

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, CHENNAI**

**माननीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।**  
**BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ **ITA No.872/Chny/2019**  
(निर्धारण वर्ष / **Assessment Year: 2015-16**)

<b>M/s. Standard Shipping and Allied Services Private Limited</b> 171, Linghi Chetty Street, Chennai – 600 001.	<b>बनाम/</b> Vs.	<b>Income Tax Officer</b> Corporate Ward -6(3), Chennai - 600 034.
स्थायी लेखा सं./जी आइ आर सं./ <b>PAN/GIR No. AABCS-2306-P</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Appellant by</b>	:	Shri V. Tharish (CA) – Ld. AR
प्रत्यर्थी की ओर से/ <b>Respondent by</b>	:	Shri ARV Sreenivasan (Addl. CIT) – Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	03-02-2022
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	15-02-2022

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2015-16 arises out of the order of learned Commissioner of Income Tax (Appeals)-15, Chennai [CIT(A)] dated 31-12-2018 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) of the Act on 22-12-2017. In this appeal, the assessee is aggrieved by confirmation of certain disallowance of Rs.15.41 Lacs u/s 40(a)(ia) for want of tax

deduction at source (TDS) on warehouse charges and transport charges.

The grounds raised by the assessee read as under: -

1. The Order of the Ld. Commissioner of Income-tax (Appeals) -15, Chennai and the Ld. Income Tax Officer, Corporate Ward 6(3), Chennai is contrary to the law and facts of the case.

2. The Ld. CIT(A) - 15, Chennai erred in adjudicating the appeal without considering the Grounds of Appeal and the Written Submissions filed by the appellant.

3.1 The Ld. CIT(A) - 15, Chennai erred in confirming the Order of the Assessing Officer in treating the total credits in Form 26AS, which includes reimbursements received as gross receipts of the Appellant and treating such payments towards reimbursements as expenditure of the Appellant.

3.2 The Ld. CIT(A) - 15, Chennai erred in confirming the Order of the Assessing Officer, in ignoring the Guidance Note issued by the Institute of Chartered Accountants of India (ICAI), in relation to tax audit under Section 44AB, which defines the term Gross Receipts, specifically excluding receipts in the nature of reimbursements.

3.3 The Ld. CIT(A) - 15, Chennai and Ld. Assessing Officer erred in following the Question No 3 of the FAQs released by CBDT in Circular No. 715 dated 08.08.1995, wherein the circular refers to deduction of tax by the ultimate customer while paying the bill to a vendor, along with the reimbursements incurred on behalf of such customer.

3.4 The Ld. CIT(A) - 15, Chennai and Ld. Assessing Officer erred in ignoring the case laws relied on by the Appellant which were rendered in similar context and following the case of Hon'ble Karnataka High Court in the case of CIT vs. CGI Information Systems and Managements Consultants Pvt. Ltd. [2014] 226 Taxman 319 (Kar.) wherein the facts are entirely different to the facts in the appellant's case.

3.5 The Ld. CIT(A) - 12, Chennai and Ld. Assessing Officer erred in confirming the disallowance under Section 40(a)(ia) of the Act, ignoring the contention of the Appellant that, disallowance can be made only when a particular amount is claimed as expenditure on which tax is not deducted or remitted by the assessee and not otherwise. However, the deductions under Section 40(a)(ia) of the Act was invoked even when the said payments were not even debited to the Profit & Loss account nor claimed as expenditure in the Return of Income.

2. The Ld. AR submitted that the expenditure was in the nature of reimbursement only and the same was not debited / claimed in the Profit & Loss Account. The Ld. DR supported the disallowance made by Ld. AO.

3. Having heard rival submissions and after going through the orders of lower authorities, our adjudication would be as under.

4.1 During assessment proceedings, it transpired that the assessee was engaged as custom house clearing agent. The assessee claimed warehouse charges for Rs.84.13 Lacs under the head reimbursements. It was submitted that charges represent the amount paid on behalf of clients to custom house station for storing the goods before clearance from custom authorities. The sum was stated to be payable by the assessee's clients and invoices were also issued in their name.

4.2 However, Ld. AO noted that the Principal Party (importer / exporter) assigns a contract to the assessee as clearing and forwarding agent, The assessee appoints various third-party agencies to execute the project. Upon execution, the third parties raises the invoice on the assessee. The assessee, in turn, settles the same by raising an invoice on the principal party for services rendered. The CBDT Circular No.715 dated 08-08-1995 clarified that TDS was to be deducted on reimbursement also. Further, the payment was made to third-parties and not directly to custom department. Therefore, the assessee was required to deduct TDS on these payments aggregating to Rs.47.33 Lacs as detailed in para 6.5 of the order. Accordingly, 30% of sum so paid was disallowed u/s 40(a)(ia) for want of compliance of TDS. The same resulted into disallowance of Rs.14.20 Lacs in the hands of the assessee.

4.3 Similarly, the assessee reflected reimbursement of transport charges for Rs.112.48 Lacs. The assessee submitted that no TDS was required in view of Sec.194C(6) as the payments were for plying, hiring or leasing of goods carriages. However, Ld. AO held that though the assessee had made compliance of Sec.194C(7) in majority of cases, however, no such compliance was made with respect to three payments

aggregating to Rs.4.04 Lacs. Therefore, 30% of this expenditure was also disallowed and added to the income of the assessee. The same resulted into another disallowance of Rs.1.21 Lacs.

5. During appellate proceedings, the assessee submitted that in the course of rendering services, the assessee makes certain payment viz. custom duty, steamer agent charges, warehousing charges and transport charges on behalf of the clients and claim the reimbursement thereof from clients. The relevant bills were raised in the name of the clients and not in the name of the assessee. The assessee credits the reimbursement to a separate account and amount paid are also debited in this account. Therefore, these are mere reimbursements and not income or expenditure for the assessee, The service charges received from customs were separately offered as income and reimbursements were not part of sales / gross receipts as per Guidance Note on Tax Audit as issued by The Institute of Chartered Accountants of India. These reimbursements could not be considered to be part of revenue from operation since the assessee acted as pure agent on behalf of its customers. The assessee only acted as intermediary between the customers and the parties and therefore, impugned disallowance was not justified. Reliance was placed on various judicial pronouncement in support of the submissions.

6. The Ld. CIT(A) noted that the assessee had produced declaration in Form No.26A in respect of certain parties for whom warehouse charges were paid. Few of the payments were below the threshold limit. The samewere already considered by Ld. AO and disallowance was made only for balance payment of Rs.47.33 Lacs. The payments were to third-parties under contractual obligations and not paid directly to custom

department. Therefore, the action of Ld. AO in making the disallowance was held to be justified. Similar view was taken with respect to transport charges. Aggrieved, the assessee is in further appeal before us.

7. Upon careful consideration of factual matrix, it could be gathered that the assessee engages as custom house agent. During the course of its business, the assessee has made certain payments which are on behalf of the clients. The nature of the expenditure is Custom Duty, Steamer Agent Charges, Warehousing Charges and Transport Charges. These payments are later on reimbursed to the assessee. The assessee credit as well as debit these payments in a separate account. In the end, this account would be nullified since it would not have any profit element and thus no expenditure would be debited by the assessee in the Profit & Loss Account. The service charges received by the assessee from its clients are separately offered to tax in the Profit & Loss Account. The invoices for expenditure paid by the assessee are raised in the name of assessee's clients. To support the case, Ld. AR relies on Guidance Note on Tax Audit u/s 44AB issued by ICAI which provide that reimbursement of customs duty and other charges collected by a clearing agent would not form part of gross receipts. Accordingly, the services charges have been considered to be part of turnover and reimbursements have been accounted in a separate account and thus, do not form part of Profit & Loss Account. All these facts remain undisputed before us. This being the case, the assessee, in our considered opinion, merely act as intermediary between the payee and its clients. In such a case, the assessee could not be held to be 'person responsible for deduction of tax at source' in terms of Section 194C and accordingly, disallowance u/s 40(a)(ia) would not be attracted. If the expenditure is incurred not in own

capacity, but as representative of some third person, then it is the expenditure of such third person and not that of the assessee. For the same we rely on the decision of Hon'ble High Court of Delhi in **CIT V/s Cargo Linkers (179 Taxman 151)**. Therefore, on the facts and circumstances of the case, we direct Ld. AO to delete the impugned disallowance of Rs.15.41 Lacs.

8. The appeal stand allowed in terms of our above order.

Order pronounced on 15<sup>th</sup> February, 2022.

Sd/-  
(V. DURGA RAO)  
न्यायिक सदस्य /JUDICIAL MEMBER

Sd/-  
(MANOJ KUMAR AGGARWAL)  
लेखासदस्य /ACCOUNTANT MEMBER

चेन्नई/ Chennai; दिनांक/ Dated : 15-02-2022  
*JPV*

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

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF