

**IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH, “C” AT KOLKATA**  
(समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य  
[Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

**I.T.A. No. 2287/Kol/2016**  
**Assessment Year: 2012-13**

Income Tax Officer, Wd-35(2), Kolkata	Vs.	M/s. J. L. Goward & Co. (PAN: AACFJ4149F)
Appellant		Respondent

Date of Hearing	17.12.2018
Date of Pronouncement	01.03.2019
For the Appellant	Shri Saurabh Kumar, Addl. CIT, DR
For the Respondent	Shri S. L. Kochar, Advocate & Shri Anil Kochar, Advocate.

**ORDER**

**Per Shri A.T.Varkey, JM**

This is an appeal preferred by the revenue against the order of Ld. CIT(A) – 10, Kolkata dated 28.09.2016 for Assessment Year 2012-13.

2. At the outset, we note that this appeal was heard on 17.12.2018 along with ITA No. 169/Kol/2017 for AY 2013-14 and the order has been pronounced on 27.02.2019.
3. By preferring the first ground of appeal, the revenue challenges the action of the Ld. CIT(A) in deleting the addition made u/s. 40(a)(ia) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”) of Rs.14,10,464/-. We note that similar ground was raised for the AY 2013-14 wherein the ground was that the Ld. CIT(A) erred in deleting the addition made by AO u/s. 40(a)(ia) of the Act for Rs.1,80,10,469/-. We find that the ground is identical and facts are also the same. Since there is no change in law, the result of our adjudication on this issue for AY 2013-14 would be applicable to this issue wherein in ITA No. 169/Kol/2017 we held as under:

“5. We have heard both the parties and perused the records. We note that the assessee is a clearing and forwarding agent working on behalf of several clients, and it is their job to secure the easy and event-free passage of goods for a service charge/brokerage from such clients. From the nature of work it is discerned that certain payments need to be made to the Government and other agencies to clear goods for timely smooth passage and delivery of goods imported to the clients. We note that Rs. 1,29,51,844/- was paid by the assessee for

*CFS charges, shipping agent charges paid to Indian Shipping Agent was to the tune of Rs. 46,82,854/-, survey fees of Rs. 3,75,771/- thus total Rs. 1,80,10,469/-. From the ledgers, it is seen that these amounts were paid by the assessee to the agencies on behalf of the clients and bills were raised against the clients to claim reimbursement of the same. We take note that over and above the reimbursement claim, the assessee has raised bills for services rendered for clients and this were paid by the clients after duly deducting the TDS. The Ld. CIT(A) has referred to his predecessors order for AY 2012-13 where in the CIT(A) has gone in detail and has explained the modus operandi of the assessee and has held that there is no element of income in the reimbursement bill which exclusively relate to the amounts spend by the assessee for and on behalf of the customers / clients. No change in facts or law could be pointed out by the learned DR as that of AY 2012-13. Therefore, we find no merit in the appeal of the Revenue and confirm the order of the Ld. CIT(A) and dismiss this ground of appeal of the assessee.”*

4. Following the judicial discipline since the facts and law are the same, the decision cited supra taken for AY 2012-13 is followed for this assessment year and for the same reasoning, we do not find any merit in the ground of appeal of the revenue and confirm the order of Ld. CIT(A) and dismiss this revenue's ground of appeal.

5. Ground no. 2 of the revenue is against the action of Ld. CIT(A) in deleting the disallowance of Rs.7,37,459/- made by AO u/s. 43B of the Act by accepting fresh evidence in violation of the provisions of Rule 46A of the I. T. Rules, 1962.

6. The brief facts of the case are that the AO noted during the assessment proceedings the outstanding liability of assessee as on 31.03.2012 in respect of the service tax was of Rs.6,55,303/- and PF contribution of Rs.83,156/- and that these amounts were deposited in the government account after the prescribed time limit, so the AO issued notice as to why these amounts should not be disallowed u/s. 43B of the Act. According to AO, the assessee submitted that the delay in payment of outstanding government dues was on account of financial difficulties faced by them during the said period. According to AO, the disallowance u/s. 43B of the Act is mandatory and, therefore a sum of Rs. 7,37,459/- was disallowed u/s. 43B of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the addition by taking note that the liability have been cleared before the due date of furnishing of the return. Taking note of this fact, the Ld. CIT(A) has given relief to the assessee. Aggrieved, the revenue is before us.

7. We have heard rival submissions and gone through the facts and circumstances of the case. At the time of hearing before us, the Ld. DR heavily relied on the order of the AO

and urged before the bench to set aside the order of Ld. CIT(A) and restore that of the AO. On the other hand, the Ld. AR heavily relied on the order of the Ld. CIT(A) and wants us not to interfere in the order of the Ld. CIT(A). We note that the AO during the course of assessment proceedings noted that outstanding liabilities as on 31.03.2012 in respect of service tax and PF contribution was to the tune of Rs.7,37,459/- (Rs.6,53,303 + Rs.82,156). When AO confronted the assessee as to why this amount should not be disallowed u/s. 43B of the Act the assessee submitted that due to financial difficulties at that particular point of time assessee was not able to clear the liability. However, we note that the AO himself has stated that these amounts were deposited in government account after the prescribed time limit. So, from the said averment of the AO itself it is clearly inferred that the AO was aware of the fact that though this amount was outstanding liability as on 31.03.2012, however, this amount was deposited in government account after the prescribed time limit is undisputed. The case of the assessee is also that the assessee because of financial difficulties could not deposit the said amount within the prescribed time limit as prescribed by specific statute governing PF Act etc., however it had deposited the amount before the due date of filing of the return. We note that the Ld. CIT(A) has given relief taking note of the ratio laid by the Hon'ble Supreme Court in CIT Vs. Alom Extrusions Ltd. 390 ITR 306 (SC) that since the assessee has made the payment within the due date of filing of the return u/s. 43B of the Act disallowance was not warranted. We give our imprimatur to the Ld. CIT(A)'s decision. We note that there is no violation of Rule 46A of the Rules because the AO himself has stated that the assessee has deposited the amount in the Government account so, therefore, there is no fresh evidence as such that was filed before the Ld. CIT(A). This ground of appeal of the revenue is, therefore, dismissed.

8. The next ground of appeal of revenue is against the action of the Ld. CIT(A) in deleting the disallowance made by AO of Rs.17,26,592/- in violation of the provisions of Rule 46A of the I. T. Rules, 1962.

9. Brief facts of the case are that the AO noted during the assessment proceedings from the details of receipts furnished by the debtors of the assessee in 26AS that they have credited the accounts of the assessee firm but the assessee has not accounted for such receipt. Therefore, the AO gave show cause notice to the assessee to explain as to why unaccounted receipt of Rs.17,26,592/- should not be added to the total income of the

assessee. Thereafter, the AO noted that the assessee could not offer any satisfactory explanation, therefore, he added Rs.17,26,592/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to delete the same vide para 3 of his order by observing as under:

*“3. I have carefully examined the action of the Ld. AO, as well as the submissions offered by the Ld. AR for the appellant during the course of the appeal. The appellant has also submitted the copy of the TDS Reconciliation Analysis and Correction Enabling System (TRACES) bearing the Form 26AS in its own case relevant for the AY 2012-13. A set of the combined details for the service charges and the Reimbursement charges in its own case has also been filed reconciling the various receipts. It is seen from the same that the Agency Commission receipts were Rs.74,40,823.50, while the reimbursements received were Rs.5,01,29,702.00. The entire details, party wise of the service charges as well as the detail of the reimbursements have also been filed, and it is to be observed that the figures are reconciled. Therefore I find merit in the contention of the appellant that tax has been deducted by certain clients not only on the Service charges Bills but also with reference to reimbursement Bills. These are likely to be appearing in the Form No. 26AS with gross amount of Rs.17,26,592/-. However, as per the reconciliation statement filed by the appellant the figure of Rs.2,52,335 appears to be have been reconciled by the appellant in both, the Form 26AS as well as the ITR submission. It is also seen that the Ld. AO has not specified the names of the parties from whom the alleged amounts totaling Rs.17,26,592/- have been received, nor any independent enquiries appear to have been conducted by the Ld AO. In the absence of any specific finding, in a situation where the Ld AO is simply depending on figures in the Form 26AS, it would not be correct to make any addition. Hon'ble Courts have for long held that additions merely on the basis of the Information network of the Department, such as form 26AS or AIR information, without corroborative and independent enquiries would not be tenable. In the said situation, there is also an explanation by the appellant, which in my considered view is also acceptable.*

*With such view of the matter, I am unable to agree with the addition made by the Ld. AO, and the same is ordered to be deleted. The ground is accordingly allowed in favour of the appellant.”*

Aggrieved by the aforesaid decision of Ld. CIT(A) revenue is before us.

10. We have heard rival submissions and gone through the facts and circumstances of the case. At the time of hearing before us, the Ld. DR heavily relied on the order of the AO and urged before the bench to set aside the order of Ld. CIT(A) and restore that of the AO and there is a clear violation of Rule 46A, so this issue may be restored to AO. On the other hand, the Ld. AR heavily relied on the order of the Ld. CIT(A) and wants us not to interfere in the order of the Ld. CIT(A). We note that the assessee is a Clearing and Forwarding Agent and by its nature of work had to make payments on behalf of the clients to the government for which the assessee raises bills for reimbursement and for its service to the clients raises bill for service charges. While we decided the issue no.1, we had elaborated about this nature of receipts. Since the reimbursement element does not have income which

exclusively relates to the amount spent by the assessee for and on behalf of the customer/clients, there was no necessity for deducting tax by the clients while making the payments. However, according to the assessee, certain clients on mistaken belief has deducted tax on the reimbursement amount also which had created the mismatch between the income and the TDS certificate. We note that the Ld. CIT(A) has taken note of this fact to give relief to the assessee. However, the main grievance of the revenue is that the Ld. CIT(A) while giving relief to the assessee has violated rule 46A of the Rules. We find force in the submission of the Ld. DR that there is violation of Rule 46A because the Ld. CIT(A) has clearly noted that the assessee had submitted before him a copy of the TDS Reconciliation Analysis and Correction Enabling System wherein the Form 26AS in its own case relevant to AY 2012-13 and that the reconciliation has also been filed before him which showed the commission receipts were to the tune of Rs.74,40,823/- while the reimbursement received were to the tune of Rs.5,01,29,702/-. We note that before the Ld. CIT(A) the assessee had filed the entire details of party wise service charges as well as the details of the reimbursement. From the aforesaid documents filed before him, the Ld. CIT(A) appreciated that the tax has been deducted by certain clients not only on the service charges bills but also with reference to reimbursement bills and thus, in form No. 26AS a gross amount of Rs.17,26,592/- has appeared. The Ld. CIT(A) has noted that as per reconciliation statement filed by the assessee the figure of Rs.2,52,335/- has been reconciled by the assessee in both the Form 26AS as well as the ITR. We note that the Ld. CIT(A) has given the relief to the assessee by taking note of the fact that neither the AO has specified the name of the parties from whom the alleged amount totaling Rs.17,26,592/- have been received by the assessee nor any independent enquiries have been conducted by the AO. Accordingly, the Ld. CIT(A) was of the opinion that in the absence of any specific finding carried out by AO merely depending on the figures in 26AS to make any addition is not correct and, therefore, he has given the relief to the assessee. We do not countenance this action of the Ld. CIT(A). We note that some documents have been filed for the first time before the Ld. CIT(A). Accordingly, the Ld. CIT(A) ought to have called for the remand report from the AO and then should have adjudicated the issue as per Rule 46A of the Rules. Since there is a violation of Rule 46A and the fact that the assessee has only reconciled about the figure of Rs.2,52,335/- it would be in the interest of justice, we set aside the order of the Ld. CIT(A) and remand the issue back to the file of the AO for fresh

adjudication on this issue. The AO is also directed to enquire as to the correctness of the 26AS and find out as to the parties from whom the assessee had received the amount in question and thereafter the enquiry from the third parties the AO to pass a speaking order on this issue after addressing all the faults noticed by the Ld. CIT(A) to give relief to the assessee. Therefore, this ground of appeal of revenue is allowed for statistical purposes.

11. In the result, the appeal of revenue is partly allowed for statistical purposes.

Order is pronounced in the open court on 01 March, 2019

Sd/-

(Dr. A. L. Saini)  
Accountant Member

Sd/-

(Aby. T. Varkey)  
Judicial Member

Dated : 1st March, 2019

Jd. (Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ITO, Wd-35(2), Kolkata.
2. Respondent – M/s. J. L. Goward & Co., 2, Church Lane, 3<sup>rd</sup> floor, R. No. 303-B, Kolkata-700 001.
3. The CIT(A)-10, Kolkata (sent through e-mail)
4. CIT , Kolkata
5. DR, ITAT, Kolkata (sent through e-mail

/True Copy,

By order,

Assistant Registrar