)
1.Rai Deo Ram	Nil	14,09,510/-	1,00,000/-	13,09,510/-
2.Md. Akeel Ahmed	14,84,385/-	Nil	1,00,000/-	13,84,385/-
3.Surendra Ram		11,61 ,250/-	1,61,250/-	10,00,000/-
4. Abdur Rahim		16,21 ,170/-		16,21,170/-
5. Md. Wasi		12,64,400/-		12,54,400/-
6.Hasibur Rahman		16,48,200/-	1,48,200/-	15,00,000/-
7. Md. Naushad		16,72,835/-	1,72,835/-	15,00,000/-

The assessee claimed to have purchased Raw Hide & Skin from the above parties. In the case at Sl.No.2, Md. Akeel Ahmed, there is no transaction during the year and Rs.14,84,385/- was outstanding for over a year, therefore, the assessing officer noted that it is improbable that in this line of business of Raw Hide & Skin any person will sale goods on credit for so long period. The Letter issued to the party was returned back unserved and the assessee also failed to produce the party which strengthened the belief that the amount of Sundry Creditor of Rs.14,84,385/- shown against Md. Akeel is a bogus one. Hence, bogus Sundry Creditor of Rs.14,84,385/- was added to the total income of the assessee.

5. The assessing officer noted in the case of all other six parties that the ledger account reflects purchase in single lot and the payments are all in cash below Rs.20,000/- in a single day. The parties are stationed in Uttar Pradesh. As per ledger copies,the cash payment below Rs.20,000/- was made on 6 to 9 occasions. Not a single payment has been made in cheque and the major portion are shown as outstanding on the last day of the financial year. The letters issued to these parties were returned unserved and the assessee also failed to produce these parties before the AO. Therefore, the AO noted that all these points establishes that the transactions are not genuine. Under the circumstances, the purchase from these six parties

amounting to Rs.87,77,365/- was treated as bogus purchase and added to the total income of the assessee.

6. Aggrieved by the stand of the Assessing Officer, assessee carried the matter in appeal before the CIT(A), with success. The Revenue is aggrieved and is in further appeal before this Tribunal.

The Id. 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. On the other hand, the Id. Counsel for the assessee has defended the order passed by the Id. CIT(A).

7. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that assessee is a Manufacturer cum Exporter of Leather and Leather Goods and for Manufacturing of Leather and Leather goods, the assessee needs various Raw materials such as mainly Raw Hides & Skins. We note that assessing officer made addition on account of bogus purchases to the tune of Rs. 87,77,365/-. The supplier of Hide & Skins were mostly butcher (Killer of animals) and illiterate and panicky for Income Tax and Banking matters. The Butchers normally accumulated their materials and send it to the party in one invoice and mostly from outside West Bengal and they set their payment on the terms and condition on cash basis. We note that the assessee purchased Raw materials, Hide & Skins by issuing way bills which was issued by Sales Tax Department, Government of West Bengal. In the Inter-state Border (Check post), the Government officials verify the Invoice, transport documents along with way bill when they are satisfied with the quantity and price, and then they allow Hide & Skins to cross the border with Government stamp and check with sign. Considering these evidences and nature of business and kind of illiterate persons (Butcher-Killer of animals) involved in the transactions, the purchases of the assessee should not be doubted. We note that assessing officer has failed to bring any cogent evidence on record to show that way bills, Invoices, transport documents and cross border Government stamp and check with sign documents are bogues. In addition to

this, the assessing officer has not doubted the sales of the assessee. It is elementary that without purchases there could not have been any sales. The assessing officer has accepted the sale figures of the assessee therefore, the question of rejecting the purchases does not arise without any cogent evidence. That being so, we decline to interfere in the order of Id CIT(A) in delating the addition to the tune of Rs. 87,77,365/-.

8. So far addition on account of bogus Sundry Creditor of Rs.14,84,385/-, is concerned, we note that sundry creditor of the assessee, Mr. Md. AkeelAhmed to the tune of Rs.14,84,385/- has been coming in the books of accounts of the assessee from the previous year, as an opening balance. This is not a liability generated in the assessment year under consideration. During the assessment proceedings, the assessee submitted the ledger copies/ list of creditors and on perusal of the ledger copies it was observed by the assessing officer that in some of the cases, the opening balance and closing balance are the same. Further, we note that assessing officer did not conduct further inquiry, under section 131 of the Act, with creditors/suppliers of Hide & Skins. There is no effort to find out the present addresses of suppliers. On the facts and in the circumstances of the case, the assessee could not do anything further except requesting the Revenue to issue summons to creditors/ suppliers. We note that the assessee has discharged his onus and burden in proving the genuineness of creditors and for that we rely on the judgment of Coordinate Bench of this Tribunal in the case of Sagar Bose vs. ITO 56 ITD 561 (Kol) wherein it was held as follows:

*“We find that the assessee has given names and addresses of the suppliers and has furnished all particulars and details of purchases. The assessee has also produced books of account and pass books and has furnished copies of bills, account payee cheque Nos. and sales-tax Nos. etc. Although it was in the knowledge of IT department that suppliers are assessed to sales tax no follow-up action was taken. It was also in the knowledge of the department that payments are made by account payee cheques and bank names, pass book Nos. and cheque Nos. were given but in spite of that the Revenue did not conduct thorough enquiry and investigation and did not pursue the matter further. There is no effort to find out the present addresses of suppliers. On the facts and in the circumstances of the case, the assessee could not do anything further except requesting the Revenue to issue summons to suppliers. We therefore come to the conclusion that the assessee has discharged the burden and it is the Revenue being alleging party which failed to discharge the heavy burden of establishing mala fides by producing evidence and proof of high order. We accordingly arrive at the conclusion that on the facts and in the circumstances of the case the addition made by the*

*Assessing Officer and confirmed by the CIT(A) is not in accordance with law and our conclusion is based on relevant material, cogent and positive evidence produced and furnished by the assessee.”*

The assessee made the payment to the creditors of Hide & Skins by cash as per norms set by Raw Hide & Skins suppliers (Butchers), therefore the assessee does not violate the provisions of Income Tax Act, as cash payment does not exceed at any point of time, more than Rs.20,000/-. Therefore, the assessee is within the (*Lakshman Rekha*), that is, the threshold limit prescribed under section 40A (3) of the Act. That being so, we decline to interfere in the order passed by the Id CIT(A), his order on this issue is hereby upheld and ground of Revenue is dismissed.

**9. Ground No.2 raised by the Revenue relates to addition in respect of clearing and forwarding charges of Rs.9,87,600/- for non deduction of tax u/s 40(a)(ia) of the Act.**

10. The brief facts qua the issue are that during the assessment proceedings, the assessing officer noted that as per Clause 27 of the Tax Audit Report, the assessee has not deducted tax on payments of clearing & forwarding charges of Rs.9,87,600/- u/s 40(a)(ia) of the Act. Therefore, the assessing officer disallowed Rs.9,87,600/- u/s 40(a)(ia) of the Act.

11. On appeal by the assessee, the Id. CIT(A) deleted the addition made by the Assessing Officer. Aggrieved by the order of the Id. CIT(A), the Revenue is in appeal before us.

The Id. 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. On the other hand, the Id. Counsel for the assessee has defended the order passed by the Id. CIT(A) .

12. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that the assessee is an exporter of leather & leather goods and for exporting goods it sends goods by foreign airlines and shipping companies through their authorized agents. The non-resident shipping companies raised the invoice against freight and local authorized agents of the non-resident shipping, collect the payments on behalf of the Foreign Shipping Co. and disburse them. In the assessee's case under consideration, we note that freight bill raised by non-resident shipping co. and local collecting agent is just working on behalf of foreign shipping co. against some nominal charge.

We note that Circular No.723 dated 19.09.1995 mentioned that only local agent charge may attract TDS but freight charge of foreign shipping company will not attract TDS and provision of section 172 and 195 will not come under the purview of section 194C of the Act. Therefore, the assessee's case under consideration, would not come within the purview of the provisions of section 194C of the Act. It is necessary for the revenue to prove that the expenditure is incurred by the assessee in his own right. If however the assessee is merely an intermediary through whom the payment is made, then for such reason the amount paid does not constitute assessee's expenditure for which section 40(a)(ia) of the Act, cannot be invoked. In the assessee's case under consideration, we note that admittedly the payment made to the foreign ocean liners, which did not constitute assessee's own expenditure and, therefore, section 40(a)(ia) of the Act, had no application in assessee's hands. Therefore, we note that mere reimbursement of expenditure does not attract the TDS for that we rely on the judgment of the Coordinate Bench of this Tribunal in the case of Satyendra Jhunjhunwalla vs. ITO, Wd-46(4), Kol in ITA No.1988/Kol/2009 wherein it was held as follows:

*“4. ....Similarly, Ld. Counsel for the assessee stated that service charges paid to J. S. Clearing Services includes custom duty, port charges, stamp duty charges, bondage charges, oct. charges apart from payment of rent and removal documentation fee and document processing fee. Ld. Counsel for the assessee stated that this can be verified from copies of bills of freight charges and copies of bills of clearing service charges. Ld. Counsel for the assessee stated that reimbursement expenses and custom duty payments by agent for and on behalf of the assessee cannot be covered under the TDS provisions. Hence, these expenses*

are not liable to TDS and the provisions of [section 40\(a\)\(ia\)](#) of the Act and not applicable. For this, he relied on the decision in the case of *ACIT V. Grandprix Fab. (P) Ltd.*, (2010) 128 TTJ 60 (Del.), wherein the Tribunal vide para 16 has held as under:

"16. In respect of the payment towards agency charges amounting to Rs.1,01,219, the assessee has deducted tax amounting to Rs.2,094 at source, and the said payment has not been disallowed by the A.O. The other two payments are towards payment of customs duty, and other expenses paid by the agent for/on behalf of the assessee. These reimbursement expenses were not made towards any services rendered by the agent, but have been made to set off of the expenses incurred by the agent while clearing the imported goods from the customs for/on behalf of the assessee. Since no element of income is embedded in reimbursement of expenses incurred by agency for/on behalf of the assessee, the assessee was not obliged to deduct tax at source, and, therefore, the CIT(A) has rightly deleted the addition."

He also relied on in the case of *ITAT, Kolkata "B" Bench in ITA No.1580/K/2008, DCIT Vs. M/s. M. B. Ispat Corporation Ltd.* Assessment Year 2005-06 dated 03.04.2009, wherein it has been held as under:

"We have carefully considered the submissions of the Ld. Representatives of both the parties and the orders of the authorities below. We have also perused the copy of consignment of sale agreement entered into by the assessee and M/s. Beharilal & Co. It is a fact that if the assessee reimbursed the expenses towards freight incurred on its behalf under an agreement for which separate bill is raised, and to such payments the provision of section 194 of the I. T. Act is not attracted. The above issue has been considered by the ITAT Delhi Bench in the case of *Willmar Schwabe India (P) Ltd.* (supra), wherein it has been held that if there is reimbursement of expenses on account of bills raised, no TDS is to be deducted therefrom. [Section 194C](#) of the Act is applicable, where payments is made to a contractor/sub-contractor, where contract is either a work contract or a contract for supply of labour for works contract. In the case before us, we observe that the assessee has reimbursed the expenses to its consignment agent and it was not a direct payment for freight by the assessee to the transporter. Therefore, we are of the considered view that there is no infirmity in the order of the Ld. CIT(A). Accordingly, we uphold the order of the Ld. CIT(A) and reject the grounds of appeal taken by the Department."

He also relied on the decision of *ITAT, Mumbai "F" Bench in the case of M/s. Utility Powertech Ltd. Vs. ACIT, ITA No.2561/Mum/2009, A.Y. 2005-06 dated 19.04.2010*, wherein the Tribunal vide para 5 has held as under:

"5) We have considered the rival contentions and perused the record. The jurisdictional High Court in the case of *CIT Vs. SeimensAktiongesellschaft* (supra) has held that reimbursement of expenses cannot be regarded as revenue in the hands of the payee. While deciding the issue, the Hon'ble High Court has followed the decision of Hon'ble Delhi High Court in the case of *CIT Vs. Industrial Engg. Projects P. Ltd.* (202 ITR 1014). It is a settled proposition of law from the various decisions of High Courts and particularly the decision of Hon'ble jurisdictional High Court (supra) that when there is no element of income and the payment is only as a reimbursement of expenses incurred by the payee, then no disallowance can be made u/s. 40(a)(ia). In the case in hand, the A.O. has not given a finding that the expenses were for office upkeep as revenue receipt in the hands of *Reliance Energy Ltd.* and not a pure reimbursement of expenses. Respectfully following the decision of the Hon'ble jurisdictional High Court (supra), we decide this issue in favour of the assessee and against the Revenue."

We find that the issue of reimbursement of customs duty charges and other charges which are incurred by agents on behalf of assessee cannot be subject matter of TDS in view of above cited case laws. Respectfully following these case laws, we allow the claim of assessee. This ground of assessee's appeal is allowed."

13. Respectfully, following the judgment of the coordinate Bench in the case of Satyendra Jhunhunwalla vs. ITO, Wd-46(4), Kol in ITA No.1988/Kol/2009 (supra), we note that in the assessee's case under consideration, it is a kind of reimbursement of expenditure which does not attract TDS under section 194C of the Act, that being so, we decline to interfere in the order passed by the Id. CIT(A) and his order on this issue is hereby upheld and the Ground raised by the Revenue is dismissed.

14. In the result, the appeal filed by the Revenue is dismissed.

Order is pronounced in the open court on 30.05.2018.

Sd/-  
(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक Date: 30/05/2018

(RS, SPS)

Sd/-  
(A. L. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant- ACIT, Circle-29, Kolkata
2. प्रत्यर्थी/ The Respondent-ANS Leather Company
3. आयकरआयुक्त(अपील) / The CIT(A),
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata
6. गार्डफाईल / Guard file.  
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By Order

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I.T.A.T, Kolkata Benches,  
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