

आयकर अपीलीय अधीकरण, न्यायपीठ – “ए” कोलकाता,
*IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH “A” KOLKATA*

Before **Shri J.Sudhakar Reddy, Accountant Member** and
Shri S.S.Godara, Judicial Member

ITA No.803/Kol/2018
Assessment Year: 2011-12

Duncans Tea Ltd., 31, Netaji Subhas Road, Kolkata-700 001 [PAN No.AABCD 0201 A]	बनाम / V/s.	ACIT Circle-4(1), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata-700 069
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Subash Agarwal, Advocate
प्रत्यर्थी की ओर से/By Respondent	Shri Anindya Kr. Bandopadhyay, JCIT-DR
सुनवाई की तारीख/Date of Hearing	19-11-2019
घोषणा की तारीख/Date of Pronouncement	10-01-2020

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This assessee’s appeal for assessment year 2011-12 arises against the Commissioner of Income Tax (Appeals)-2, Kolkata’s order dated 29.04.2016 passed in case No.1290/CIT(A)-2/14-15 involving proceedings u/s 143(3) of the Income Tax Act, 1961; in short ‘the Act’.

Heard both the parties. Case file(s) perused.

2. The assessee’s former substantive ground challenges correctness of both the lower authorities’ action disallowing handling & warehouse collection charges of ₹14,40,861/- incurred for warehouse and freight movement. Both the lower authorities

case is that the assessee ought to have deducted the TDS u/s. 194C of the Act and its failure to this effect renders the entire amount not allowable.

3. After giving our thoughtful consideration to rival contentions against and in support of the impugned handling and warehouse collection charges freight disallowance, we find that this issue is no more *res integra*. The assessee had filed **ITA No.1961/Kol/2016** in assessment year 2012-13 challenging the lower authorities' identical action. Learned co-ordinate bench's order dated 31.07.2018 has deleted the same as under:-

"7. Having heard the rival submissions and perused the material available on record. We note that the assessee has reimbursed the collection charges and pick up charges to the various transporters, and this fact can be verified from the copies of freight bills and ledger account of warehousing collection charges (pb.23). The reimbursement of expenses for and on behalf of assessee is not covered under the provisions of section 194C of the Act. Therefore, these expenses are not liable to TDS as the term 'contract' is absent. These reimbursement of expenses were not made by the assessee towards any services rendered by the agent, but has been made to set off the expenses incurred by the agent on behalf of the assessee. We note that there is no element of 'income' in these transactions, it is just reimbursement of expenses incurred by the agent for and on behalf of assessee. Therefore, the assessee was not obliged to deduct tax at source. We note that it is not a direct payment for freight to the transporter. Therefore, we are of the view that there is no TDS obligation on the assessee on the alleged amount of Rs.18,16,096/-. For that we rely on the judgment of the Co-ordinate Bench of ITA T Kolkata in the case of Satyendra Jhunhunwalla Vs. ITO, W-46(4), Kolkata, ITA No.1988/Kol/2009, for the A.Y 2005-06, wherein it was held as follows:-

"4. At the outset, the Ld. Counsel for the assessee stated in respect of octroi charges that freight is less than Rs.12,622/- and it does not attract TDS in any case. For this he referred to assessee's paper book wherein details of octroi charges and other charges paid to M/s Inland Transport Pvt. Ltd. are detailed out as under:

Date	Freight Ch.	Oct.Ch	OS Ch	Del.Ch	Miasc. Ch incl unloading chgs	E Cess	Total
23/7/2004	523.00	597.00	30.00	5.00	30.00	--	1,185.00
6/8/2004	573.00	1,265.00	67.00	5.00	1,537.00	--	3,447.00
19/8/2004	978.00	2,705.00	137.00	5.00	1,538.00	--	5,363.00
20/8/2004	388.00	806.00	41.00	5.00	2,030.00	--	3,270.00
20/8/2008	1,285.00	3,300.00	165.00	5.00	30.00	--	4,785.00
1/10/2004	812.00	2,640.00	133.00	5.00	2,823.00	--	6,413.00
10/11/2004	523.00	1,518.00	74.00	5.00	30.00	--	2,150.00
2/12/2004	1,078.00	2,200.00	112.00	5.00	30.00	--	3,425.00
25/12/2004	1,111.00	2,846.00	143.00	5.00	3,030.00	--	7,135.00
2/2/2005	843.00	2,200.00	112.00	5.00	30.00	25.00	3,215.00
15/2/2005	599.00	1,595.00	83.00	5.00	30.00	18.00	2,330.00
24/2/2005	1,111.00	2,035.00	102.00	5.00	30.00	31.80	3,314.80
31/03/2005	--	--	1,254.00	60.00	2,315.00	123.00	3,752.00
31/03/2005	--	--	641.00	29.00	2,168.00	62.00	2,900.50
28/3/2005	1,361.00	2,640.00	135.00	5.00	30.00	39.00	4,210.00
11/1/2005	1,437.00 12,622.00	3,685.00 30,032.00	191.00 3,420.00	5.00 159.00	30.00 15,711.00	42.40 341.70	5,390.40 62,285.70

Similarly, Ld. Counsel for the assessee stated that service charges paid to J.S. Clearing Services includes custom duty, port charges, stamp duty charges, bondage charges, oct. Charges apart from payment of rent and removal documentation fee and document processing fee. Ld. Counsel for the assessee stated that this can be verified from copies of bills of freight charges and copies of bills of clearing services. Counsel for the assessee stated that reimbursement expenses and custom duty payments by agent for and on behalf of the assessee cannot be covered under the TDS provisions. Hence, these expenses are not liable to TDS and the provisions of section 40(a)(ia) of the Act and not applicable. For this he relied on the decision in the case of ACIT V. Grandprix Fab. (P) Ltd., (2010) 128 TTJ 60 (del), wherein the Tribunal vide para 16 has held as under:-

'16. In respect of the payment towards agency charges amounting to rs.1,01,219, the assessee has deducted tax amounting to Rs.2,094 at source, and the said payment has not been disallowed by the AO. The other two payments are towards payment of customs duty, and other expenses paid by the agent for // on behalf of the assessee. These reimbursement expenses were not made towards any services rendered by the agent, but have been made to set off of the expenses incurred by the agent while clearing the imported goods from the customs for / on behalf of the assessee. Since no element of income is embedded in reimbursement of expenses incurred by agency for / on behalf of the assessee, the assessee was not obliged to deduct tax at source, and, therefore, the CIT(A) has rightly **deleted** the addition.'

8. We note that provision of section 194C of the Act is applicable, where payments is made to a contractor/sub-contractor, where contract is either a work contract or a contract for supply of labour. In the case of before us, we observe that the assessee has reimbursed the expenses to its agent and it was not a direct payment for freight by the assessee to the transporter. Besides, the Hon'ble Delhi High Court in the case of CIT Vs. Industrial Engg. Projects P. Ltd. (202 ITR 1014), held that it is a settled proposition of law that when there is no element of income and the payment is only as a reimbursement of expenses incurred by the payee, then no disallowance can be made u/s. 40(a)(ia) of the Act.

We find that the issue of reimbursement of charges which are incurred by agents on behalf of assessee cannot be subject matter of TDS in view of above cited case laws. Therefore, considering the factual position discussed above, we are of the view that the amount paid to transporters on account of handling warehousing collection charges is not liable to TDS, as the handling and warehouse collection charges paid to transporters were having valid PAN number and, in assessee's case under consideration no income element is there and it is just reimbursement of expenses and moreover, there is no contract between the assessee and the payee, hence, TDS obligation is not applicable to the assessee. Therefore, the addition made by the AO and confirmed by the CIT-A needs to be deleted. Accordingly, we delete the addition. The grounds raised by the assessee are **allowed**."

Learned departmental representative is fair enough in not pin-pointing any distinction on facts or law. We therefore accept assessee's instant former grievance and direct the Assessing Officer to delete the impugned disallowance. Necessary computation to follow as per law.

4. Next comes the latter issue of disallowance of assessee's damages claim regarding loss of packed tea of ₹1,87,160/- made in the lower proceedings. The CIT(A)'s detailed discussion to this effect reads as under:-

“Ground-4

This ground of appeal is against the action of the AO in disallowing a sum of Rs.1,87,160/- being damage/loss of packet tea debited to the Profit & Loss Account on the ground that no evidences/documents were produced.

At the time of passing the assessment order the Assessing Officer expressed his view as follows:-

Damage/Loss of pocket tea.

A sum of Rs.1,87,160/- has been debited to the Profit and Loss Account on account of damage/loss of packet tea. No details/evidences relating to such damage/loss has been filed by the assessee.

During the appellate proceedings, AR of the Appellant submitted his written submissions as follows:-

‘The Appellant is engaged in the business of blending various grades of tea and packing them under different brand names. The teas so packed at various locations are sold through more than 1200 key dealers appointed by the Appellant for this purposes. The key dealers, in turn, supply the packed tea to the retailers under them. Packet Tea as a commodity has a shorter shelf life. Further, packet tea being a FMCG product is monitored by Prevention of Food Adulteration Authorities of the Govt. of India. Hence, packets which are damaged or fungus affected are returned by the retailers to the key dealers who, in turn, claim the reimbursement in respect of packet tea damaged and returned. The teas which are returned by the key dealers are destroyed since these teas cannot be sold in the market. During the previous year relevant to this assessment year, the Appellant had written off a sum of Rs.1,87,160/- being loss of damaged packet tea stock.

The appellant submits that the loss or damage of packet tea is an event which happens during the normal course of business activity. The Appellant had, during the previous year relevant to this assessment year, sold packet tea aggregating to Rs.13499.04 lacs. Out of this, tea amounting to Rs.1,87,160/- was damaged, which works out 0.01% of the total turnover. The Appellant submits that the loss compared to the total turnover is negligible and hence has to be considered as a normal loss incurred during sale of teas through various dealers spread almost all over the country. Similar disallowance made in the assessment years 2008-09 and 2009-10 were deleted by the learned C.I.T(A). Copies of the orders are enclosed for your kind perusal.

*In view of the above, it is humbly prayed that the disallowance of Rs.1,87,160/- made by the learned Assessing Officer may kindly be **deleted**.’*

*I have considered the submissions of the AR of the appellant. A sum of Rs.1,87,160/- was debited to the Profit and Loss Account on account of damage/loss of packet tea. The assessee during the assessment proceeding mentioned that “No details / evidences relating to such damage /loss has been filed by the assessee.” In view of above, the order of the AO is confirmed. This ground of appeal is **dismissed**.”*

5. We have heard rival pleadings against and in support of the impugned disallowance. The assessee's case that its packed tea damages claim in question has

been worked out to the tune of 0.01% of the total turnover only which is allowable as normal business expenditure. The Revenue on the other hand quotes lower authorities' findings that the impugned disallowance has been rightly made on account of assessee's failure in filing exact corresponding details. After giving our thoughtful consideration to rival pleadings, we observe that neither parties submission deserve to be accepted in entirety. The fact remains that assessee has not placed on record all the necessary details in either of the lower proceedings and the Revenue also fails to dispute that such a loss of packed tea cannot be altogether ruled out in regular business activity. We therefore conclude that a lump sum disallowance of ₹20,000/- only would meet the ends of justice with a rider that same shall not be treated as a precedent in any other assessment year. The assessee's latter substantive grievance is partly accepted.

7. This assessee's appeal is partly allowed in above terms.

Order pronounced in open court on 10/01/2020

Sd/-
(लेखा सदस्य)
(J.Sudhakar Reddy)
Accountant Member

Sd/-
(न्यायिक सदस्य)
(S.S.Godara)
Judicial Member

*Dkp-Sr.PS

दिनांक:- 10/01/2020 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-Duncans Tea Ltd., 31, Netaji Subhas Road, Kolkata-001
2. प्रत्यर्थी/Respondent-ACIT, Cir-4(1), Aayakar Bhawan,P-7, Chowringhee Sq. Kol-69
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता/DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।