

**IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH  
MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM  
&  
SHRI AMARJIT SINGH, JM**

**ITA No.767/Mum/2016  
(Assessment Year :2010-11)**

|   |     |   |
|---|-----|---|
| Income Tax Officer-<br>12(3)(2)<br>Room No.147A, 1 <sup>st</sup> Floor<br>Aayakar Bhavan<br>M.K.Road,<br>Mumbai – 400 020 | Vs. | M/s. Keshma Impex Pvt.Ltd<br>P-28, M.R. Housing Society<br>Relief Road,<br>Opp. Raheja College<br>Santacruz (W)<br>Mumbai – 400 054 |
| <b>PAN/GIR No.AABCK5728R</b>  |     |   |
| <b>(Appellant)</b>  | ..  | <b>(Respondent)</b>   |

**CO No.54/Mum/2018  
(Arising Out of ITA No.767/Mum/2016)  
(Assessment Year :2010-11)**

|   |     |   |
|---|-----|---|
| M/s. Keshma Impex Pvt.Ltd<br>P-28, M.R. Housing Society<br>Relief Road,<br>Opp. Raheja College<br>Santacruz (W)<br>Mumbai – 400 054 | Vs. | Income Tax Officer-<br>12(3)(2)<br>Room No.147A, 1 <sup>st</sup> Floor<br>Aayakar Bhavan<br>M.K.Road,<br>Mumbai – 400 020 |
| <b>PAN/GIR No.AABCK5728R</b>  |     |   |
| <b>(Appellant)</b>  | ..  | <b>(Respondent)</b>   |

|                              |                    |
|------------------------------|--------------------|
| Revenue by                   | Shri B. Yadagiri   |
| Assessee by                  | Shri Dharan Gandhi |
| <b>Date of Hearing</b>       | <b>20/06/2019</b>  |
| <b>Date of Pronouncement</b> | <b>10/07/2019</b>  |
|                              |                    |

## **आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

**CO No.54/Mum/2019 (A.Y.2010-11)**

1. This cross objection of the assessee arises out of the order by the Id. Commissioner of Income Tax (Appeals)-20, Mumbai in appeal No.CIT(A)-20/ITO-12(3)(2)/IT-297/14-15 dated 12/11/2015 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3)of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 14/03/2013 by the Id. Income Tax Officer, Mumbai (hereinafter referred to as Id. AO).

2. At the outset, the Id. AR of the assessee stated that he is not pressing the cross objection preferred by the assessee. The same is reckoned as the statement from the Bar and accordingly, the cross objection of the assessee is dismissed as not pressed.

**ITA No.767/Mum/2016 (A.Y.2010-11) – Revenue Appeal**

3. This appeal in ITA No.767/Mum/2016 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-20, Mumbai in appeal No.CIT(A)-20/ITO-12(3)(2)/IT-297/14-15 dated 12/11/2015 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3)of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 14/03/2013 by the Id. Income Tax Officer, Mumbai (hereinafter referred to as Id. AO).

4 The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in restricting the disallowance of expenses to

Rs.2,05,000/- as against Rs.24,50,155/- made by the Id. AO in the facts and circumstances of the case.

4.1. The brief facts of this issue are that assessee is engaged in the business of export of leather goods, wallets, leather articles, cotton bags etc., The break-up of the expenses disallowed by the Id. AO are as under:-

|                              |   |                       |
|------------------------------|---|-----------------------|
| Tour and Travel Expenses     | - | Rs. 8,32,220/-        |
| Sampling Expenses            | - | Rs.12,41,085/-        |
| Exhibition Expenses          | - | Rs. 3,09,140/-        |
| Buyer Entertainment Expenses | - | Rs. 67,710/-          |
|                              |   | -----                 |
| <b>Total</b>                 |   | <b>Rs.24,50,155/-</b> |
|                              |   | -----                 |

5. **Tour and Travel Expenses – Rs.8,32,220/-**

The Id. AO observed that no supporting evidences were filed by the assessee with regard to the said tour and travel expenses of Rs.8,32,220/- and hence, genuineness of the expenditure and its relatability to the business of the assessee could not be examined by the Id. AO. The assessee had furnished the details of expenses vide its letter on 04/01/2013 as under:-

|                         |   |                      |
|-------------------------|---|----------------------|
| Foreign Travel Expenses | - | Rs.4,11,324/-        |
| Local Travel Expenses   | - | Rs.4,20,896/-        |
|                         |   | =====                |
| <b>Total</b>            |   | <b>Rs.8,32,220/-</b> |
|                         |   | =====                |

The Id AO observed that the assessee only furnished a sample bill of Shri Sidhivinayak Travels and Tours Pvt. Ltd, for the foreign visit undertaken. The Id. AO observed that the assessee did not furnish any evidence with regard to the purpose of visit, seminar or exhibition details to authenticate the necessity of expenditure and justify the expenses. Accordingly, he disallowed the entire sum of Rs.8,32,220/- u/s.37(1) of the Act as not incurred for the purpose of business.

5.1. **Sampling Expenses: Rs.12,41,085/-**

The Id. AO observed that assessee had not brought on record any specific material or evidences to prove that the samples have been dispatched / collected at particular rate which would establish that the same was incurred for the purpose of sales promotion. Accordingly, he disallowed the same u/s.37(1) of the Act, as not incurred for the purpose of business.

5.2. **Exhibition Expenses: Rs.3,09,140/-**

The Id. AO observed that the nature of expenses itself proves that the expenditure is contractual in nature and also incurred in foreign currency which would require withholding tax in terms of Section 195 of the Act. In response, the assessee submitted the following:-

**Exhibition Expenses:**

|                      |   |                      |
|----------------------|---|----------------------|
| J.K. Footwear        | - | Rs.2,10,000/-        |
| Exyprom S.L. (Spain) | - | Rs. 99,140/-         |
|                      |   | -----                |
| <b>Total</b>         |   | <b>Rs.3,09,140/-</b> |
|                      |   | -----                |

The Id. AO observed that even if the expenditure was shown to be made through J.K.Footwear, then the expenditure is found to be incurred through journal voucher in the books of the assessee which would violate the provisions of Section 40A(3) of the Act. Accordingly he disallowed the same as inadmissible expenditure within the meaning of Section 37(1) of the Act. The Id. AO further stated that even if it is found to be paid to resident Indian i.e. J.K.Footwear, the same would attract the provisions of Section 40(a)(ia) of the Act for non-deduction of tax at source. Hence, in any case it would get disallowed u/s.40(a)(ia) of the Act. Since, no details were furnished by the assessee with regard to the same, the Id. AO disallowed the same u/s.40(a)(ia) for Rs.2,10,000/- and u/s.40(a)(i) for Rs.99,140/- in the assessment.

### **5.3. Buyer Entertainment Expenses-Rs.67,710/-**

The Id. AO observed that the said expenditure would be covered in the provisions of Section 195 of the Act and consequently disallowable u/s.40(a)(i) of the Act as the payments were made without deduction of tax at source.

6. The assessee submitted before the Id. CIT(A) with regard to the disallowance of aforesaid 4 expenditures in the total sum of Rs.24,50,155/- as under:-

The assessee has followed the consistent practice of claiming certain expenses which are for development of the market as business development expenses. These expenses are claimed by the assessee in five equal annual instalments commencing from the year in which expenses were incurred.

The assessee stated that during the year under consideration, the assessee debited and claimed as deduction of Rs.19,33,628/- as under:-

|                                       | <i>Amount spent during the year</i> | <i>Claimed in A.Y.2010-11</i> | <i>Claimed in following years</i> |
|---------------------------------------|-------------------------------------|-------------------------------|-----------------------------------|
| <i>Travelling &amp; Tour Expenses</i> | 8,32,220                            | 1,66,444                      | 6,65,776                          |
| <i>Sampling Charges</i>               | 12,41,085                           | 2,48,217                      | 9,92,868                          |
| <i>Exhibition Expenses</i>            | 3,09,140                            | 61,828                        | 2,47,312                          |
| <i>Courier Charges for Samples</i>    | 4,67,984                            | 93,597                        | 3,74,387                          |
| <i>Buyer Entertainment Expenses</i>   | 67,710                              | 73,542                        | 54,168                            |
| <i>Total</i>                          | 29,18,139                           | 5,83,628                      | 23,34,511                         |

*Expenses claimed in AY. 2010-11* 5,83,628

*Add: Expenditure incurred in*

*i) Accounting Year 2007-08 claimed now* 8,67,531

*ii) Accounting Year 2008-09 claimed now* 4,82,470

*Total amount claimed as deduction in this year* 19,33,629

The assessee submitted that the courier charges for samples had been accepted by the Id. AO as incurred for the purpose of business and no disallowance thereon was made. It was submitted that assessee had claimed only a sum of Rs.5,83,628/- during the year as against the sum of Rs.24,50,155/- spent during the year towards the above mentioned four expenditures.

6.1. With regard to tour and travel expenses incurred as per the books of accounts, the assessee submitted the vouchers together with the details of persons who travelled, place of visit, nature of expenses, mode of payment, purpose of visit and some evidences for foreign travel of Director. The statement giving full details of expenses towards tour and travel are as under:-

|                       |   |                 |
|-----------------------|---|-----------------|
| Foreign tour expenses | - | Rs.6,21,538.00  |
| Travelling in India   | - | Rs.6,29,813.80  |
|                       |   | -----           |
| Total                 |   | Rs.12,51,351.80 |
|                       |   | =====           |

6.2. The assessee submitted that out this expenditure, Rs.4,19,131.80 was treated as expenses for the year and claimed as deduction under the head 'Travelling and conveyance' as appearing and included in schedule of selling and distribution expenses. Balance sum of Rs.8,32,220/- [12,51,351.80 – 4,19,131.80) are included in business development expenses and deferred over a period of 5 years and deduction claimed in five equal instalments accordingly. All these details were duly filed before the Id. AO vide letter dated 28/11/2012. It was submitted that all these details were completely ignored by the Id. AO. Accordingly, the assessee submitted the sample bills of travel agent who had booked the travel tickets, vouchers for foreign tours among other details. It was submitted that all these travel expenses were incurred for the purpose of business only as assessee had made substantial sales to Italy, Spain and Portugal as well as in India and all these travelling had been admittedly made only to those places where export of goods had taken place or for making purchases or obtaining samples and finding fresh customers. It was submitted that these expenses were not contractual in nature and hence, provisions of deduction of tax at source are not attracted.

6.3. With regard to Sampling Expenses, the assessee clarified that the samples are purchased locally and are sent abroad to customers. Thereafter, the orders are received if customer wants the product. These are always sent through courier or carried and given personally when the customers are visited by the assessee or its representatives. The full list of parties from whom these purchases made were furnished before the Id. CIT(A). These purchases were made from 16 parties and the details regarding names and addresses of the party, description of goods, quantity of goods etc., were furnished by the assessee. These were forwarded to overseas buyers on various occasions and courier charges amounting to Rs.4,67,984/- were incurred in this regard, which was accepted as genuine by the Id. AO. The assessee also submitted the bills for purchase of the sampling expenses together with copies of some of the receipts for forwarding of samples by air. The assessee submitted that all the evidences being purchase bills and despatch proof were indeed available and were produced. The Id. AO completely disregarded all these facts and proceeded to make disallowance without even considering the fact that assessee had claimed only 1/5<sup>th</sup> of that said expenditure as tabulated hereinabove.

6.4. With regard to exhibition expenses of Rs.3,09,140/-, the assessee submitted the entire details and submitted that these expenses were incurred for exhibition conducted in Italy and Spain. The assessee also submitted that pursuant to such incurrence and display of products in the exhibition, the assessee was able to have incremental sales of Rs.90.62 lakhs in the subsequent year. Since the exhibition was conducted abroad and expenditure incurred thereof, there was foreign remittance of EURO 1448.35 (equivalent to Rs.99,140/-), no deduction of tax at source is warranted in respect of said expenditure. The assessee submitted that

there was a payment of sharing expenses amounting to Rs.2,10,000 to M/s. J.K.Footwear Pvt. Ltd, representing reimbursement of share in expenses for fair conducted abroad. The assessee pleaded that since this being reimbursement on cost to cost, there would be no requirement for deduction of tax at source for the same. The assessee submitted that this payment made for exhibition promoted by Government of India Council for Leather Exports. The assessee had paid its share of 70% for place used by it abroad in exhibition, based on the debit note raised by M/s. J.K.Footwear Pvt Ltd in this regard.

6.5. With regard to Buyer Entertainment Expenses, it was pleaded that the Id. AO had illogically came to the conclusion that provisions of Section 195 of the Act are applicable to the said payment. The assessee submitted the entire details of such expenses and stated that these are merely reimbursements in India to an employee stationed in Kolkata with a monthly cap of Rs.5,500/- per month. It was pleaded that provisions of Section 195 are not attracted for reimbursement of expenses. It was also submitted that these expenses are incurred in India and not paid out of India.

7. The Id. CIT(A) on due appreciation of all the facts and material available on record, prima facie agreed with the principle of claim of the assessee on deferred revenue basis in respect of aforesaid expenditures. With regard to the claim of expenses towards tour and travel expenses, the Id. CIT(A) disallowed a sum of Rs.75,000/- as against the claim of Rs.1,66,444/- during the year. Against this, the assessee did not prefer any appeal before this Tribunal.

7.1. With regard to sampling charges, the CIT(A) deleted the entire disallowance made and directed the Id. AO to allow Rs.2,48,217/- out of expenses incurred during the year in this regard.

7.2. With regard to exhibition expenses, even though the expenditure claimed during the year was only Rs.61,828/-, the Id. CIT(A) proceeded to disallow the sum of Rs.1,00,000/- thereof, as against the disallowance made by the Id. AO. Against this, the assessee did not prefer any appeal before this Tribunal.

7.3. With regard to Buyer Entertainment Expenses, as against the claim of Rs.13,542/- towards expenditure incurred during the year, the Id. CIT(A) disallowed Rs.30,000/- as against the disallowance made by the Id. AO. Against this, the assessee did not prefer any appeal before this Tribunal.

8. Aggrieved, the revenue is in appeal before us.

9. We have heard rival submissions. It is not in dispute that assessee had claimed certain expenditure on deferred revenue basis in five equal instalments. We find that the Id CITA had accepted to this claim of deferred revenue basis in principle. We also find that in any case, there is no scope for disallowing the expenditure actually incurred in A.Yrs. 2007-08 and 2008-09, wherein 20% portion is being claimed as deduction during the year under consideration, as expenditure were accepted as genuine in those two years i.e., in the years of incurrence. The assessee had given complete break-up of deferred revenue expenses which are also enclosed in page 52 of the paper book. The assessee has submitted the details of tour and travelling expenses at page 53 of the paper book

mentioning the various details regarding the purpose of visit, place of visit etc. The assessee has also submitted the list of parties who visited the foreign countries in page 55 of the paper book together with the list of customers who had been met thereof etc. We find that the assessee has also submitted the sample bills with regard to the incurrance of aforesaid travelling expenses which are enclosed in pages 56-63 of the paper book. When all these details are available on record, there would be no scope for any disallowance without rejection of books of accounts after finding any defects in the said books of accounts. However, the Id. CIT(A) had disallowed a sum of Rs.75,000/- as against the claim of Rs.1,66,444/- towards the tour and travelling expenses on an adhoc basis, against which the assessee is not in appeal before us. Hence, we do not deem it fit to interfere with the said order of the Id. CIT(A).

9.1. With regard to Sampling Expenses, we find that assessee has submitted the entire details of the same in page 67 of the paper book together with all the relevant bills which are enclosed in pages 69-83 of the paper book. We also find that assessee has also submitted the courier bills in pages 84-91 of the paper book which are admittedly incurred for transportation of these goods on sampling basis. In the instant case, the Id. AO had accepted the transportation of goods in the form of courier charges as genuine but had apparently disputed the cost of goods itself i.e. sampling expenses, which in our considered opinion, is unwarranted. Hence, the Id. CIT(A) was right in deleting the entire disallowance of sampling expenses made in the sum of Rs.2,48,217/-.

9.2. With regard to Exhibition Expenses, we find that the details of the same are enclosed in pages 92 and 93 of the paper book and we also find from the debit note raised by J.K.Footwear Pvt. Ltd. on 20/10/2009

which is enclosed in page 93 of the paper book, there is a specific mention that J.K.Footwear Pvt. Ltd. had incurred a sum of Rs.3 lakhs by making the payment to the Council for Leather Exports, Government of India, for conducting Grad Fair Stall Exhibition from 16/01/2010 to 19/01/2010, occupying the space of 20 sq.mtr in the stall. Out of that, as per the mutual agreement between assessee and J.K.Footwear Pvt. Ltd., 70% of the said cost of Rs.3 lakhs is to be borne by the assessee, for which a debit note for Rs.2,10,000/- was raised by J.K.Footwear Pvt. Ltd. Hence this goes to prove that it is cost to cost reimbursement and there is no element of profit thereon, accordingly, we hold there is no requirement of deduction of tax at source on the said payment. With regard to charges paid in EURO 1448.35 to Exyprom S.L. Spain amounting to Rs.99,140/- for conducting exhibition abroad, the said exhibition was conducted abroad and payments were made for the same. Hence, there cannot be any requirement for deduction of tax at source on the said payment as services were rendered outside India and consequently no disallowance u/s.40(a)(i) of the Act is warranted. However, we find that the assessee has claimed the deduction of Rs.61,828/- only under the head 'Exhibition Expenses' in respect of amount spent during the year, whereas the Id. CIT(A) had disallowed the sum of Rs.1,00,000/- on that account. Since the assessee has not contested this issue by filing an appeal before us against the order of Id. CIT(A), we do not deem it fit to interfere with the order of the Id. CIT(A) with regard to his decision on Exhibition Expenses.

9.3. With regard to Buyer Entertainment Expenses, we find that this is nothing but the monthly sum paid to an employee who is stationed in Kolkata @ Rs.5,500 per month. We find the assessee had claimed only a sum of Rs.13,542/- as deduction in respect of amount spent during the

year, whereas the Id. CIT(A) had disallowed the sum of Rs.30,000/- thereon. Since the assessee has not contested this issue by filing an appeal before us against the order of Id. CIT(A), we do not deem it fit to interfere with the order of the Id. CIT(A) with regard to his decision on Buyer Entertainment Expenses.

10. Accordingly, the ground Nos.1 (a) and 1(b) raised by the revenue are dismissed.

11. The next ground to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the disallowance made in the sum of Rs.1,36,944/- u/s.40(a)(i) of the Act in the facts and circumstances of the case in respect of payments made to foreign parties.

11.1. We have heard the rival submissions. At the outset, we find that the Id. AO observed that assessee had made certain payment to foreign party M/s. Impo Regalos Publicitarios, Spain towards freight and forwarding charges amounting to Rs.1,36,944/-. The Id. AO accepted the explanation of the assessee that these are mere reimbursement of expenses but however, held that assessee ought to have deducted tax at source on the same. Accordingly, he made disallowance of the said expenditure u/s.40(a)(i) of the Act. The Id. CIT(A) deleted the disallowance on the ground that these are mere reimbursement of expenses made to a foreign party and not a contractual payment and hence, there is no liability to deduct tax at source on the same. We find from details of payment of expenses made to the aforesaid party which are enclosed in page 99 of the paper book that there is a clear note written in the said detail which is also filed before the Id. AO. The said note reads as under:-

*“We shipped goods to sedisa & Impo Regalos (Both are sister concern) under our Inv No KI-987, KI-994 & KI-997, which is full container load of 20 fitter (FCL) total 227 Ctns, but for overside from our side we shipped cargo individually (LCL) in one vessel. Due to this our buyer incurred additional cost to clear goods in part, which he asked reimbursement from us. We agree for this and reimburse the same through banking channel.”*

The aforesaid note is also supported by the relevant documents in the form of email correspondence and the various invoices to support the claim of the assessee that it only represents mere reimbursement and the assessee had actually reimbursed the exact foreign currency amount incurred by the said party on cost to cost basis without any profit element. These evidences are enclosed in pages 102 and 103 of the paper book. It is now well settled by the decision of the Hon'ble Supreme Court in the case of DIT (International Transaction) vs. AP Moller Maersk reported in 392 ITR 186 (SC) wherein it has been categorically held that if there is no profit element embedded in payments and if the payments are mere reimbursement and expenses, there would be no requirement of deduction of tax at source as there would be no income chargeable to tax in India in the hands of the said non-resident. Similar view was also taken by the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Zee Entertainment Expenses Ltd. reported in 254 taxman 370 (Bom). In view of the aforesaid observations and respectfully following the aforesaid judicial precedents, we hold that the Id. CIT(A) was justified in deleting the disallowance of Rs.1,36,944/- and accordingly, the ground No.2 raised by the revenue is dismissed.

12. The next issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the disallowance of packing expenses to the tune of Rs.19,91,573/- in the facts and circumstances of the case.

12.1. We have heard the rival submissions. We find that the assessee has debited packing expenses of Rs.19,91,573/- in the profit and loss account and assessee was show-caused as to why the same should not be disallowed for non-deduction of tax at source. The assessee replied that the same represents purchase of packing boxes covered by Sale of Goods Act and is not a contract of packing and hence, the provisions of Section 194C are not applicable. The assessee also submitted the party wise details of packing along with copy of bills before the Id. AO. The Id. AO observed that the name of the assessee company is embossed on the packing material and the material is made to order. The Id. AO observed that the payment of VAT and works contract tax or any other special tax does not alter the nature of work done by the supplier and is therefore, covered within the ambit of Section 194C of the Act. Hence for non-deduction of tax at source, the Id AO proceeded to disallow the same u/s.40(a)(ia) of the Act. The Id. CIT(A) accepted the contentions of the assessee that these are mere purchase of packing material and there is no contractual payment included thereon and hence, it is outside the ambit of provisions of Section 194C of the Act. Accordingly, he deleted the disallowance made by the Id. AO. We find that there is no dispute that the aforesaid expenses of Rs.19,91,573/- represent purchase of packing materials on which VAT is suffered by the assessee. There are also some purchases which are made through 'C' form or 'H' form which also indicate purchase of materials. These are evident from the bills enclosed in the paper book. These are only tailor made packing materials purchased by the assessee and hence, would not fall within the definition of a work as evident u/s.194C of the Act. We hold that the Hon'ble Jurisdictional High Court in the case of BDA Ltd., vs. ITO reported in 281

ITR 99 (Bom) had addressed the similar issue. The question before the Hon'ble Bombay High Court was as under:-

- (a) *“Whether the supply of printed lables by M/s. Mudranika to the assessee amounted to contract for sale, or works contract?”*

The Hon'ble Jurisdictional High Court in the case of BDA Ltd., vs. ITO reported in 281 ITR 99 had held as under:-

*“13. It is not disputed that, M/s. Mudranika is an independent establishment engaged in the business of supplying printed packaging material to various establishments, and it is not a captive unit of the assessee. The assessee had issued a purchase order in favour of M/s. Mudranika for supply of printed labels as per the specifications provided by it, and the raw materials required for the same were not supplied by the assessee. M/s. Mudranika has been supplying such printed labels to other establishments as per their respective specifications. The printing work was not being carried out in the premises of the assessee. This supply of printed labels cannot be compared and equated with the supply of printed question papers to universities and educational institutions. M/s. Mudranika would not print such labels with the specifications of the assessee beyond the quantity specified in the purchase order, and therefore, it was wrong on the part of the Tribunal to hold that, the labels printed by M/s. Mudranika to supply to the assessee could not be sold to any other establishments in the market. This finding regarding no marketability is based on a fallacious premise that, M/s. Mudranika was printing an unlimited number of labels. When the printing work was being carried in the premises of M/s. Mudranika, though as per the specifications of the assessee, the supply was limited to the quantity specified in the purchase order and it would not do such printing beyond the numbers specified in the same. There is nothing on record to show that, all other ancillary costs like the labels, ink, papers, screen-printing, screens, etc., were being supplied by the assessee to M/s. Mudranika. In the facts of this case, the supply of printed labels by M/s. Mudranika to the assessee was a "contract of sale" and it could not be termed as a "works contract". The Tribunal has rightly held in the case of Wadilal Dairy International Limited [2002] 81 ITD 238 (Pune) that, the supply of printed packing labels amounted to a "sale contract" and not a "works contract", and the same ratio is applicable in the instant case, as well. The single Bench of the Tribunal thus fell in gross error in holding that, the subject transaction was a "works contract", and therefore TDS was required to be deducted by the assessee under [Section 194C](#) of the Act.”*

12.2. Respectfully following the said decision which are squarely applicable to the facts of the instant case before us, we hold that the Id. CIT(A) was justified in deleting the disallowance made in the sum of Rs.19,91,573/- towards packing charges and accordingly the ground No.3 raised by the revenue is dismissed.

13. The next issue to be decided is with regard to disallowance of commission expenses deleted by the Id. CIT(A) to the tune of Rs.3,34,000/-.

13.1. We have heard the rival submissions. We find that the assessee had made payment of Rs.3,34,000/- towards export commission to a foreign party. The details of the same were duly filed before the lower authorities, which is not in dispute. This is nothing but an export commission paid to a party outside India by the assessee. We hold that services are not rendered in India and instead they were rendered outside India. Hence, the income does not accrue or arose in India. It is not in dispute that the assessee is a 100% exporter and had to incur export commission to various parties for procuring business outside India. We find that the Id. AR before us placed reliance on the Co-ordinate Bench decision of this Tribunal in the case of ACIT vs. Pahilajrai Jaikishin reported in 157 ITD 1187 (Mum Trib.) dated 01/02/2016 wherein it has been categorically held that export commission payment made to foreign broker for rendering services abroad are not chargeable to tax in India in the hands of the said foreign broker and hence, there is no requirement of deduction of tax at source on the said payment. In view of the aforesaid observations and respectfully following the said decision, we hold that the Id. CIT(A) had rightly granted relief to the assessee in this regard and accordingly, ground No.4 raised by the revenue is dismissed.

14. The ground No.5 raised by the revenue is with regard to deletion of interest expenditure in the sum of Rs.11,96,528/- by the Id. CIT(A).

14.1. We have heard the rival submissions. We find that the Id. AO observed that the assessee has shown investment in joint venture of Rs.70,25,000/-. The Id. AO also observed that assessee had secured loan of Rs.2,70,58,777/- and unsecured loan of Rs.1,25,00,935/- and financial expenses claimed was Rs.51,18,210/- in the profit and loss account. The Id. AO observed that no business nexus was proved by the assessee with regard to the investment in joint venture and no income was offered by the assessee from the said investment. Accordingly, the Id. AO concluded that the assessee had diverted its borrowed funds for making investment in joint venture, which in his opinion, is for non-business purpose. Accordingly, he proceeded to make disallowance of proportionate interest thereon. We find that the assessee submitted the break-up of interest and bank charges as under:-

|   |   |                |
|---|---|----------------|
| (i) Bank Charges                                    | - | Rs. 9,05,832/- |
| (ii) Interest paid on term loan from bank           | - | Rs.18,28,129/- |
| (iii) Interest paid on bank loans(working capital)- |   | Rs.16,09,903/- |
| (iv) Interest paid on other loans                   | - | Rs.7,74,346/-  |
|   |   | -----          |
| Total   |   | Rs.51,18,210/- |
|   |   | =====          |

14.2. The assessee had submitted that out of the total interest paid, it had claimed deduction of Rs.23,84,249/- (16,09,903 + 7,74,346) as interest in computing the business income. The assessee also submitted that it had claimed Rs.18,28,129/- as deduction while computing income

from house property. We find that the Id. AO had observed that assessee had claimed interest expenditure to the tune of Rs.11,96,528/- which in his opinion is to be treated as capital expenditure and accordingly disallowed the same as inadmissible expenditure u/s.37(1) of the Act. The Id. CIT(A) deleted the disallowance.

14.3. We find that the deduction of interest paid by the assessee in the sum of Rs.16,09,903/- towards working capital loans and the interest on other loans of Rs.7,74,346/- totalling to 23,84,249/- which had been claimed as deduction while computing business income of the assessee had been allowed by the Id. AO. Now, the short point in dispute is with regard to interest paid on term loan from bank. We find from page 137 of the paper book that assessee had paid total interest on term loan to various banks as under:-

|                              |   |                |
|------------------------------|---|----------------|
| (i) Bank of India            | - | Rs.11,96,528/- |
| (ii) Standard Chartered Bank | - | Rs. 2,70,949/- |
| (iii) Barclays Bank          | - | Rs. 3,60,652/- |
|                              |   | -----          |
| Total                        |   | Rs.18,28,129/- |
|                              |   | =====          |

14.4. Out of this, the dispute is only with regard to interest paid on term loan to Bank of India in the sum of Rs.11,96,528/-. We find that the entire sum of Rs.18,28,129/- has been disallowed by the assessee voluntarily in the memo of income while computing income under the head 'profits and gains of business and profession'. We also find from the memo of income which is enclosed in page 3 of the paper book that assessee has claimed this sum of Rs 18,28,129/- as deduction u/s.24 under the head of income from house property, which has been accepted

by the Id. AO while computing total income of the assessee. Hence there is no case of the Id. AO making any disallowance of interest in the sum of Rs.11,96,528/- in the facts and circumstances of the case under the head 'income from business'. Accordingly, the ground No.5 raised by the revenue is dismissed.

15. The last issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in deleting the purchases of Rs.1,50,22,326/- in the facts and circumstances of the case.

15.1. The brief facts of this issue are that the Id. AO issued notice u/s. 133(6) of the Act to certain purchase parties which were returned back by the lower authorities. Few parties however, confirmed the purchases before the Id. AO. The Id. AO however, observed that the purchases made from certain parties could not be treated as genuine and accordingly, treated the same as bogus and fictitious purchase and made disallowance of Rs.1,50,22,326/- in the assessment. The assessee submitted before the Id. CIT(A) that it had filed detailed statement of the entire purchases vis-à-vis related sales thereon. In other words, their purchases and sales were completely co-related by the assessee. The assessee also submitted the details for sales made by it together with copies of bank certified invoices along with certificate of export realisation. These invoices also specify the details of material exported by the assessee, giving type of goods and its description. It was pleaded by the assessee that the Id. AO had disbelieved the purchases to the tune of Rs.1,50,22,326/- but had taxed the sales realisation made out of such purchases. The Id. CIT(A) deleted the disallowance by observing as under:-

*“10.3 I have carefully considered the facts of the case, the submissions of the appellant and order of the Assessing Officer. It is noted that the A.O. had treated the purchases made by the appellant to be bogus. The appellant has vehemently opposed the addition and has submitted that assessee is an exporter and has maintained full record of purchase against export invoices for which sales proceeds were realized in foreign currency. It is submitted that entire sales proceeds were certified to have been received by banks. Further it is submitted that all purchases were paid for through banking channel and auditors have not made any adverse comments about these purchases. It is . noted that assessee is an exporter who purchased goods from vendors across different cities and made payment by cheque. These purchases are then packed and exported on which foreign exchange payments are received through '- banking channel. Once the sales are established and purchase are paid through banking channel there is little scope to doubt the purchases. It appears that Ld. A.O. has not appreciated these facts fully and has disallowed purchases only without disturbing the sales. It is noted that Ld. A.O. has not established any purchase to be bogus by any enquiry. The only doubt which the A.O. had was about mismatch of dates of invoice of purchase and documents given for export which has been explained by the assessee to be due to the export documentation procedure which the assessee has been following since long and no such disallowance was ever made in earlier or subsequent years. It is also pertinent to note that all purchases were exported and export proceeds were received through banking channel duly certified by the banks. Having regard to facts of the case it is noted that the addition made by A.O. is without much basis and cannot be sustained in appeal and is directed to be delete Accordingly this ground of appeal is **allowed**. “*

15.2. Aggrieved, the revenue is in appeal before us.

15.3. We have heard the rival submissions. We find that the Id. AO had pointed out certain difference in dates of despatch of goods and dates of purchase of goods. In effect, the allegation of the Id. AO is that the date mentioned in the export invoice is prior to the date of purchase of goods by the assessee. Accordingly, the purchases made thereon were treated as ingenuine. We find in this regard that assessee had produced the entire books of accounts alongwith purchase bills, sales bills, bank

realisation certificates, bank statements and export documents such as commercial invoices, packing list, bill of lading, GSP form 'A', insurance certificate, exchange control copy, EP copy, SDF form, MAT receipt and FIRC. The assessee also duly explained the mismatch of date of purchase and sales in the form of a separate statement showing bill wise details of mismatch thereon.

15.4. We find that the assessee had explained the entire modus operandi / procedure for export of goods before the Id AO as under:-

*“As informed to your good office earlier, we are 100% trade exporter and are purchasing the goods only against confirm sales order from our overseas customer. We are purchasing the goods from our regular supplier with whom we are, dealing since many years. In case of export of goods we are initially preparing a copy of custom invoice which contains all the details of the goods proposed to be exported except BL number and date. Out of the 3 copies of custom invoice one copy goes to our customer as pre shipment intimation, 2<sup>nd</sup> copy goes to our clearing agent for completing pre-shipment custom formalities and 3<sup>rd</sup> copy of goes to forwarder (International transporter) nominating by our buyer. After completing the pre-shipment custom formalities our clearing agent upload the shipping bill on custom department portal and thereafter custom department issue shipping bill number which conforms that pre shipment formalities are completed. It is only after date completing the custom formalities we prepare the commercial invoice keeping the date same as per custom invoice which contain all details as mention in custom more than 2 to 3 weeks as this involves the overseas buyers, clearing agent and international forwarder, each one of them take their own time for approval /processing. After safe and proper shipment of full lot we request our supplier to prepare the final invoice.”*

15.5. We find that the assessee had also specifically explained the reasons for difference in dates before the Id AO as under:-

**Reason for difference in date:**

*1) As explained above custom invoice is prepared initially before shipment and then commercial invoice is prepared, but we cannot change the date*

*and which has to be same as mentioned in the custom invoice. Our suppliers invoice us only after clearance of full lot and shipment of goods.*

*2) We normally make the payment to our supplier through Bank Inland letter of Credit in that case they issue the invoice after approval of goods by our buyer final destination, So that proper financial discipline can be maintained.*

15.6. We find that the Id. AO had also observed that with regard to the quantitative tally of goods purchased and sold which were co-related by the assessee, the physical tally of the quantities does not prove the genuineness of the purchases particularly when the evidences gathered does not authenticate the same. This statement of the Id. AO apparently goes to prove that assessee had indeed correlated each and every sale together with its related purchases. We find that assessee had submitted before the Id. CIT(A) that in respect of each of the purchases which were the subject matter of disallowance by the Id. AO, copy of purchase invoice, sale invoice, copy of air way bill for export, invoice copy of clearing agents bill handling export, particulars about goods delivered to the port and confirmation from supplier party wise. The assessee had also brought on record before the Id. CIT(A) that the Id. AO had erred in making disallowance of Rs.25,33,851/- in respect of five parties where the date of purchase invoices and sale invoices are comparable and no mismatch thereon could be seen. The assessee also submitted before the Id. CIT(A) that the Id. AO had adopted wrong amounts towards value of

purchases in respect of four items totaling to Rs.20,76,683/- . We find that the assessee had submitted the following detailed statement containing all the relevant details together with the fact of proving the goods being delivered to the port / customs area prior to the date of export as under:-

Keema Impex Pvt.Ltd.

Detail Statement of disallowed Purchase for the accounting year 2009-10

| S No | Purchase |       |          |          |               |          | Name of Supplier      | ITEM Purchase     | QUANTITY   | Value of Quantity Purchase | ITO Disallowed Amount | Excess/ Wrong Disallow | Paid By | Sales       |           | Sales Invoice No | BL Date  |
|------|----------|-------|----------|----------|---------------|----------|-----------------------|-------------------|------------|----------------------------|-----------------------|------------------------|---------|-------------|-----------|------------------|----------|
|      | B NO     | PR No | Date     |          | Custom Inward |          |                       |                   |            |                            |                       |                        |         | Shipment By | From      |                  |          |
|      |          |       | Nvoice   | Challan  | Vehicle No    | Dated    |                       |                   |            |                            |                       |                        |         |             |           |                  |          |
| 1)   | 2        | 14    | 22.04.09 | 16.04.09 | MH-43 F 6064  | 16.04.09 | Vijay Leather Co      | Leather Sandal    | 490 Pair   | 213150                     |                       | Chq/LC                 | Air     | Mumbai      | KI-1050   | 16.04.09         |          |
| 1A)  | 2        | 14    | 22.04.09 | 21.04.09 | MH-04-BU 5439 | 21.04.09 | Vijay Leather Co      | Leather Sandal    | 1010 Pair  | 439350                     | 652500                | Chq/LC                 | Air     | Mumbai      | KI-1051   | 21.04.09         |          |
| 2)   | 12       | 64    | 24.07.09 | 16.06.09 | MH-04 BU 9428 | 20.06.09 | Lotus Chem            | Leather Wallets   | 3000 Pcs   | 598643                     | 598643                | 0                      | ILC     | Sea         | JNPT      | KI-1055          | 22.06.09 |
| 3)   | 3        | 66    | 28.07.09 | 20.07.09 | RJ-05-G3592   | 20.07.09 | J K Footwear          | Leather Shoes     | 2265 Pair  | 985275                     | 985275                | 0                      | ILC     | Sea         | JNPT      | KI-1063          | 21.07.09 |
| 4)   | 21       | 95    | 28.08.09 | 11.08.09 | MH-04CP 1681  | 17.08.09 | Lotus Chem            | Leather Articles  | 6500 Pcs   | 818265                     | 818265                | 0                      | ILC     | Sea         | JNPT      | KI-1065          | 20.08.09 |
| 5)   | 26       | 102   | 01.09.09 | 16.08.09 |               |          | Lotus Chem            | Leather Ladies B  | 1650 Set   | 834875                     | 834875                | 0                      | ILC     | Sea         | Kolkata   | KI-1066          | 19.08.09 |
| 6)   | 7        | 106   | 04.09.09 | 16.08.09 |               |          | SnS International     | Leather Ladies B  | 450 Set    | 222750                     |                       | Chq                    | Sea     | Kolkata     |           |                  |          |
|      | 7        | 106   | 04.09.09 | 16.08.09 |               |          | SnS International     | Leather Ladies B  | 400 Set    | 209000                     | 571000                | 139250                 | Chq     | Sea         | Kolkata   | KI-1068          | 26.08.09 |
| 7)   | 2        | 111   | 06.09.09 | 27.08.09 | MH-04CG 9590  | 27.08.09 | Swad                  | Tobacco Pouch     | 1000 Pcs   | 113700                     | 1103700               | 990000                 | Chq     | Sea         | JNPT      | KI-1069          | 31.08.09 |
| 8)   | 28       | 161   | 05.11.09 | 04.09.09 |               |          | Lotus Chem            | Leather Wallets   | 4440 Pcs   | 695280                     | 695280                | 0                      | ILC     | Air         | Kolkata   | KI-1076          | 08.09.09 |
| 9)   | 29       | 132   | 03.10.09 | 12.09.09 | MH-04BU 9428  | 18.09.09 | Square S Internationa | Organic Cotton Be | 8570 Pcs   | 514200                     | 514200                | 0                      | Chq/LC  | Sea         | JNPT      | KI-1077          | 25.09.09 |
| 10)  | 32       | 148   | 23.10.09 | 16.09.09 | MH-06L 4712   | 19.09.09 | Lotus Chem            | Leather Bag       | 350 Pcs    | 173250                     |                       | 0                      | ILC     | Sea         | JNPT      | KI-1080          | 19.09.09 |
|      | 32       | 148   | 23.10.09 | 16.09.09 |               |          | Lotus Chem            | Leather Wallets   | 350 Pcs    | 0                          | 475750                | 0                      | ILC     | Sea         | JNPT      |                  |          |
|      | 32       | 148   | 23.10.09 | 16.09.09 |               |          | Lotus Chem            | Leather Wallet    | 1500 Pcs   | 302500                     |                       | 0                      | ILC     | Sea         | JNPT      |                  |          |
| 11)  | 31       | 180   | 19.11.09 | 16.09.09 |               |          | Lotus Chem            | Leather Articals  | 5280 Pcs   | 963490                     | 963490                | 0                      | ILC     | Air         | Kolkata   | KI-1081          | 22.09.09 |
| 12)  | 9        | 158   | 27.10.09 | 14.10.09 |               |          | SnS International     | Jute Bag          | 500 Pcs    | 20000                      | 20000                 | 0                      | Chq     | Sea         | JNPT      | KI-1085          | 20.10.09 |
| 13)  | 12       | 171   | 12.11.09 | 04.11.09 |               |          | SnS International     | Non Woven Bag     | 22000 Pcs  | 254250                     | 254250                | 0                      | ILC     | Sea         | JNPT      | KI-1086          | 10.11.09 |
| 14)  | 11       | 192   | 07.11.09 | 06.11.09 |               |          | SnS International     | Cotton Bag        | 500 Pcs    | 122500                     |                       | 0                      | Chq     | Air         | Kolkata   | KI-1087          | 06.11.09 |
|      | 11       | 192   | 07.11.09 | 06.11.09 |               |          | SnS International     | Leather Belt      | 360 Pcs    | 106200                     | 228700                | 0                      | Chq     | Sea         | Kolkata   |                  |          |
| 15)  | 265      | 174   | 16.11.09 | 16.11.09 |               |          | Faizan Export         | Leather Coin Purs | 13000 Pcs  | 152750                     |                       | 152750                 | Chq     | Air         | Delhi     | KI-1089          | 17.11.09 |
|      | 265      | 174   | 16.11.09 | 06.11.09 | MH-02 XA 5870 | 06.11.09 | Faizan Export         | Leather Coin Purs | 12000 Pcs  | 141000                     | 436250                | 142500                 | Chq     | Air         | Mumbai    | KI-1090          | 06.11.09 |
| 16)  | 108      | 310   | 29.03.10 | 18.09.09 |               |          | Spellbound            | Colour Paper She  | 570 Pcs    | 10855                      | 815788                | 804933                 | Chq     | Sea         | JNPT      | KI-1093          | 17.12.09 |
| 17)  | 43       | 239   | 19.01.10 | 26.12.09 |               |          | Lotus Chem            | Leather Wallets   | 6500 Pcs   | 1143475                    | 1143475               | 0                      | ILC     | Sea         | JNPT      | KI-1099          | 30.12.09 |
| 18)  | 45       | 261   | 19.02.10 | 01.01.10 |               |          | Lotus Chem            | Leather Article   | 10490 Pcs  | 1499710                    | 1499710               | 0                      | ILC     |             | Kolkata   | KI-1101          | 02.01.10 |
| 19)  | 210      | 264   | 23.02.10 | 23.02.10 |               |          | S V M Textile         | Cotton Bag        | 100000 Pcs | 1235400                    | 1235400               | 1235400                | ILC     | Sea         | Tuticorin | KI-1113          | 26.02.10 |
| 20)  | 60       | 292   | 05.03.10 | 05.03.10 |               |          | Lotus Chem            | Leather Article   | 4000 Pcs   | 880575                     | 880575                | 880575                 | ILC     | Sea         | Kolkata   | KI-1117          | 16.03.10 |
| 21)  | 130      | 299   | 13.03.10 | 13.03.10 |               |          | Perfect Packaging     | Card Board Bags   | 200 Pcs    | 10936                      |                       | 157126                 | Chq     | Air         | Kolkata   | KI-1121          | 06.03.10 |
|      | 130      | 299   | 13.03.10 | 13.03.10 | MH-04 CU 3345 | 15.03.10 | Perfect Packaging     | Card Board Bags   | 350 Pcs    | 19138                      | 187200                |                        | Chq     | Air         | Mumbai    | KI-1124          | 18.03.10 |
| 22)  | 22       | 314   | 25.03.10 | 25.03.10 |               |          | Leder Design Inter    | Leather Wallets   | 450 Pcs    | 108000                     | 108000                | 108000                 | Chq     | Air         | Kolkata   | KI-1126          | 06.04.10 |
|      |          |       |          |          |               |          |                       |                   |            | 12788517                   | 15022326              | 4610534                |         |             |           |                  |          |

15.7. We find that in support of the aforesaid table, the entire evidences are enclosed from pages 144 to 364 of the paper book. We also found from page 177 of the paper book that one of the suppliers had given confirmation to the fact that the goods were supplied at the customs warehouse on a particular date which is prior to the date of export made

by the assessee. It is pertinent to note that this party was also included in the list of purchases that were disallowed by the Id. AO. The entire payments for purchases for all the parties were made through inland letter of credit and all the purchases are indeed genuine and duly supported by their confirmation which is filed before the lower authorities. We find that the Id. AO had not appreciated these documentary evidences and had proceeded to disallow the purchases with pre-conceived notion. We also find that assessee had duly explained the mismatch in dates by explaining the modus operandi and procedure for export of goods before the Id. AO which had not been appreciated. We find that the entire exports given by the assessee are supported by documentary evidences which are enclosed in pages 144 -364 of the paper book. We find that in the instant case, the Id. AO had disbelieved the records of the assessee as well as the records of the customs department. We also find that the Id. AO had merely stated that some parties had not responded to the notices issued u/s.133(6) of the Act and he had not mentioned the parties who had not responded to the notice and what is the value of purchases made from them.

15.8. We find that assessee had placed on record the quantitative tally of purchases relating the same with its corresponding sales, which fact has been duly acknowledged by the Id. AO in his assessment order but had

been ignored by him on the ground that the same would not prove the genuineness. We are unable to persuade ourselves to appreciate this contention of the Id. AO. The assessee could only place stock reconciliation duly supported by entries recorded in his stock register, payments made through inland letter of credit through banking channel, evidences proving the delivery of goods by the supplier at the relevant customs area, evidences of the customs department acknowledging the receipt of goods and then allowing the said goods to be exported, export realization proceeds, being received within due time from the relevant customer. When all these documents are staring on us, it is not warranted on the part of the Id. AO to simply disbelieve all these documents including the records of the customs department and disallow the purchases. It is not in dispute that the export sales have been duly accepted by the Id. AO and purchases have been made by making payment through inland letter of credit and the documentary evidences clearly prove that the goods had been delivered by the supplier to the customs area prior to the date of export and hence all the allegations levelled by the Id. AO in his order deserve to be dismissed. Accordingly, we find that the Id. CIT(A) had duly appreciated these contentions of the assessee and had rightly deleted the disallowance in this regard. Accordingly, the ground No.6 raised by the revenue is dismissed.

**16. In the result, appeal of the revenue is dismissed and Cross  
Objection of the assessee is dismissed as not pressed.**

Order pronounced in the open court on this 10/07/2019

**Sd/-**  
**(AMARJIT SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

Mumbai; Dated 10/07/2019  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai