

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'A' BENCH, KOLKATA  
(Virtual Court)**

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Partha Sarathi Chaudhury, Judicial Member)**

**I.T.A. No. 1547/Kol/2019  
Assessment Year: 2009-10**

**ACIT, Circle-1(2), Kolkata.....Appellant**

**Vs.**

**M/s. Reach Cargo Movers Pvt. Ltd.....Respondent  
[PAN: AACCR 6653 F]**

**Appearances by:**

*Sh. Dhrubajyoti Ray, JCIT, appeared on behalf of the Revenue.*

*Sh. Soumitra Choudhury, Adv.*

*Sh. Jaydeep Chakraborty, appeared on behalf of the Assessee.*

Date of concluding the hearing : November 5<sup>th</sup>, 2020

Date of pronouncing the order : November 13<sup>th</sup>, 2020

**ORDER**

**Per Partha Sarathi Chaudhury, JM:**

This appeal preferred by the Revenue emanates from the order of the Learned Commissioner of Income Tax (Appeals) - 1, Kolkata (hereinafter the 'ld. CIT (A)'), dated 25.03.2019 u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act') for the Assessment Year (hereinafter 'AY') 2009-10 as per the following grounds of appeal:

*"1. That on the facts and circumstances of the case on law Ld. CIT(A) has erred in granting relief to the assessee on account of provision for gratuity of Rs.3,27,410/-.*

*2. That on the facts and circumstances of the case and on law Ld. CIT(A) has erred in granting relief to the assessee on account of disallowance of transportation charges of Rs.2,63,50,271/-.*

*3. The appellant craves the leave to make any addition, alteration, modification etc. of grounds either before the appellate proceedings, or in the course of appellate proceedings."*

2. At the very outset of the hearing, with the permission of the Bench, the ld. Counsel for the assessee submitted chronology of facts involved in this case. In the present case original assessment was completed dated 08.12.2011. Thereafter the ld. Pr. CIT assumed revisionary jurisdiction and passed order u/s 263 of the Act finding the said assessment order to be erroneous and prejudicial to the interest of the Revenue

vide order dated 16.03.2018 issuing necessary direction for passing a fresh assessment order. Thereafter the consequential assessment order was passed by the AO dated 30.03.2015 making various additions/disallowances as on record. The Id. CIT(A) had given relief on the issue of provisions for gratuity amounting to ₹3,27,410/- and also granted relief to the assessee with regard to disallowance of transportation charges of ₹2,63,50,271/-. That against this relief the Revenue is in appeal before us.

3. That with regard to the first ground it is the case of the AO that a sum of ₹3,27,410/- as provision for gratuity have been made in the books of the account of the assessee u/s 40A(7) of the Act but the said payment was not made before the due date of filing of the return of income. As per Tax Audit Report of the assessee company the said claim is inadmissible by virtue of Section 40A(7) of the Act but the assessee company has not added the same while computing the income/loss. The AO added the provision for gratuity and held it as an inadmissible claim. At the appellate stage before the Id. CIT(A), the assessee submitted that the payment was made u/s 40(a) of the Act, before the date of filing of return of income. The Id. CIT(A) at para 6 of his order observed as follows:

*"6. It is a fact that the assessee has failed to honour the specific date as given in the respective Act. However, the payments have been made before the due date of filing of Return of Income. Decision of Hon'ble High Court of Delhi in the case of CIT vs. AIMIL Limited [2010] 188 Taxmann 265 is absolutely clear on the subject matter. So is the decision by Delhi Tribunal in Leaseforces Staffing India Pvt. Ltd. in ITA No. 6266 & 6267 of 2014. Decisions made by higher judicial forum is binding on me. Payment if made before the due date of filing of Return of Income has to be allowed."*

4. We observe that the Id. CIT(A) has provided relief to the assessee relying on the decision of the Hon'ble High Court of Delhi in the case of *CIT vs. AIMIL Limited* (supra) and decision of Delhi Tribunal in *Leaseforces Staffing India Pvt. Ltd.* (supra). The basic principle is that the payment if made before the due date of filing the return of income then it has to be allowed. Therefore there is no need to interfere with the findings of the Id. CIT(A) and the relief provided to the assessee on this issue is sustained. In the result, ground no. 1 of the Revenue's appeal is dismissed.

5. The next ground pertains to the deletion of addition on account of transportation charges of ₹2,63,50,271/- by the Id. CIT(A) which was imposed by the AO in the assessment order. That regarding this issue at the very outset, the Id. Counsel for the assessee submitted referring to para 5 and para 12 of the order passed u/s 263 of the

Act by the Pr. CIT that transportation charges was not at all the subject matter of that order based on which the consequential assessment order was passed by the AO. At para 5 of the order dated 25.03.2019 of the Pr. CIT it is clear that he is referring to the fact that TDS was required to be deducted on rentals u/s 194I of the Act and it was the onus on the assessee to furnish details as called for by the AO. That further the facts were the matter was sent back to the AO requiring the assessee to furnish details of rentals, TDS etc. to the satisfaction of the AO that further at para 12 of the said order the Pr. CIT has clearly mentioned that the assessment order should be limited to the aforesaid disallowance and thereby the scope of jurisdiction for the AO while passing the consequential assessment order was limited only to the subject matter in dispute and as directed by the Pr. CIT in his order. The issue of transportation charges, was not disputed by the Id. Pr. CIT and as such he accepted it according to the original assessment order and now in the consequential assessment order addition made by the AO on this ground of transportation charges is actually over stepping his jurisdiction not permissible within the realm of the Act. The Id. D/R could not refute these facts on record nor could place any evidence to show that the additions were made as per directions of the Id. Pr. CIT or that it was within the jurisdictional powers of the AO framing the consequential assessment order.

6. We have perused the case records, heard rival contentions, and analyzed the facts and circumstances in this case. That on perusing the order passed u/s 263 of the Act dated 25.03.2019 vide para 12 of said order it is crystal clear that the consequential assessment order were to be passed only on the subject matter as discussed by the Pr. CIT at para 5 of the said order and it had to be limited to those observations only. The observations related to enquiry of deduction on rentals u/s 194I of the Act and supporting evidences to be filed by the assessee in respect thereto before the AO. The issue of transportation charges were not at all the subject matter in the order passed u/s 263 of the Act by the Pr. CIT. In such scenario the additions made by the AO with regard to transportation charges in the consequential assessment order is without jurisdiction and suffers from irregularity of law and thus liable to be deleted. We observe that the Id. CIT(A) has not deliberated on this realm of the subject while providing relief to the assessee. That vide para 9, 10 and 11 of the order of the Id. CIT(A), he has provided relief to the assessee nonetheless on ground that the additions

were based on estimate basis and that the AO has not come out with specific reasons for making such additions.

7. We have already observed in the aforesaid paras that this addition of transportation charges suffers from irregularity of law and accordingly it has to be deleted and that the Id. CIT(A) has provided relief on this issue as per the reasons bearing in his order, we sustain the relief provided to the assessee. In the result, Ground No. 2 of the Revenue's appeal is dismissed.

8. Ground no. 3 is general in nature and needs no adjudication.

9. In the result, the appeal of the Revenue is dismissed.

***Kolkata, the 13<sup>th</sup> November, 2020.***

Sd/-  
[J. Sudhakar Reddy]  
Accountant Member

Dated: 13.11.2020  
*Bidhan*

Sd/-  
[Partha Sarathi Chaudhury]  
Judicial Member

*Copy of the order forwarded to:*

1. ***ACIT, Circle-1(2), Kolkata.***
2. ***M/s. Reach Cargo Movers Pvt. Ltd., 25<sup>th</sup> Floor, 30, Jadunath Dey Road, Central Avenue area, Kolkata-700 012.***
3. CIT(A) , Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy  
By order

Assistant Registrar  
ITAT, Kolkata Benches