

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “C” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

**ITA. No: 871/AHD/2014  
(Assessment Year: 2010-11)**

<b>Laxmi Protein Products Pvt. Ltd. Approach Road, Vasad-388306</b>	<b>V/S</b>	<b>The ACIT, Anand Circle, Anand</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: AAACL3972F**

**Appellant by : Shri Aseem L. Thakkar, AR  
Respondent by : Shri Lalit P. Jain, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 19 -11-2018

Date of Pronouncement : 29-11-2018

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. This appeal by the Assessee is directed against the order of the Ld. CIT(A)-IV, Baroda dated 24.01.2014 pertaining to A.Y. 2010-11 and following grounds have been taken:

- 1. The learned CIT (A) - IV, Baroda, erred in law and on facts in confirming the addition of Rs. 2610140/- made by the AO u/s 40(a)(ia) of the IT Act.*
- 2. The learned CIT (A) - IV, Baroda, erred in law and on facts in confirming the addition made by the AO of Rs. 104861/- u/s 14A of the IT Act*

2. Since ground no. 2 has not been pressed because of smallness of amount, therefore, we would like to adjudicate ground no. 1 only.
3. On scrutiny, it was found that the assessee has credited total amount of Rs.3096540/- (as reduced by opening balance of Rs.622556) to Sunraj Shipping Agency, Mumbai (CHA) during the P.Y. relevant to A. Y. under consideration as per the copy of ledger account furnished during the course of assessment proceedings. It was further found that the payments made to this party are towards clearing and forwarding charges under the head tour purchase expenses which attract the TDS U/S.194C of the Act. The assessee has deducted TDS of Rs.10190/- only on commission charges etc and not deducted tax at source in respect of Rs.2610140/- claiming the same as reimbursement of expenses. During the course of assessment proceedings, it was requested to show cause vide order sheet dated 22/11/2012 as to why the amount of Rs.2610140/- as above paid without TDS U/S.194C should not be disallowed and added in the total income of the assessee u/s.40(a)(ia) of the Act.
4. Against the addition made by the A.O., appellant preferred first statutory appeal before the Id. CIT(A) who dismissed the appeal of the appellant.
5. Now appellant is before us.

6. The assessee is a Private Company registered under the Companies Act and derives income from business of manufacturing of Toor Dal and trading in cereals & pulses. It was found by the lower authorities that assessee has credited total amount of Rs. 30,96,540/- to Sunraj Shipping Agency, Mumbai (CHA) towards clearing and forwarding charges under the head toor purchase expense. And assessee deducted TDS of Rs. 10,190/- only on commission charges and not deducted tax at source in respect of Rs. 26,10,140/- claiming the same as re-imburement of expenses for which lower authorities made the addition.
7. In support of its contention, ld. A.R. cited a judgment of Gujarat High Court in the matter of CIT vs. Gujarat Narmada Valley Fertilizers Co. Ltd. (2013) 35 taxmann.com 638 (Guj.) wherein it is held:

***“Section 40(a)(ia) of the Income-tax Act, 1961 - Business disallowance - Interest etc., paid to resident without deduction of tax [Reimbursement of expenses] - Expenses were incurred by agent on behalf of assessee-principal for transportation and other charges, which had been spelt out in bill itself - So far as obligation to deduct tax at source from payment of transport charges and other charges was concerned, same was complied with by agent, who had made payment on its behalf - Whether no part of amount reimbursed was to be disallowed - Held, yes [Para 3] [In favour of assessee]”***

8. And apart from that assessee also cited judgment of Gujarat High Court in the matter of Pri.CIT vs. Consumer Marketing (India) (P.) Ltd. (2015) 64 taxmann.com 16 (Guj.) wherein it is held:

***“Section 194J, read with section 40(a)(ia), of the Income-tax Act, 1961 - Deduction of tax at source - Fees for technical or professional services***

***(Reimbursement of expenses) -Assessment year 2008-09 - Assessee paid a certain amount to its clearing and forwarding agent and claimed deduction of same - Said agent had raised separate bills for services rendered by him and in respect of reimbursement of expenses incurred by him on behalf of assessee - Assessee deducted TDS only on services bill and did not deduct TDS on reimbursement bill - Assessing Officer disallowed a certain amount under section 40(a) (ia) on which TDS was not deducted - Whether no TDS was required to be deducted in respect of reimbursement bill which was separately raised and, therefore, disallowance under section 40(a)(ia) was not justified - Held, yes [Para 12] [In favour of assessee]"***

9. Since facts and circumstances are similar to the case cited by the ld. A.R. and respectfully following the Jurisdictional High Court, we allow the appeal of the appellant and hold for reimbursement of expenses, no TDS is required.

10. In the result, appeal filed by the Assessee is allowed.

Order pronounced in Open Court on	29 - 11- 2018
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Sd/-

**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 29/11/2018

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad