

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, □□□□ □□□□□ के समक्ष
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.2116, 2117 & 2118, 2119, 2120/Chny/2019
निर्धारण वर्ष /Assessment Years: 2008-09, 2009-10, 2010-11 & 2011-12

M/s. e2e Supply Chain Solutions Ltd.,
4th Floor, East Coast Centre,
534, Anna Salai,
Teynampet,
Chennai – 600 018
[PAN: AABCE 7932P]

The Assistant Commissioner of
Income Tax,
Vs. Corporate Circle – 2(1),
Chennai – 600 034

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr. S. Sridhar, Advocate

प्रत्यर्थी की ओर से /Respondent by

: Ms. R. Anitha , JCIT

सुनवाई की तारीख/Date of Hearing

: 25.11.2019

घोषणा की तारीख /Date of Pronouncement

: 25.11.2019

आदेश / O R D E R

PER SHRI GEORGE MATHAN, JUDICIAL MEMBER :

These are appeals filed by the assessee directed against the consolidated order of the learned Commissioner of Income Tax (Appeals)-9, Chennai (hereinafter called as 'CIT(A)') in ITA Nos.56 (2013-14), 52 (2011-12, 56 (2014-15), 57 (2013-14) and 55 (2014-

15)/CIT(A)-9 dated 27.06.2019 for the assessment years 2008-09, 2009-10, 2010-11 & 2011-12.

2. Shri S. Sridhar, Advocate represented on behalf of the Assessee and Ms. R. Anitha, JCIT represented on behalf of the Revenue.

3. In I.T.A. No.2116/Chny/2019 for the assessment year 2008-09, the assessee has challenged the action of the learned CIT(A) in confirming the disallowance representing the cash payments made to the freight vendors by applying the Provision of Section 40A(3) of the Act. In Ground No.3, the assessee has challenged the action of the learned CIT(A) in confirming the disallowance in respect of the payment made to the freight vendors on account of non-availability of the freight vendor at the respective addresses and in Ground No.4, the assessee has challenged the action of the learned CIT(A) sustaining the disallowance representing the payments made to the freight vendors based on the postal remarks and respective verification letter sent. In Ground No.5, the assessee has challenged the disallowance being made to the freight vendor on account of their denial of receiving payment. Ground No.6, the assessee has challenged the action of the learned CIT(A) in confirming the disallowance in respect of the difference in the payments as claimed by the assessee and the confirmation received from the freight vendors. Ground No.7 to 16 are supportive grounds.

4. In I.T.A. No.2117/Ch2019 for the Assessment Year 2009-10, the assessee has challenged the action of the learned CIT(A) in confirming the reopening of the assessment as also in sustaining the addition representing the amounts paid to M/s. Twinkle Vanijya P. Ltd., and M/s. Sunlight Agency P. Ltd., which have been made by the Assessing Officer on the basis of a statement recorded from Shri Abhishek Chokhani, an accommodation entry operator at Kolkata. In I.T.A. No.2118/Chny/2019 for the Assessment Year 2009-10, the assessee has challenged the action of the learned CIT(A) in sustaining the disallowance being the cash payments made to the freight vendors on account of the applicability of Section 40A(3) of the Act. In Ground No.3, the assessee has challenged the action of the learned CIT(A) in confirming the disallowance representing the payments made to the freight vendors on account of non-availability of the said freight vendors. Other grounds raised by the assessee are general in nature. In I.T.A. No.2119/Chny/2019 for the Assessment Year 2010-11, in Ground No.2, the assessee has challenged the disallowance sustained by the learned CIT(A) representing the cash payments made to the freight vendors by invoking the Provision of Section 40A(3) of the Act. In Ground No.3, the assessee has challenged against the confirmation of the disallowance representing the payments made to the freight vendors in view of the non-availability of the freight vendors and in Ground No.4, in respect of the denial by the freight vendors on receipt of payment and in Ground No.5 on account of the difference in the payment confirmation received and Ground Nos.6 to 14 are

general in nature. In I.T.A. No.2120/Chny/2019 for the Assessment Year 2011-12, in Ground No.2, the assessee has challenged the action of the learned CIT(A) in confirming the disallowance being the payments made to the freight vendors on account of the genuineness of the payment claimed.

In I.T.A. No.2117/Chny/2019 in respect of the reopening of the assessment, it was submitted by the learned Authorized Representative that the reopening has been done by the Assessing Officer by placing reliance on the statement recorded by one Shri Abhishek Chokhani who is claimed to be an accommodation entry operator. It was a submission that the statement of Shri. Abhishek Chokhani was not provided to the assessee nor was the said Shri. Abhishek Chokhani given to the assessee for cross-examination.

5. The learned Authorized Representative drew our attention to pages 94 to 102 of the paper book which was the copies of the invoices raised by M/s. Sunlight Agency P. Ltd., at Kolkata along with the list of the details of the Goods Consignment Number (GSN), Challans, the Date of loading, Vehicle No., etc. The learned Authorized Representative further drew our attention to page-103 to 106 of the paper book which being the invoices raised by M/s. Twinkle Vanijya P. Ltd. Admittedly, both the agencies have their addresses in Kolkata. The learned Authorized Representative further drew our attention to pages 109 to 111 of the paper book which is a copy of the letter issued by the DVS Advisors LLP, wherein the assessee has specifically mentioned that the reopening of the assessment cannot be made on the basis of the statement recorded by the third parties without furnishing copies of the same. It was a

submission that he had no objection if the issue was restored to the file of the Assessing Officer for granting the assessee the copy of the statement recorded from Shri Abhishek Chokhani before completion of the assessment.

6. In reply, the learned Departmental Representative submitted that it was for the assessee to prove the transactions and the assessee having not proved the transaction, the decision made by the Assessing Officer and as confirmed by the learned CIT(A) is liable to be upheld.

7. We have considered the rival submission and perused the materials available on record.

8. At the outset, the Revenue has not been able to show that the statement recorded from Shri. Abhishek Chokhani has been provided to the assessee for its rebuttal. Admittedly, the principles of natural justice require that if any evidence is going to be considered in an assessment which is against the assessee, then such statement or evidence must be put to the assessee for its rebuttal.

9. In the present case, there has been a violation. This being so, the issues in this appeal are restored to the file of the Assessing Officer for re-adjudication. If the Assessing Officer proposed to rely upon the statement of Shri. Abhishek Chokhani for the purpose of making the disallowance, then he shall provide the copy of the statement recorded from Shri Abhishek Chokhani for cross-examination by the assessee. It is also recognized that the assessee

has claimed the expenditure in respect of the payment made to M/s. Twinkle Vanijya P. Ltd., and M/s. Sunlight Agency P. Ltd. It is also noticed from the assessment order that no documents were produced in respect of the transactions stated to have been made to M/s. Sunlight Agency P. Ltd. The assessee it seems has not responded to the learned Assessing Officer. It is also brought on record that no TDS has been done in respect of the amounts paid to M/s. Twinkle Vanijya P. Ltd. This being so, the issues in this appeals are restored to the file of the Assessing Officer for re-adjudication after granting adequate opportunity to substantiate its claim of the expenditure representing the payments made to M/s. Twinkle Vanijya P. Ltd., and M/s. Sunlight Agency P. Ltd., including, if necessary in producing the persons responsible in respect of the two companies. If the Assessing Officer proposes to take the benefit of the statement recorded from Shri. Abhishek Chokhani for the purpose of making addition, then such statements shall be provided to the assessee for its rebuttal.

10. In the result, the appeal of the assessee in I.T.A. No.2117/Chny/2019 is partly allowed for statistical purposes.

11. In respect of the other four appeals, in respect of the disallowance made by invoking Provision of Section 40A(3) of the Act, it was submitted by the learned Authorized Representative that each of the transactions with each of the freight vendors were separate transactions in respect of each vehicle.

The learned Authorized Representative drew our attention to a chart for each of the Assessment Years, wherein the Vehicle No, the Goods Consignment No., the Cash payment made representing the payment to the drivers and the final payments to the freight vendors were shown. It was a submission that in respect of the said goods consignment bills, separate TDS had been made. The learned Authorized Representative drew our attention to page page-17 of the additional paper book which was a copy of Form-16A representing the TDS, in respect of the Diksha Road Carriers. Page-19 was the copy of the PAN Account No. Page-20 was the copy of the Goods Consignment Note having No.15422, dated 08.07.2008. Page-21 was the Debit Note representing the cash payments made in respect of the said Goods Consignment Note. Page-22 was the Debit Voucher and Page-23 was the bill details wherein the date, vehicle no. items weight, rate, dimension, total contract amount, advance amount, TDS amount and balance due have been specifically shown. It was a submission that each bill was considered as a separate contract and for each bills, TDS has been made and consequently in respect of no contract the cash payment representing the payments to the drivers exceeded to Rs.20,000/-. It was a submission that the assessee has no objection if the issue was restored to the file of the Assessing Officer for verification as to whether any of the payments exceeded to Rs.20,000/-.

12. In reply, the learned Departmental Representative vehemently supported the order of the learned Assessing Officer and the learned CIT(A).

13. We have considered the rival submission and perused the materials available on record.

14. Admittedly, the sample testing shows that the assessee has operated its business by taking on hire trucks from vehicle aggregators who are also identified as the vendor. The assessee is organizing transport of material from the various ports to Barmer and other places. The Goods Consignment Note which is basic note of which the goods move shows that the goods are transferred from Chennai Port or Mundra Port, etc., to various locations. The vehicle no. is mentioned and the product carried is also mentioned. The Goods Consignment Note tallies with the Debit Voucher in respect of the advance payments made to the drivers in cash. The bills from the said M/s. Diksha Road Carriers being the vendor more specifically the transport vehicle aggregator specifies the bills specifically as also the TDS respectively. Thus admittedly, each goods consignment note would have to be considered as separate contract and if the cash payments in respect of each of the contract does not exceed the prescribed limit of Rs.20,000/-, no disallowance by invoking of Provision of Section 40A(3) can be made.

15. The perusal of the assessment order shows that the Assessing Officer has consolidated the payments made to each of the transport aggregators and as the said payments to the drivers representing the transport aggregators cumulatively exceeds Rs.20,000/-, disallowance has been made. This is not permissible. In the circumstances, the issue of disallowance by invoking the Provisions of Section 40A(3) is restored to the file of the Assessing Officer for re-adjudication. The assessee shall link the goods consignment number with the independent TDS deductions to show that each of the said Goods Consignment Nos. are independent contracts on which TDS has been made and if the assessee is able to show separate individual TDS deductions in respect of each of the Goods Consignment Nos., then the Assessing Officer shall treat each of the said Consignment Note as a separate contract and if the payment made in cash in respect of each of the said Goods Consignment Note is within the prescribed limit, then no disallowance by invoking the Provision of Section 40A(3) of the Act is to be made.

In respect of the issue of the non-availability of the vendor at the addresses provided as also on account of the postal remarks, it was submitted by the learned Authorized Representative that the assessee has provided the names and addresses of the various vendors representing the transport aggregators. Their PAN Account details were also provided. It was a submission that Notice u/s.133(6) of the Act had been issued to various vendors and some of the vendors had not responded, whereas some of the vendors have also not received the notices. It was a submission that

consequently, the Assessing Officer disallowed the cash transactions with such vendors. It was a submission that the cash portion of the transactions were basically the transactions done by the assessee when paying the drivers of the vehicle who were transporting the goods. It was a submission that the payments have never been made in cash to the aggregators. It was a submission that the balance payments were always paid by cheques and TDS has also been deducted in respect of such transport aggregators. It was a submission that on the notice issued by the Income Tax Department the transport aggregators were unwilling to provide any of the details. It was a submission that he had no objection if the issue is restored to the file of the Assessing Officer for examination as to whether the PAN No. provided is genuine and that whether the transactions have been recorded by the transport aggregators in their accounts and whether the TDS benefit has been claimed by them.

16. In reply, the learned Departmental Representative vehemently supported the order of the learned Assessing Officer and the learned CIT(A).

17. We have considered the rival submission and perused the materials available on record.

18. Admittedly, it is a fact that the assessee has made payments to various freight vendors being the transport aggregators by cheque. Admittedly, TDS

has also been deducted. The TDS has been made in the name of the various transport aggregators. The PAN details of the aggregators have also been provided to the Assessing Officer. Admittedly, on the basis of the non-response in respect of the Notices issued u/s.133(6) of the Act, the Assessing Officer has drawn adverse inference against the assessee.

When TDS has been made in the name of the said vendors, their PAN details are available, just because the said vendors does not respond to the notices issued by the Assessing Officer, adverse inference should not be directly drawn against the assessee. This being so, the issues in these appeals in respect of non-response to the notices issued u/s.133(6) are restored to the file of the Assessing Officer for re-adjudication. The assessee shall provide the Assessing Officer the details of the PAN Accounts of each of the said aggregators as are required by the Assessing Officer along with the details of the TDS deducted for the respective years and copies of the Form-16A and the addresses as are available with the assessee. The Assessing Officer shall intimate the Assessing Officer of the concerned transport aggregators, as would be readily available from the PAN No, the details of the aggregators to verify as to the amounts claimed to have been paid by the assessee to the aggregators and whether it is recorded in their books and whether the TDS done by the assessee on accounts of those aggregators have been claimed by them. If the same is found to be in conformity, no addition is to be done in the hands of the assessee. If the said verification does not tally with the accounts as provided by the assessee, then it shall be

on the assessee to prove the details of expenses and in the absence of which, the Assessing Officer shall be at liberty to draw adverse inference.

In respect of the issues of the disallowance made in respect of the payments made to the freight vendors on account of denial to have received such payments as also on account of the difference in the confirmation provided by the assessee and as provided by the vendor, these issues are also restored to the file of the Assessing Officer for re-adjudication in line with the issue of verification in respect of such vendors who have not responded to the notices issued u/s.133(6) of the Act. With these directions, the issues in these appeals are restored to the file of the Assessing Officer for re-adjudication.

19. In the result, the appeals of the assessee in I.T.A. No.2116/Chny/2019, I.T.A. No.2118/Chny/2019, I.T.A. No.2119/Chny/2019 and I.T.A. No.2120 are partly allowed for statistical purposes.

Order pronounced in the open Court on 25th November, 2019 in Chennai.

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 25th November, 2019.

IA, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर

आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF