

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

**BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER
AND SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER**

**ITA No. 1674, 1675 and 1676/Hyd/2017
Assessment Year: 2015-16**

J.M. Baxi & Co., (as agent vs. Income Tax Officer
for Erika Shipping Pte Ltd), (International Taxation)
Visakhapatnam. Visakhapatnam.

PAN – AAAFJ5198E
(Appellant)

(Respondent)

Assessee by : Shri Sandeep Rajani
Shri Ram Gopal Sharma
Revenue by : Smt. N. Swapna

Date of hearing 18.07.2018
Date of pronouncement 20.07.2018

ORDER

PER CHALLA NAGENDRA PRASAD, JM:

These three appeals are filed by the assessee against the order of the Ld. CIT(A)-10, Hyderabad dated 31.05.2017 for the A.Ys 2015-16 arising out of the orders passed by the A.O u/s 172(4) of the IT Act. The assessee raised the following effective ground, which is common, in all these three appeals:

“The Ld. CIT(A) has erred in rejecting the additional evidence placed before him, after calling for Remand Report under Rule 46A. And then ignoring without any speaking order / reasons for which he has not considering the additional evidence, which has been considered by A.O while giving remand report to Ld. CIT(A). The Ld. CIT(A) also ignored the Mumbai ITAT judgment of APL Co. PTE Ltd, submitted during hearing stating that the proof of remittance is not mandatory to avail DTA benefits”.

2. At the outset, the Ld. Counsel for the assessee submitted that Ld. CIT(A) erred in rejecting the additional evidences placed before him, even though, remand report was called for from the A.O. The Ld. Counsel for the assessee submitted that

in the remand report given by the A.O, the A.O clearly admitted that proof of payment was received directly confirming the payment made to the Singapore company by the German company and the assessee was only acted an agent to the transition and supervised the loading of cargo from the Indian Port. Ld. Counsel for the assessee submitted that during the course of assessment proceedings assessee was unable to provide the proof of payment made to the Singapore company as the information has to come from German company and the office of German company was closed due to Christmas vacation. The basis on which the addition was made is only for non-submission of information, which was submitted later in the course of proceedings before the Ld.CIT(A) invoking Rule 46A of the IT Rules which was remanded and the remand report was also sent by A.O stating that in view of the details submitted by the assessee regarding the total freight received and remittance proof along with freight invoices, the total freight as shown by the assessee is considered to be acceptable in view of the DTAA between India and Singapore. Therefore, the Ld. Counsel for the assessee submitted that ignoring the remand report wherein the A.O accepted the contentions of the assessee and accepted freight charges reported by the assessee, the Ld. CIT(A) dismissed the claim of the assessee, which is not proper and justified.

3. On the other hand Ld. DR supported the orders of the Ld. CIT(A).

4. We have heard rival submission and perused the orders of the authorities below. On a perusal of the order of the Ld. CIT(A), we find that the additional evidences were rejected observing that the assessee did not file the details of remittances before the A.O before passing the order u/s 172(4)

of the IT Act and no reasonable cause have been sighted for not filing the evidence before the A.O. However, surprisingly the Ld. CIT(A) without admitting the additional evidences called for the remand report of the A.O and when the A.O in his remand report accepted the contentions of the assessee based on the evidences furnished, the Ld. CIT(A) rejected the additional evidences on the pretext that no reasonable cause have been cited by the assessee in furnishing evidences before finalisation of the proceedings u/s 174(2) of the Act. The assessee submitted that the information could not be obtained from the German company due to Christmas vacation and that is the reason why the information could not be submitted before the A.O appears to be a genuine cause. In view of the fact that the order u/s 172(4) of the IT Act was passed on 29.12.2015 by the A.O, it is certainly a reasonable cause in not furnishing the information as the German company might have closed for Christmas vacation. Therefore, the Ld. CIT(A) should not have rejected the additional evidence furnished by the assessee. In any case these evidences have already been examined by the A.O in remand proceedings and accepted the contentions of the assessee observing as under:

“4. Verification of remittance proof submitted by the agent before the CIT(A)-10, Hyderabad.

In view of the letter received from CIT(A) calling for remand report, the assessee was given an opportunity and called for submission of further information vide this office letter dt. 04.04.2017. In response to the above, Sri K. Subba Rao, Sr. managar and Sri Sri VVKSTP Rama Mohan, Dy. Manager of M/s J.M. Baxi and Company, Visakhapatnam agents of M/s Erika Shipping Pte Ltd., filed the information regarding remittance proof along with letter. As verified from the record the details are as under:

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| <i>1. Date of NOC issued</i> | <i>:20.01.2015</i> |
| <i>2. Date of sailing</i> | <i>:23.01.2015</i> |
| <i>3. Date of remittance</i> | <i>:25.01.2015 (Prior to date of order u/s 172(4))</i> |
| <i>4. Amount of remittance</i> | <i>:USD195,333.68</i> |
| <i>5. Date of filing of return U/s 172(3)</i> | <i>:06.07.2015</i> |

6. Date of order u/s 172(4)	:29.12.2015
7. Date of Service of order	:05.01.2016
8. Date of filing of appeal	:02.02.2016
9. Date of submission of remittance	:03.02.2016
Proof before the A.O.	

An amount of \$ 195,333,68 was remittance to M/s. Erika shipping PTE Ltd., through OCBC Bank vide transaction reference no. OC 150616003062000 i.e the total freight less commission shown in the Tax invoice (USD 202,944.08 – USD 7,610.40 = USD 195,333,68) was remitted to M/s. Erika Shipping PTE Ltd. Through the remittance was made on 25.01.2015 (prior to the date of order u/s 172(4)) the remittance proof and freight invoice was submitted by the Agent before the A.O on 03.02.2016 i.e, after the date of completion of the order u/s 172(4) dt., 29.12.2015. It is stated by the agent vide its letter that he could not submit the remittance proof before completion of the order due to financial year end and Christmas Holidays for their Overseas Principals, M/s Erika Shipping Pte Ltd., Singapore.

In view of the further details submitted by the assessee regarding the total freight received and remittance proof along with freight invoice (stating the fact that the entire amount was shown as received by M/s Erika Shipping PTE Ltd., Singapore), the total freight of USD 195,333.68 as shown is considered to be acceptable in view of the DTAA between India and Singapore”.

5. In these circumstances we are of the view that the assessee’s claim should be allowed in view of the remand report submitted by the A.O. Thus, we direct the A.O to consider the claims of the assessee keeping in view the remand report already submitted and pass appropriate orders. We order accordingly.

6. In the result, the appeals filed by the Assessee are allowed for statistical purposes.

Pronounced in the open Court on 20th July, 2018.

SD/-
(B. RAMAKOTIAH)
ACCOUNTANT MEMBER

SD/-
(CHALLA NAGENDRA PRASAD)
JUDICIAL MEMBER

Hyderabad, Dated: 20th July, 2018

KRK

Copy to:-

- 1) *M/s JM Baxi & Co. Indu Mansion, 25-12-35, Godevari Street, SBI I Town Branch, Visakhapatnam.*
- 2) *ITO (IT), Visakhapatnam.*
- 3) *CIT(A)-10, Hyderabad.*
- 4) *The CIT (IT & TP) Hyderabad.*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*
- 6) Guard File