

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI  
BEFORE SHRI G.S.PANNU, AM AND SHRI RAVISH SOOD, JM**

ITA No.6406/Mum/2016  
C.O. No.49/Mum/2018  
(Arising out of ITA No.6406/Mum/2016)  
(निर्धारण वर्ष / Assessment Years:2010-11)

A.C.I.T-1(2)(1), Room No. 535, 5 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai 400 020	बनाम/ Vs.	M/s Laxmichand Dayabhai Export Co. Ltd.
स्थायी लेखा सं./जीआइआर सं./PAN No.		AAACL0628C
(अपीलार्थी /Revenue)	:	(प्रत्यर्थी / Assessee)

अपीलार्थी की ओर से / Revenue by	:	Shri Rajesh Kumar Yadav, D.R
प्रत्यर्थी की ओर से/Assessee by	:	Shri Dhirajlal Mehta & Shri Mayank Thosar, A.Rs

सुनवाई की तारीख / Date of Hearing	:	12.06.2018
घोषणा की तारीख / Date of Pronouncement	:	15.06.2018

**आदेश / O R D E R**

**PER RAVISH SOOD, JUDICIAL MEMBER:**

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-2, Mumbai, dated 13.07.2016, which in itself arises from the order passed by the A.O under Sec. 143(3) r.w.s. 147 of the Income tax Act, 1961 (for short 'Act'), dated 08.12.2014 for A.Y 2010-11. The assessee on the other hand is before us as a cross-objector. The revenue assailing the order of the CIT(A) has raised before us the following grounds of appeal:

- I. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of Rs.45,40,665/-by admitting additional evidence during appeal even when no such application under Rule 46A has been made, when it is apparent from the assessment order that the assessee had not submitted the relevant details during assessment proceedings and , thus rendering the order passed by Ld. CIT(A) as bad in law and procedure which need to be quashed or set aside.*
- II. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of Rs.45,40,665/-by relying on the ratio of decision of Hon'ble Bombay High Court in the case of East India Hotels Ltd. v/s. CBDT (2001) (320 ITR 526),and not appreciating that issue involved there was, whether providing Hotel Room and allied services to Patrons would constitute Work as envisaged under Section 194C or not, whereas no such issue is involved in this case and hence the said decision was not applicable in this case.*
- III. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in relying on ITAT decision in the case of ACIT v/s. PP Overseas ITA No.733/Mum/2010 dtd. 18.02.2011 while allowing the appeal of the assessee, and not appreciating that, there, the amount of payments were below monetary limit attracting TDS provisions, whereas in the present case no such facts related to amounts being below monetary limits, have been brought on record by the assessee and hence the said decision was not applicable in this case.*
- IV. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in relying on the decision in the case of PP Overseas and not appreciating that, there, the payments involved were made to C & F Agents towards custom duty, stuffing charges, central excise, etc., whereas in the present case no such payments are involved and on the contrary major payment of Rs.39,12,741/ out of total disallowance of Rs.45,40,665/-pertains to Seaway Shipping Ltd and not to C& F agent as in the case law cited, and hence the said decision was not applicable in this case.*
- V. *Whether on the fact and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of Rs.6,14,885/- by admitting additional evidence during appeal even when no such application under Rule 46A has been made, when it is apparent from the assessment order that the assessee has not submitted the relevant details during assessment proceedings and, thus rendering the order passed by Ld. CIT(A) as bad in law and procedure which need to be quashed or set aside.*

VI. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the disallowance of Rs. 6,14,885/- by relying on the affidavit of Director of assessee company in respect of above payments, admitted in contravention of Section 46A of the Income tax Act, 1961 without giving an opportunity to the A.O to examine and verify the same.”*

2. Briefly stated, the facts of the case are that the assessee company which is engaged in the business of import and export of spices and agricultural products had e-filed its return of income for A.Y 2010-11 on 30.09.2010, declaring total income of Rs.87,38,679/-. The case of the assessee was thereafter taken up for scrutiny assessment and its income was assessed at Rs.87,38,675/-, vide order passed by the A.O under Sec. 143(3) of the Act, dated 31.01.2013.

3. The A.O holding a *belief* that the income of the assessee chargeable to tax had escaped assessment on two grounds viz. (i) the failure on the part of the assessee to deduct tax at source under Sec. 194C on clearing and forwarding charges of Rs.45,40,665/- rendered the same liable for disallowance under Sec.40(a)(ia) of the Act; and (ii) that as per the TDS certificates the assessee had paid clearing and forwarding charges of Rs.6,15,646/- outside its books of accounts, reopened the case of the assessee under Sec. 147 of the Act. The A.O after making the additions/disallowance on both of the aforesaid counts assessed the income at Rs. 1,38,94,990/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee before him that as the payments of Rs.45,40,665/- were made to the clearing and forwarding agents, viz. (i) M/s Seaways Shipping Ltd; and (ii) M/s Hetal Clearing and Forwarding towards reimbursement of expenses, thus there was no obligation cast upon it to deduct tax at source on the said amount, was persuaded to be in agreement with the same. On the basis of

the aforesaid deliberations the CIT(A) deleted the disallowance of Rs.45,40,665/- made by the A.O. under Sec.40(a)(ia) of the Act.

5. Still further, the CIT(A) also did find favour with the contention of the assessee that as it had not made payment of any amount as alleged by the A.O to M/s Keller Shipping Ltd, hence no addition of Rs.6,14,885/- could have been made in its hands on the ground that unaccounted payment was made by the assessee to the aforementioned party. On the basis of the aforesaid observations, the CIT(A) deleted the addition of Rs.6,14,885/- made by the A.O towards unexplained expenditure under Sec.69C.

6. The revenue being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The Id. Departmental Representative (for short 'D.R') at the very outset submitted that the CIT(A) had erred in deleting the disallowance of Rs.45,40,665/- under Sec.40(a)(ia) of the Act, without confronting the material that was produced by the assessee by way of additional evidence during the course of hearing of the appeal before him. Shifting his contentions, it was thereafter submitted by the Id. D.R that the CIT(A) had not given any reasoning for accepting the claim of the assessee that the payments made to the clearing and forwarding agents viz. (i) M/s Seaways Shipping Ltd; and (ii) M/s Hetal Clearing and Forwarding, were made towards reimbursement of expenses. As regards the deletion of addition of Rs.6,14,885/- made by the A.O under Sec.69C by the CIT(A), the Id. D.R. could not assist the bench as regards the basis on which the said addition was made by the A.O. Per contra, the Id. Authorized Representative (for short 'A.R') relied on the order of the CIT(A). The Id. A.R despite specific query by the bench as to on what basis the CIT(A) had characterised the payments of Rs. 45,40,665/- as reimbursement of expenses incurred by the aforementioned parties on behalf of the assessee, however could not substantiate the same.

7. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on

record. We find that the A.O observing that the assessee had failed to deduct tax at source on the clearing and forwarding charges of Rs.45,40,665/- as was debited in its profit and loss account for the year under consideration viz. A.Y 2010-11, had thus for the said reason disallowed the said amount under Sec.40(a)(ia) of the Act. On appeal, the CIT(A) was persuaded to be in agreement with the claim of the assessee that the payment of Rs.45,40,665/- was made by the assessee to the aforementioned clearing and forwarding agents viz. (i) M/s Seaways Shipping Ltd; and (ii) M/s Hetal Clearing and Forwarding, towards reimbursement of expenses incurred by them on behalf of the assessee. The CIT(A) on the basis of his aforesaid observations concluded that as there was no obligation on the part of the assessee to have deducted tax at source on the amounts paid to the aforementioned parties towards reimbursement of expenses, thus no disallowance of Rs.45,40,665/- was called for in the hands of the assessee under Sec. 40(a)(ia) of Act.

8. We have deliberated at length on the issue under consideration and find ourselves to be in agreement with the view taken by the CIT(A) that no obligation is cast upon an assessee to deduct tax at source on the amounts paid towards reimbursement of expenses. However, we find that the CIT(A) had merely gone by the claim of the assessee and had characterised the payments made to the aforementioned parties viz. (i) M/s Seaways Shipping Ltd (Rs. 39,12,741/-); and (ii) M/s Hetal Clearing and Forwarding (Rs. 6,72,924/-), as having been made towards reimbursement of expenses incurred by the said C&F agents on behalf of the assessee. We find that neither there is any material available on record, nor our attention during the course of hearing of the appeal was drawn to any such document which could substantiate the aforesaid view arrived at by the CIT(A). We are unable to persuade ourselves to be in agreement with the view taken by the CIT(A), which we are afraid is not backed by either any reasoning or supporting documentary evidence. We thus, in the backdrop of the aforesaid facts are of the considered view that in all fairness the matter requires to be restored backed to the file of the A.O, for the limited purpose of verifying as to

whether the payment of Rs.45,40,665/- was made by the assessee to the aforementioned parties viz. (i) M/s Seaways Shipping Ltd (Rs. 39,12,741/-); and (ii) M/s Hetal Clearing and Forwarding (Rs. 6,72,924/-), towards reimbursement of various expenses that were incurred by them on behalf of the assessee. If the claim of the assessee is found to be in order then no disallowance under Sec.40(a)(ia) of Rs.45,40,665/- shall be made by the A.O in the hands of the assessee. Needless to say, the A.O shall during the course of the set aside proceedings afford reasonable opportunity of being heard to the assessee, who shall be at a liberty to place on record further documentary evidence to substantiate his aforesaid claim. The **Grounds of appeal Nos. I to IV** are allowed for statistical purposes.

9. We shall now advert to the addition of Rs.6,14,885/- made in the hands of the assessee under Sec. 69C of the Act, on the ground that it had made payment of the said amount to M/s Keller Shipping Ltd, outside its books of account. The aforesaid addition was deleted by the CIT(A), for the reason that the assessee had declined of having paid any amount to M/s Keller Shipping Ltd. We find that the assessee had submitted before the CIT(A) that during the year under consideration viz. A.Y. 2010-11 or in the earlier years since its incorporation and/or in the subsequent years, i.e after 1<sup>st</sup> April, 2010 and till date, as it had never dealt with M/s Keller Shipping Ltd, therefore, there was no question of payment of any amount to the said party. We find that the aforesaid explanation of the assessee was neither dislodged by either of the lower authorities by proving to the contrary on the basis of any documentary evidence, nor any material was placed before us during the course of hearing of the appeal by the Id. D.R which could disprove the veracity of the aforesaid claim of the assessee. We are afraid that an addition/disallowance which is divorced of any reasoning and supporting material cannot be sustained and is destined to be struck down. We are of the considered view that as the addition of Rs.6,14,885/- made by the A.O under Sec.69C towards unexplained expenditure has no legs to stand upon, therefore, the same had rightly been deleted by the CIT(A). We thus, finding no infirmity in the deletion of addition of Rs.6,14,885/- by the

CIT(A), uphold his order to the said extent. The **Grounds of appeal Nos. V and VI** are dismissed.

10. The appeal of the revenue is partly allowed in terms of our aforesaid observations.

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11. The ld. A.R. at the very outset of the hearing of the appeal had submitted that as instructed, he seeks liberty for withdrawing the cross-objections filed by the assessee. The ld. D.R had no objection to the withdrawal of the cross-objections by the assessee. We thus, on the basis of the concession made by the ld. A.R dismiss the Cross Objections filed by the assessee as not pressed.

12. The appeal of the revenue viz. ITA No. 6406/Mum/2016 is partly allowed in terms of our aforesaid observations and the Cross-objections filed by the assessee is dismissed as not pressed.

Order pronounced in the open court on 15.06.2018

Sd/-  
(G.S.PANNU)  
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 15.06.2018  
Ps. Rohit

Sd/-  
(RAVISH SOOD)  
JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**  
**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT,**  
**Mumbai**