



ITA Nos. 539 & 553/Mum/2019  
M/s Balaji Impex  
Assessment Year :2010-11

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.539/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2010-11)

<b>DCIT-Central Circle – 4(2)</b> Room No. 1918, 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai – 400 021.	<b>बनाम/</b> Vs.	<b>M/s. Balaji Impex,</b> 201, Vyapar Bhavan, 368/370 Narshi Naka Street Katha Bazar (in front of Exim House) Near Masjid Railway Station Masjid Bunder, Mumbai – 400 009.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AAHFB-8409-R</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

&

आयकर अपील सं./ I.T.A. No.553/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2010-11)

<b>M/s. Balaji Impex,</b> 201, Vyapar Bhavan, 368/370 Narshi Naka Street Katha Bazar (in front of Exim House) Near Masjid Railway Station Masjid Bunder, Mumbai – 400 009.	<b>बनाम/</b> Vs.	<b>DCIT-Central Circle – 4(2)</b> Room No. 1918, 19 <sup>th</sup> Floor Air India Building Nariman Point Mumbai – 400 021.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. <b>AAHFB-8409-R</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Mayur Kisnadwala - Ld. AR
<b>Revenue by</b>	:	Ms. Kavita P. Kaushik - Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	27/01/2020
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	05/02/2020



## आदेश / O R D E R

### Manoj Kumar Aggarwal (Accountant Member)

1.1 Aforesaid cross-appeals for Assessment Year [in short referred to as 'AY'] 2010-11 contest the order of Ld. Commissioner of Income-Tax (Appeals)-52, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-52/IT-626/DCIT-CC 4(2)/2016-17 dated 05/11/2018* on certain grounds of appeal.

1.2 The Ld. Authorized Representative for Assessee (AR), at the outset, submitted that the assessee is pressing only Ground No. 2 of its appeal, which read as under: -

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming an addition of Rs.42,18,256/- being alleged bogus purchases from various parties.

### 1.3 The Grounds raised by revenue read as under: -

1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in restricting the addition to the extent of 12.5% of the bogus purchases of Rs.3,40,80,030 [Rs. 99,00,821 from Aadit International Rs. 1,52,01,540 from Embee Metal Deals (India) Pvt. Ltd., Rs.49,00,300 from NKB Metal Deals (India) Pvt. Ltd.] booked by the assessee after setting off the GP shown by the assessee.

2. Same as Ground No.1

3 On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in directing the AO to delete the disallowance u/s 14A of the IT Act r.w.r. 8D of Rs.2,89,114 relying upon the decision in the case of Chettinad Logistics (P) Ltd. (80 taxmann.com 221) where the Hon'ble Supreme Court has dismissed the SLP of the department. However, vide CBDT Circular No. 5/2014 dated 11.02.2014 it is clarified that rule 8D read with Section 14A of the Act provides for disallowance of the expenditure even where taxpayer in a particular year has not earned any exempt income.

4. On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in deleting the disallowance u/s 36(1)(iii) of the IT Act, 1961 where assessee failed to prove that interest paid have been utilized wholly and exclusively for the business purpose.

5. On the facts and in the circumstances of the case and in law, Ld. CIT(A) erred in deleting the disallowance u/s 40(a)(ia) of the IT Act, 1961 where assessee failed to deduct tax at source on the reimbursement as per Circular No. 715 dated 08.08.2015.



1.4 We have carefully heard the rival arguments and perused relevant material on record. We have also deliberated on various judicial pronouncements as cited during the course of hearing. Our adjudication to the subject matter of cross-appeals would be as given in succeeding paragraphs.

1.5 Facts on record would reveal that the assessee being resident firm stated to be engaged in trading of chemicals and Iron & Steel, was subjected to reassessment proceedings for year under consideration and an assessment was framed u/s 143(3) r.w.s. 147 on 25/11/2016 wherein the income of the assessee was determined at Rs.461.04 Lacs after certain additions / disallowances as against returned income of Rs.96.87 Lacs e-filed by the assessee on 17/09/2010.

1.6 Pursuant to search action u/s 132 in the case of *Uhsdev Group* on 11/09/2014, the assessee was subjected to survey proceedings u/s 133A on 11/09/2014 wherein it transpired that the assessee was involved in inflating the expenses by booking bogus purchases. Accordingly, notice u/s 148 was issued on 03/08/2016 as per due process of law which was followed by statutory notices u/s 143(2) and 142(1) wherein the assessee was directed to file requisite information / documentary evidences and explanations to substantiate the returned income.

### **Addition on Account of Alleged Bogus Purchase**

2.1 The assessee had made aggregate purchases of Rs.340.80 Lacs from four suspicious suppliers, the details of which has already been extracted at para-10 of the quantum assessment order. The assessee, in



defense of purchases, submitted that there was one-to-one correlation between purchase and corresponding sales and all the payments were through banking channels. However, the assessee failed to prove the dispatch, transportation and delivery of goods. Notices issued u/s 133(6) to all the suppliers were returned back unserved by postal authorities. The field inquiries revealed that none of the parties was existing at the given addresses. The assessee failed to produce any of the supplier to confirm the transactions.

2.2 Since the assessee failed to discharge the primary onus of proving the purchase transactions, relying upon various judicial pronouncements, Ld.AO termed the said purchases as non-genuine purchases and added the same to the income of the assessee.

2.3 The Ld. CIT(A), at para-6.6 of the impugned order, took note of the fact that during the course of survey action, soft copy of the books of accounts were impounded which also had quantitative details of corresponding sales booked against the purchases so made. It was further observed that the assessee had booked back to back sales against the purchases made from various suppliers including purchases made from 4 suspicious dealers. Therefore, since there was one-to-one correlation between the purchases and sales, the entire tainted purchases could not be added to the income of the assessee but only the profit element embedded in such transactions could be added keeping in view settled legal proposition that tax could be levied only on real income. Reliance was placed on the decision of Hon'ble Bombay High Court in **Hariram Bhambhani (ITA No. 313 of 2013)** for the conclusion that only profit attributable to the unaccounted sales could be



brought to tax. Similar reliance was placed on the decision of Hon'ble Gujarat High Court in **Bholanath Polyfab Pvt. Ltd. (355 ITR 290)**, **Simit P.Sheth (38 Taxmann.com 385)** and **Sanjay Oil Cake Ind. (316 ITR 274)**. Applying the ratio of these decisions, Ld. CIT(A) estimated additions @12.5% of these purchases with set-off of Gross Profit already shown by the assessee in the regular books in respect of purchases made from the said 4 suppliers.

Aggrieved, the assessee as well as revenue is under further appeal before us.

2.4 The Ld. AR pleaded for reasonable estimation keeping in view the circumstances of the case and in view of the fact that the assessee was dealing in low margin item like iron & steel. The Ld. DR, on the other hand, submitted that full disallowance as made by Ld. AO would be justified since the assessee miserably failed to substantiate the purchase transactions and inquiries conducted by the department clearly pointed out that the suppliers were non-existent entities.

3. After careful application of mind, we are of the considered opinion that there could be no sale without actual purchase of material keeping in view the fact that the assessee was engaged in trading activities. It is fact on record that there was one-to-one correlation between the purchases and sales. The assessee was in possession of primary purchase documents and the payments to the suppliers were through banking channels. However, at the same time, the assessee miserably failed to substantiate the purchases and failed to produce any of the suppliers to confirm the transactions. The field enquiries revealed that none of the suppliers was existing at the given addresses. Notices



issued u/s 133(6) did not elicit any satisfactory response. Therefore, the primary onus casted upon assessee, to prove the transactions, remained undischarged.

4. The stated factual matrix, in our considered opinion, would make it a fit case to make estimated additions to account for profit element embedded in these purchase transactions to factorize for profit earned by assessee against possible purchase of material in the grey / unorganized market and undue benefit of VAT against such bogus purchases, which learned first appellate authority has rightly done so. However, accepting the submissions that the assessee was dealing in low margin item like iron & steel which would warrant lower estimation and keeping in view the healthy Gross profit rate of 5.43% already reflected by the assessee, we restrict the estimation to net 5% of alleged bogus purchases of Rs.3,40,80,030/- which comes to Rs.17.04 Lacs. The balance addition stands deleted.

5. Resultantly, the assessee's appeal stand partly allowed whereas Ground Nos. 1 & 2 of revenue's appeal stand dismissed.

#### **Disallowance u/s 14A**

6.1 During assessment proceedings, it transpired that the assessee had closing investment of Rs.435.28 Lacs as compared to opening investment of Rs.4.62 Lacs. The assessee earned exempt dividend income of Rs.51,250/- but did not offer any suo-moto disallowance u/s 14A by submitting that no expenditure was incurred to earn the exempt income. However, not satisfied, Ld. AO applying Rule 8D, computed aggregated disallowance of Rs.2.89 Lacs which comprised-off of interest



disallowance u/r 8D(2)(ii) for Rs.1.79 Lacs and expense disallowance u/r 8D(2)(iii) for Rs.1.09 Lacs.

6.2 Before Ld. CIT(A), the assessee pointed out that the dividend income of Rs.51,250/- was not exempt income but a taxable income. Accordingly, Ld. CIT(A) directed Ld. AO to include this income as taxable income but directed for deletion of disallowance u/s 14A since no exempt income was earned by the assessee during the year, relying upon the decision of Hon'ble Madras High Court rendered in **Chettinad Logistics P. Ltd. (80 Taxmann.com 221)**. It was also observed that Special Leave Petition filed by the revenue against the same was already dismissed by Hon'ble Apex Court which was reported at **95 Taxmann.com 250**. Aggrieved, the revenue is under further appeal before us.

6.3 After considering the facts as enumerated hereinabove, it transpires that the dividend income of Rs.51,250/- stated to be earned by the assessee has been found to be taxable and Ld. AO has been directed to include the same while computing taxable income. Therefore, there would be no exempt income earned by the assessee and hence, no disallowance u/s 14A would be warranted as held by Hon'ble Madras High Court in the cited decision as relied upon by Ld. CIT(A). Therefore, finding no fault in the adjudication of Ld. CIT(A), we dismiss this ground of appeal.

### **Disallowance u/s 36(1)(iii)**

7.1 It was observed that the assessee claimed interest expenditure of Rs.11.67 Lacs. However, the assessee did not reflect any interest income against loans & advances of Rs.620.42 Lacs advanced by it during the year. The assessee submitted that interest expenditure was



incurred wholly and exclusively for business purposes and hence the same was an allowable expenditure. However, since no interest was charged on loans and advances, an opinion was formed by Ld. AO that the assessee diverted interest bearing funds towards interest-bearing advances. The assessee, in the opinion of Ld. AO, also could not demonstrate the business exigency of giving interest free advances. Therefore, Ld. AO worked out proportionate disallowance u/s 36(1)(iii) for Rs.3.03 Lacs and added the same to the income of the assessee.

7.2 Before Ld. CIT(A), the assessee provided the break-up of interest expenditure which included interest on letter of credit, overdraft against term deposits, interest on overdraft account and interest on car loan for the submissions that substantial loans were utilized for specific business purposes and it was to be presumed that loans were advanced out of own funds as well as income earned during the year. Reliance was placed on favorable decision of Ld. CIT(A) for AY 2012-13.

7.3 The Ld. CIT(A), after considering assessee's submissions, observed that favorable decision rendered by its predecessor for AY 2012-13 could not be applied in this year since interest free advances of Rs.620.42 Lacs were more than own capital of Rs.609.09 Lacs. However, Ld.AO was directed to exclude interest on letter of credit & interest on car loan aggregating to Rs.6.01 Lacs while computing the disallowance and consider only the balance interest component of Rs.5.65 Lacs while computing the proportionate disallowance.

7.4 Upon due consideration, we find that Ld. CIT(A) has clinched the issue in correct perspective and met the assessee's submissions with due application of mind. No fault could be found in the directions of Ld.



CIT(A) for exclusion of interest on letter of credit and interest on car loan since the same did not have any nexus with interest free loans advanced by the assessee. Resultantly, this ground stand dismissed.

**Disallowance u/s 40(a)(ia)**

8.1 It was observed that the assessee did not deduct tax at source (TDS) on certain expenses aggregating to Rs.17.44 Lacs stated to be paid to various parties. The same are tabulated in para-19 of the quantum assessment order. These expenses were stated to be incurred in the course of import of material. In defense, the assessee submitted that these expenses were in the nature of reimbursement and hence, TDS was not applicable on such reimbursements. However, Ld.AO observed that the assessee could not demonstrate that such payment had no element of income and moreover, such reimbursement would require deduction of tax at source as per Circular No. 715 issued by CBDT. The assessee also failed to produce the *Nil* deduction of TDS certificates stated to be issued to the payee. Therefore, Ld. AO made disallowance of the same in terms of section 40(a)(ia).

8.2 Before Ld. CIT(A), the assessee explained that for each import clearance, two separate bills were raised-one for the service charges and other one for reimbursement of expenses actually incurred. The assessee duly deducted TDS on service charge payments but did not deduct any tax on reimbursements. These reimbursements were in the nature of expenditure on wharfage, CMC Charges, container charges, stamp duty survey, insurance, transport charges etc. for which agents had enclosed supporting bills. All these expenses were pure reimbursement and there was no profit element of income in it. The



CBDT circular No. 715 was stated to be not applicable since the said circular would contemplate a scenario where a consolidated common bill for service charges and reimbursements is raised, which was not the case here. The attention was drawn to the fact that additions made by Ld. AO in AY 2012-13 on similar factual matrix, was deleted by learned first appellate authority. Reliance was placed, *inter-alia*, on the decision of Mumbai Tribunal in **Utility Powertech Ltd. V/s ACIT (ITA No. 2561/Mum/2009)** wherein it was held that no TDS was required on mere reimbursements.

8.3 The learned CIT(A), relying upon the decision of its predecessor in assessee's own case for AY 2012-13, finding the factual matrix to be quite similar, deleted the impugned disallowance. Aggrieved, the revenue is under further appeal before us.

8.4 The Ld. AR drew attention to the fact that revenue's appeal for AY 2012-13 has already been dismissed due to low tax effect, by the Tribunal vide ITA No. 7341/Mum/2016 order dated 29/11/2018, a copy of which has been placed on record. The Ld. AR submitted that factual matrix in AY 2012-13 as well as in this year was quite identical and therefore, the disallowance deserves to be deleted. The Ld. DR submitted that the appeal has been dismissed merely due to low tax effect and therefore, it could not be said that the matter has attained finality.

8.5 Upon due consideration, we concur with the submissions of Ld. DR that the matter could not be said to have attained finality since the appeal was dismissed only due to low tax effect. However, the undisputed position that emerges is that the assessee has duly deducted



ITA Nos. 539 & 553/Mum/2019  
M/s Balaji Impex  
Assessment Year :2010-11

tax at source against service charges whereas no tax has been deducted against mere reimbursements. These reimbursements were supported by the supporting bills of the agents and there was no profit element in it. All these expenses were pure reimbursement in nature. This being the case, no TDS was required on such reimbursements. The decision of this Tribunal in **Utility Powertech Ltd. V/s ACIT (ITA No. 2561/Mum/2009)** also supports the same view. This decision has been rendered after considering the decision of Hon'ble Bombay High Court in **CIT V/s Siemens Aktiengesellschaft (310 ITR 320)**. Therefore, we find no fault in the action of Ld. CIT(A) in deleting the same by relying upon the order for AY 2012-13. This ground stands dismissed.

### **Conclusion**

9. The assessee's appeal stand partly allowed whereas the revenue's appeal stand dismissed.

*Order pronounced in the open court on 05/02/2020.*

**Sd/-**  
**(Mahavir Singh)**  
उपाध्यक्ष / **Vice President**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 05/02/2020  
Sr.PS. Jaisy Varghese

### **आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent



ITA Nos. 539 & 553/Mum/2019  
M/s Balaji Impex  
Assessment Year :2010-11

3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.