

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

**BEFORE SHRI C. N. PRASAD, JM&  
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 1774/Mum/2017  
(निर्धारणवर्ष / Assessment Year: 2012-13-11)

M/s Raj Clearing Agency, 303, Jayant Apartment, D- Wing, Air Cargo Complex, Sahar, Andheri (E), Mumbai-400099	<b><u>बनाम/</u></b> Vs.	ACIT Range-24(3), 613, 6 <sup>th</sup> floor, Piramal Chambers, Mumbai-400 012.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAIFR0443E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Sanjay Parikh, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Smt. Jyoti Lakshmi Nayak, DR
सुनवाईकीतारीख/ Date of Hearing	:	30.09.2019
घोषणाकीतारीख / Date of Pronouncement	:	16.10.2019

आदेश / ORDER

**Per S. Rifaur Rahman, Accountant Member:**

The present Appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals) - 51 in

short referred as 'Ld. CIT(A)', Mumbai, dated 22.12.16 for Assessment Year (in short AY) 2012-13.

2. Brief facts of the case are that assessee filed its return of income for assessment year 2012-13 declaring total income at Rs. 1,10,42,030/- on 30.09.12. The return of income was processed under section 143(1) of the act. The case was selected for scrutiny under CASS and accordingly notice under section 143(2) and section 142 (1) of the Act were issued and served on the assessee. In response AR of the assessee filed the relevant information and complied.

3. During the assessment proceedings, AO observed that assessee has incurred customs clearance charges, transportation loading/ unloading charges and penalty charges in the profit and loss account and he was called upon to substantiate the claim and supporting documents. After verification, AO observed that assessee has claimed these expenses incurred by various branch offices throughout India and majority of these expenses have been incurred in cash and supported only by self-made vouchers and when this matter was asked to show cause, assessee

submitted that in the AY 2010-11, the department has disallowed 15% of the customs clearance charges and transportation charges, because vouchers are self-made. Further, AO was not convinced with the submission of the assessee and disallowed 15% of the total expenses claimed by the assessee in the profit and loss account with regard to customs clearance and transportation charges.

4. With regard to penalty charges, the AO observed that these expenses are not allowed u/s 37(1) of the Act by considering the fact that these penalty charges are an offence prescribed under law which cannot be allowed.

5. Aggrieved with the above order, assessee preferred an appeal before Ld. CIT(A) and submitted before him a detailed submission and gave a break-up of the expenditure incurred by the assessee through the bank as well as in cash for customs clearance and transportation charges.

6. With regard to penalty, assessee submitted that penalty charges are on account of fees levied for rectification of bill of

loadings and late payment of customs duty, further submitted that penalty includes Rs. 40,000/- fine of service tax returns for late payment. Assessee submitted that these charges are not incurred for any infringement of law, but are in normal course of business and commercial expediency. After considering the submission of the assessee, Ld. CIT(A) observed that assessee has stated that expenses are voluminous as it pertains to 13 branches spread over the country. He observed that prima facie, it appears the assessee has opted for additional evidence, but as no submission has been placed before him, it is not feasible to consider the issue in accordance to the rule 46A of the Income Tax Rule 1962, accordingly he decided the issue on merits. He observed that addition made in assessment year are on the basis of cash expenditure and the self-made vouchers and observed that quantum of expenditure are huge and is not feasible to verify each and every vouchers and entry in the book. Further he observed that it is not practical to verify on sample basis also and he noted that the only issue remains to be decided is the quantum of addition. By considering the huge amount of the expenditure claimed and for the sake of interest of revenue, he reduced the

disallowance of expenditure to 10% of the total expenditure instead of 15% on both the expenditure i.e. customs clearance and transportation charges. With regard to penalty charges, Ld. CIT(A) has dismissed the ground as argument of the assessee is not sustainable.

7. Aggrieved with the above order, assessee is an appeal before us raising the following grounds of appeal:-

*1. The Learned Commissioner of Income Tax (A) erred in law and in facts by confirming the disallowance of custom clearance charges of Rs.4,76,86,661/- to the extent of 10% being Rs.47,68,666/- on adhoc basis.*

*Your appellant submits that custom clearing agency charges are for the purpose of business and addition ought to be deleted.*

*2. The Learned Commissioner of Income Tax (A) erred in law and in facts by confirming the disallowance of transportation and loading/unloading charges of Rs.6,26,23,303/- to the extent of 10% being Rs.62,62,330/- on adhoc basis.*

*Your appellant submits that transportation and loading/unloading charges are for the purpose of business and addition ought to be deleted.*

*3. The Learned Commissioner of Income Tax (A) erred in conforming the disallowance of penalty paid of Rs.4,53,550/- u/s 37(1) of the Income Tax Act, 1961. Your appellant submits that as the payment of penalty is not for any infringement of any law or statutory provisions the same ought to be allowed as claimed.*

*4. The Learned Commissioner of Income Tax (A) failed to consider the submissions, explanations and documents filed during the course of assessment proceedings.*

*5. The appellant reserves the right to add, alter or amend any ground or grounds of appeal on or before the hearing.*

8. From the above, assessee has specially contested all the three disallowances sustained by Ld. CIT(A) and the ground no. 4 & 5 are general in nature, hence not adjudicated.

9. Before us, Ld. AR submitted that AO has disallowed the

customs clearance charges, transportation and loading and unloading charges on adhoc basis without verifying the expenditure. He further submitted that in the similar case in the earlier assessment order for AY 2011-12, the Hon'ble ITAT remitted the issue back to the file of AO for fresh consideration. Further, he submitted that for AY 2013-14, the AO himself disallowed 15% of the cash expenses and the same was reduced to 10% by Ld. CIT(A). He further submitted that the issue in this appeal are also similar to the facts for AY 2013-14 and he prayed that the disallowance should be restricted only to cash expenditure as the assessee has submitted in detail the cash and cheque payments/bills before Ld. CIT(A).

10. On the other hand learned DR submitted that in the earlier assessment year as submitted by Ld. AR, there is no finding on merit by the Hon'ble ITAT and she brought to our notice at page no. 8 of the paper book. She further brought to our notice the finding of Ld. CIT(A) at para no. 5.1.2, in which there was no distinction made between cash and cheque payments/bills before the AO and the same was not verifiable by considering the huge

expenditure and vouchers. She submitted that even before Ld. CIT(A), only tabulated chart was submitted without proper evidence and she relied upon the finding of Ld. CIT(A) and submitted that Ld AR relied upon the findings of AO for AY 2013-14, in this regard, she submitted that we do not know the relevant facts of that assessment year. She further brought to our notice page no. 2 of the paper book submitted by the assessee in which gross receipt has come down and profit has also come down drastically not inconsonance with reduction in gross receipts, however she submitted that the *respective* expenditure has not come down, it clearly shows that assessee has over charged the expenditure.

11. In the rejoinder, Ld. AR submitted that all the relevant information in support of the expenditure were submitted before Ld. CIT(A) and he brought to our notice various documents submitted before Ld. CIT(A) in the form of paper book and he reiterated that the AO made the disallowance on adhoc basis without any basis in support of such disallowance. He further submitted that AO has not brought on record anything to support

that the expenditure are not made for the purpose of business.

12. Considering the rival submissions and material placed on record, we notice that assessee has incurred clearance expenditure and transportation, loading and unloading expenditure in 13 branches spread over the country and it is not dispute on the fact that assessee has incurred certain expenditure in cash and the vouchers are self-made. Considering the similar situation, assessment are completed by disallowing the certain percentage of expenditure and it is important to note that in the subsequent assessment year, AO himself disallowed 15% of the cash expenditure incurred by the assessee and the same was reduced to 10% by Id. CIT(A). It is pertinent to note that there is no significant change in the business carried on by the assessee, more or less same business carried on in the AY 2013-14. In the AY under consideration, the expenditure were not segregated or quantified by any tax authority on the basis of cash/bank payments, therefore we are inclined to remit these issue to the file of AO to verify the accounts of the assessee and the vouchers, with a direction to quantify the cash expenditure incurred by the

assessee in clearing charges, transportation and loading/unloading expenses and disallow 10% of cash expenditure incurred by the assessee. Accordingly, ground no. 1 & 2 are allowed for statistical purposes.

13. With regard to disallowance of penalty, assessee has submitted that the penalty expenses are incurred for service tax and customs clearance, since these penalty are in the nature of compensation not as contravention of any law, therefore we direct the AO to allow the penalty charged by service tax and customs clearance which are in the compensatory nature. Accordingly, we remit this issue to the file of AO to verify the same and allow the same, which are in the nature of compensation as held in various judicial pronouncements.

14. In the net result, the appeal filed by the assessee stands **allowed for statistical purposes.**

*Order pronounced in the open court on 16<sup>th</sup> Oct 2019.*

*Sd/-*

(C. N. Prasad)

न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated :

*Sr.PS. Dhananjay*

*Sd/-*

(S. Rifaur Rahman)

लेखासदस्य / Accountant Member

16.10.2019

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
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/सहायकपंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**