

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.1246/Bang/2016
Assessment year: 2010-11

M/s. U.B. International Trading Ltd., Level 12, UB Tower, UB City, 24, Vittal Mallya Road, Bengaluru – 560 001. PAN: AAACU 5060H	Vs.	The Income Tax Officer, Ward 12(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravishankar, Advocate
Respondent by	:	Shri Priyadarshi Mishra, Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	10.02.2022
Date of Pronouncement	:	10.02.2022

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order dated 7.4.2016 of the CIT(Appeals)-7, Bengaluru for the assessment year 2010-11 on the following grounds:-

- “1. The orders of the lower authorities in so far as they are against the appellant is opposed to law, equity and weight of evidence, probabilities, facts and circumstance of the case.
2. The appellant denies itself liable to be assessed on a total income of Rs.79,46,089/- as determined by the learned Assessing Officer as against total income declared by

Appellant of Rs.3,36,620/- on the facts and circumstances of the case.

3. The learned Commissioner of Income-tax (Appeals) is not justified in law in confirming the disallowance made by the learned Assessing Officer in respect of freight charges Rs.579/- and Professional charges Rs.18,33,500/- under section 40(a)(ia) of the Act on the facts and circumstances of the case.
4. The learned Commissioner of Income-tax (Appeals) failed to appreciate that the reimbursement made by the appellant in respect of freight charges and professional charges paid by M/s UB Global on behalf of the appellant based on the agreement and consequently the provisions of section 194C and 194J of the Act are not applicable on the facts and circumstances of the case.
5. The learned Commissioner of Income-tax (Appeals) failed to appreciate that M/s. UB Global deducted tax at source under section 194C and 194J of the Act being the payer of the amount, at the time of making payment of freight charges and professional charges on behalf of the appellant and consequently the appellant is not liable to deduct tax at source when the appellant reimburses the said amount to M/s. UB Global on the facts and circumstances of the case.
6. The learned Commissioner of Income-tax (Appeals) ought to have appreciated that M/s. UB Global is not the service provider and the appellant is not the service receiver from M/s. UB Global to attract the provisions of section 194C and 194J of the Act and consequently the provisions of section 40(a)(ia) of the Act is not applicable on the facts and circumstances of the case.
7. The learned Commissioner of Income-tax (Appeals) failed to appreciate that the relationship between the appellant and M/s. UB Global is in the nature of contract of sale which is excluded from the purview of section 194C of the Act on the facts and circumstances of the case.

8. The learned Commissioner of Income-tax (Appeals) failed to appreciate that as per provisions of section 204(iii) the liability to deduct tax at source is on the person who pays the said amount and the reimbursement of the same shall not be subject to TDS again on the facts and circumstances of the case.
9. The learned Commissioner of Income-tax (Appeals) erred in relying on the circular No.715 dated 8.8.1995 and the same is distinguishable
on the facts of the case of the appellant on the facts and circumstances of the case
10. The learned Commissioner of Income-tax (Appeals) ought to have appreciated that when there is no proceedings is initiated under Chapter XVII of the Act, the provisions of section 40(a)(ia) of the Act is not applicable on the facts of the case of the appellant.
11. The learned Commissioner of Income-tax (Appeals) ought to have appreciated that M / s. UB Global has not claimed freight charges and professional charges as expenditure in their books and deducted the TDS while making the payment and shown in the personal ledger account of the appellant and the appellant reimbursed the said amount and consequently the provisions of section 40(a)(ia) is not applicable on the facts and circumstances of the case.
12. The learned Commissioner of Income-tax (Appeals) ought to have appreciated that the second proviso to section 40(a)(ia) of the Act is applicable, since the appellant is not deemed to be assessee in default as per proviso to section 201(1) of the Act, since M/s. UB Global has considered these payments made by the appellant in their books of accounts and consequently the disallowance made under section 40(a)(ia) of the Act is bad in law on the facts and circumstances of the case.
13. The learned Commissioner of Income-tax (Appeals) failed to appreciate that the very object of TDS is to make sure TDS deducted by the payer and further failed to appreciate

as long as the payer has paid and discharged TDS liability no disallowance is warranted on the facts and circumstances of the case. The scheme of the Act does not contemplate double deduction of TDS.

14. The learned Commissioner of Income-tax (Appeals) failed to appreciate that the disallowance made by the learned Assessing officer are purely on suspicion, surmise, assumptions and presumptions and therefore, the disallowance made deserves to be deleted.
 15. The learned Commissioner of Income-tax (Appeals) failed to appreciate that the learned Assessing Officer is not justified in law in charging the interest under section 234A, 234B and 234C of the Act and further the calculation of interest under section 234 A, B and C of the Act is not in accordance with law since the rate, method of calculation, quantum is not discernable from the order of assessment on the facts and circumstance of the case.
 16. The appellant craves leave to add, alter, amend, substitute or delete any of the grounds at the time of hearing of the appeal.
 17. The appellant humbly prays that the appeal of the appellant be allowed or pass any such further orders for the advancement of substantial cause of justice.”
2. The facts of the case are that assessee company is a manufacturer of footwear year and trading. It has entered into an agreement with M/s UB Global Corporation Ltd ('UB Global') in which it was agreed upon that the entire production of the assessee should be sold to 'UB Global' which will arrange for necessary export order and furnished details of the products its specifications, quality, price, delivery terms and such other terms and conditions of supply on behalf of the assessee. In turn, the assessee agreed to provide the required design and technical supervision, to organise raw material required for manufacture of the products as per the standard laid down, organised production as per the schedule and

specifications, organised labour, power, water and other utilities to meet the production targets, organised timely delivery of the products to make the export commitments and to obtain necessary regulatory clearances, licences, permissions and approvals from various agencies and the statutory bodies. Thus the assessee was engaged in the production and the 'UB Global' was engaged in export of goods produced by the assessee. As per clause 2 of the agreement the 'UB Global' will make advance payments to the assessee against the supply of the products in consideration of the investment made by the assessee. The advances so made will be against the export orders/anticipated orders and it will be settled within 15 days from the date of receipt of invoice. It was also agreed upon that the assessee will reimburse the expenses incurred by 'UB Global' on behalf of the assessee after mutual discussion and consent.

3. During the assessment proceedings, the AO observed that the assessee has debited expenses under the head ' professional consultancy charges' of Rs. 18,33,500/- and ' airfreight charges, of Rs. 57,75.969/- . It was further found that these payments were made to 'UB Global', a sister concern and it was contended by the assessee that these were reimbursements. The view of AO that these payments attracts provisions of TDS failing which it should be disallowed under section 40(a)(ia) of I.T. Act was negated by the assessee on the plea that it is a reimbursement and hence the provisions of TDS does not apply. The AO, however, opined that since the entire exercise of export of products made by the assessee has been contracted out to 'UB Global' which, in turn, has hired various professional to discharge its portion of work, thus the mere non-existence of profit on the transaction cannot relieve the assessee from the obligation of deducting tax at source.

4. On appeal, the CITAAA observed that the AO is correct to observe that where the cost of services is charged and recovered by way of

reimbursement, even without any profit element, TDS will be applicable as held in the case of *Arthur Andersen & Co by the Mumbai tribunal 94 TTJ 736 (Mum)*.

5. On the assessee's reliance upon the decision of ITAT, Bangalore' B' bench, Bangalore in the case of *M/s Dhaanya Seeds Pvt Ltd., ITA No.1523/bang/2012* in which it was held that deduction of tax is not warranted on reimbursement of expenses which are separately billed, the CIT(Appeals) observed that this decision of ITAT was passed after considering the decision in the case of *Transmission Corporation of A.P. Ltd (SC) 239 ITR 587 and Van Oord ACZ India (p)Ltd 112 ITD 79*. Further, it is a settled issue that TDS provisions apply to gross amount paid to the contractor and not the sum paid bill wise, thus TDS has to be made on the gross amount of the bill if the payment is made on account of a contractual obligation. The same has been clarified in question number 30 circular number 715 of the CBDT. The payment in question made to sister concern 'UB Global' is not shown to have reimbursed bill wise, but it is a gross amount which has been paid to 'UB Global'. He observed that the assessee has made an attempt to escape the obligation of deducting tax at source by submitting that the sister concern 'UB Global' with whom it has the exclusive contract for the sale of its products has deducted tax at source while making payments to the 3rd party which does not absolve the assessee in performing the statutory obligation.

6. Further, the CIT(Appeals) observed that since assessee failed to deduct tax at source u/s 194C/194J in relation to payments made which was claimed as expenditure, it cannot be allowed as expenditure as the provisions of section 40(a)(ia) of the Act get attracted. In view of the above, addition made by the AO was sustained by the CIT(Appeals). Against this, the assessee is in appeal before us.

7. We have heard both the parties and perused the material on record. The assessee brought on record the payments made by it to UB Global. The Id. AR submitted that these payments were made to reimburse UB Global, in turn, UB Global has paid this amount to various professionals and service providers and duly deducted tax on the same. The assessee has placed the necessary record on this count in the PB as follows:-

Particulars	Page No.
Copy of ledger account of the UB Global Corp Ltd in the books of the appellant for the AY 2010-11	18-19
Copy of statement of payments made for professional services	20
Copies of Form 16A issued by UB Global to the various professionals	21-30
Copy of statement of payments made for freight charges	31
Copies of Form 16A issued by UB Global to the various freight operators	32-45

8. We have carefully gone through the above documents filed by the assessee. In our opinion, there is merit in the arguments of the Id. AR. Admittedly the assessee made the payments to UB Global and in turn UB Global made payments to respective parties after due deduction of tax at source. There is no dispute regarding this.

9. However, the Id. DR made a plea before us that the issue may be remitted to the AO to examine whether UB Global deducted TDS and remitted it to Govt. account.

10. We accede to the submission of the Id. DR. Accordingly, we remit the issue to the file of the AO to examine whether UB Global has made TDS out of the reimbursement payments received from the assessee and

remitted it to the Govt. account, after providing opportunity of being heard to the assessee. If UB Global has deducted TDS on the impugned reimbursement amount and remitted it to the Govt. account, there cannot be any disallowance in the hands of the assessee to that extent. With these observations, the issue is remitted to the AO for fresh consideration.

11. In the result, the appeal by the assessee is partly allowed for statistical purposes.

Pronounced in the open court on this 10th day of February, 2022.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 10th February, 2022.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.