

**IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA 'B' BENCH, KOLKATA**

**(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Aby T. Varkey, Judicial Member)**

**I.T.A. No. 2171/Kol/2018  
Assessment Year: 2010-11**

**ITO, Ward-8(1), Kolkata.....Appellant**

**Vs.**

**M/s. Aar Bee Machineries Pvt. Ltd.....Respondent  
[PAN: AACCA 7614 F]**

**Appearances by:**

*Smt. Ranu Biswas, Addl. CIT, appeared on behalf of the Revenue.*

*Sh. A.K. Gupta, A/R, appeared on behalf of the Assessee.*

Date of concluding the hearing : March 9<sup>th</sup>, 2021  
Date of pronouncing the order : March 24<sup>th</sup>, 2021

**ORDER**

**Per J. Sudhakar Reddy, AM:**

This is an appeal filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-3, Kolkata, [hereinafter the "CIT(A)"], passed u/s. 250 of the Income Tax Act, 1961 (the 'Act'), dated 16.08.2018 for the Assessment Year 2010-11.

2. After hearing rival contentions, we find that the ld. CIT(A) has deleted the disallowance by summarising the case of the assessee as follows:

*"The case of the appellant can be summarized as follows:*

*1. When the payment received for services performed has not been doubted then the payment made to M/s. Spring Vincom Pvt. Ltd. for services received should also not be doubted. This is because M/s. Spring Vincom Pvt. Ltd. rendered the services directly to M/s. MCIPL and the appellant had no active role in it.*

*2. The Assessing Officer has relied on the report of investigation wing and a copy of the said report was not been furnished to them.*

*3. The investigation report is based on the statement of the Director, Shri Sumit Sharma which was recorded on 10/03/2016. The matter relates to assessment year 2011-12 and 2012-13. It has been argued that the statement has been given by a Director, who was not occupying the said position when the transactions took place. How can such a statement be the sole basis of the disallowance.*

4. A copy of the statement of Shri Sumit Sharma was not given to them and the opportunity to cross examine him was also not given to them.

5. There is no tangible evidence that no services were rendered by M/s. Spring Vincom Pvt. Ltd.

6. Statement of a person who was not the Director of M/s. Spring Vincom Pvt. Ltd. has been relied upon however there is no evidence to show that the money has been routed back to the appellant. No action or adverse inference has been drawn in the case of the ultimate beneficiary of the transaction i.e. M/s. MCIPL.

7. As the whole scheme was a back to back contract for supervision charges then if the payment has to be treated as bogus then the receipt should also be treated as bogus.”

2.1. Thereafter, he examined the investigation report of the Service Tax Department on this issue and recorded that nothing adverse has been found by the Service Tax Department during the course of investigation in this matter. Thereafter, he concluded as follows:

“On perusal of the above, it is seen that the Hon’ble High Court has allowed the commission based on the following:

a) Binding Contract.

b) Payment through account payee cheque.

c) Absence of any evidence for payment being ploughed back to the appellant in cash.

*In the impugned case also it is observed that there was a back to back contract entered into by the appellant with the M/s. MCIPL and the sub-contractor M/s. Spring Vincom Pvt. Ltd. Admittedly appellant did not perform any services and the same was sub-contracted to M/s. Spring Vincom Pvt. Ltd. The only evidence with the Assessing Officer is the report of the investigation wing wherein the Director, Sumit Sharma gave a statement that they had not performed any services and had only given an accommodation entry. The appellant has argued that Shri Sumit Sharma was not a director in the said company when the transactions took place so his statement cannot be relied upon. Even if this argument is ignored, as discussed above, and if the statement has to be relied upon then it has to be implemented to both the limbs of the transaction. In that case both the services rendered and services received would then have to be treated as accommodation entries and both debit and credit entries in the Profit & Loss Account of the appellant, pertaining to supervision charges, would have to be ignored. In such a situation the profit of the appellant will go down by Rs.7,67,564/-. However in this case the appellant has admitted to only acting as an intermediary and in the process earning a profit of Rs.7,67,564/-. So, in short, for the appellant there is a commission income for acting as an intermediary. Accordingly the profit shown from supervision charges in the case of the appellant of Rs.7,67,564/- is accepted and the addition made by the Assessing Officer on account of supervision charges paid to Rs.2,02,16,928 /- is deleted.”*

3. This Bench of the Tribunal on identical circumstances in the assessee’s own case on the very same issue, in ITA No. 2229/Kol/2018 for the AY 2011-12 order dated 19.02.2020 has upheld an identical order of the Id. CIT(A) allowing the claim of the assessee for deduction. Consistent with the view taken therein, we find no infirmity in the order of the Id. CIT(A) on this issue. Thus we uphold the same and dismiss this appeal of the Revenue.

4. In the result, the appeal filed by the Revenue is dismissed.

***Kolkata, the 24<sup>th</sup> March, 2021.***

Sd/-  
[Aby T. Varkey]  
Judicial Member

Dated: 24.03.2021

*Bidhan (P.S.)*

*Copy of the order forwarded to:*

1. ***ITO, Ward-8(1), Kolkata***
2. ***M/s. Aar Bee Machinerics Pvt. Ltd., 97, Park Street, 1<sup>st</sup> Floor, Kolkata-700 016.***
3. CIT(A)-3, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

Sd/-  
[J. Sudhakar Reddy]  
Accountant Member

By order

Assistant Registrar  
ITAT, Kolkata Benches