

IN THE INCOME TAX APPELLATE TRIBUNAL  
“I” BENCH, MUMBAI  
BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.29/Mum/2021 (A.Y: 2017-18)

Orient Overseas Container Line Ltd, ICC Chambers, 5 <sup>th</sup> Floor, Saki Vihar Road, Opp. Santogen Silk Mills, Powai, Mumbai – 400 072.	Vs.	DCIT (IT) – 3(2)(2) Rm No. 1615, 16 <sup>th</sup> Floor, Air India, Bldg, Nariman Point, Mumbai – 400 021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACO5679E		
Appellant	..	Respondent

Appellant by :	Shri Nikhil Tiwari. AR
Respondent by :	Shir Milind Chavan. DR

Date of Hearing	23.11.2021
Date of Pronouncement	26.11.2021

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The assessee has filed the appeal against the final assessment order passed u/s 143(3) r.w.s 143(C)(13) of the Act in pursuance to the directions of the DRP order dated 25.09.2020.

2. The brief facts of the case are that the assessee is a Non Resident of India (NRI) and the assessee company was incorporated under the companies ordinance of Hong

Kong and is primarily engaged in the business of operation of ships in international traffic. The assessee's revenue comprises of freight income and ancillary charges such as terminal handling charges, demurrage charges etc. In the absence of Double Taxation Avoidance Agreement (DTAA) with Hong Kong, the assessee has offered the entire income i.e freight income and ancillary charges under the presumptive scheme of taxation u/s 44B of the Act.

3. The assessee has filed the return of income on 30.11.2017 declaring a total income of Rs. 67,04,43,660/- and claimed refund of prepaid taxes of Rs.34,07,16,075/- subsequently, the revised return of income was filed on 16.02.2018 with a total income of Rs.67,11,97,870/-.The case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act are served electronically on the assessee. The Assessing officer(A.O.) found that the assessee has disclosed gross freight and ancillary receipts in relation to export and imports and has estimated deemed income U/s 44B of the Act @ 7.5% which worked out to Rs.67,11,97,864/-.The A.O. has observed that the assessee has collected service tax in respect of ancillary charges. The assessee has not included the service tax in computing the presumptive income u/s 44B of the Act. The assessee has explained

the reasons in respect of the service tax claim. The A.O has relied on the decisions of the assessee's own case for the earlier assessment years and the provisions of Sec. 44B of the Act and the applicable provisions of service tax. Finally, the A.O has observed that the gross service tax collected by the assessee is an amount specified u/s 44B(2) of the Act and determined income @ 7.5% of service tax collected and assessed the total income of Rs. 72,45,68,891/- and passed the draft assessment order u/sec 144C of the Act dated 2-12-2019.

4. Aggrieved by the draft assessment order, the assessee has filed objections with the DRP. Whereas the DRP considering the judicial decisions and also the facts in respect of the assessee case has observed that in earlier years for A.Y 2012-13 to 2017-18 the similar issue has come for discussions. Considering the judicial decisions and provisions of Sec. 44B of the Act, the DRP has directed the A.O not to include the service tax collected in aggregate amounts as specified u/s 44B(1) of the Act for the purpose of the deemed profit and passed the order on 25.09.2020.

5. In pursuance to directions of the DRP, the AO has passed the order u/s 143(3) r.w.s 144(C)(13) of the Act and has granted relief on the disputed issue of

chargeability of service tax and assessed the total income of Rs.67,11,97,870/- on 11.11.2020. Aggrieved by the order of the A.O, the assessee has filed an appeal before the Hon'ble Tribunal.

6. At the time of hearing, the Ld. AR submitted that the (i) the A.O has to grant refund of short TDS Credit and the applications have been filed before the A.O. (ii) The A.O. has to give short credit of advance tax paid and the application is filed (iii) A.O. to grant interest u/s 244A of the Act on the above refunds and prayed for the directions. Contra, the Ld. DR supported the order of the lower authorities.

7. We heard the rival contentions and perused the material on record. The sole crux of the disputed issue as envisaged by the Ld. AR is with respect to grant of short credit of TDS and short credit of advance tax and interest u/s 244A of the Act .We find that the assessee has filed the applications in respect of the claims which are pending before the A.O. Therefore, we considering the facts and circumstances direct the Assessing officer (A.O.) to expedite the applications and grant the short TDS credit and short advance tax credit after verification of

information and details. Further interest u/sec244A of the Act is granted as per the provisions of law.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 26.11.2021.

Sd/-  
(PRAMOD KUMAR)  
**VICE PRESIDENT**

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Mumbai, Dated 26.11.2021

KRK, PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

( Asst. Registrar)  
ITAT, Mumbai