

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH,**  
**MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI S RIFAUR RAHMAN, AM**

आयकर अपील सं/ I.T.A. No.793/Mum/2023

(निर्धारण वर्ष / Assessment Year: 2011-12)

IAL Logistics India Pvt. Ltd. 6 <sup>th</sup> Floor, Kalpataru Court, C Gidwani Marg, Chembur, Mumbai-400074.	<b>बनाम/</b> Vs.	DCIT, Circle-5(2)(1) Mumbai.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACM3123B</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri S. N Kabra (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 28/11/2023

घोषणा की तारीख /Date of Pronouncement: 12/12/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee company against the order of the Ld. Commissioner of Income Tax (Appeals)/(NFAC), Delhi dated 25.01.2023 for the assessment year 2011-12.

2. None appeared for assessee. However a perusal of the records reveals that the main grievance of the assessee is against the action of the Ld. CIT(A) upholding the addition of Rs.8,27,200/- as undisclosed business income.

3. Brief facts are that the assessee had filed its return of income on 29.09.2011 declaring total taxable income of Rs.5,76,899/- which was processed u/s 143(1) of the Income Tax Act, 1961 (hereinafter "the Act"). According to the AO, the assessee is a Shipping Agent and International Freight Forwarder. According to the AO, he received an



ITA No.793/Mum/2023

A.Y. 2011-12

IAL Logistics India Pvt. Ltd.

information from the DG Central Excise Intelligence, Mumbai that during the period between October, 2010 to June, 2011, the assessee has used the service of M/s. Speedy Multimodes Ltd (hereinafter "M/s. Speedy) to store the export freight of its clients. And M/s. Speedy had passed on rebates totaling to Rs.8,27,200/- to the assessee which, according to the AO, the assessee had not passed on to its clients, meaning assessee has retained the rebate [of Rs.8,27,200/-] with itself and has not offered it to taxation, which escaped assessment. Therefore, on the strength of the aforesaid facts, the AO recorded his reasons for reopening the assessment u/s 147 of the Act and issued notice u/s 148 of the Act; pursuant to which assessee requested for a copy of the reasons which was given to assessee and assessee objected to reopening, which was disposed of by the AO. The AO had also reproduced in the assessment order *the reasons recorded* for reopening at page nos. 2 and 3 of the assessment order. And thereafter, AO observed that the assessee's only defense in respect of not offering the rebate received from M/s. Speedy was that in the relevant year, the assessee has not dealt with any CFS particularly with M/s. Speedy. However, the AO was of the view that the assessee failed to submit any documentary proof that it has not under taken any business activity with M/s. Speedy. Therefore, after justifying the reopening of the assessment, the AO observed that assessee is a shipping agent for the principal shipping company M/s. IAL Container Line UK Ltd in Dubai. And he noted that the Service Tax Authorities conducted search in the premises of the assessee and found that assessee was not paying service tax on the rebates earned by them from CFS. And inter alia



ITA No.793/Mum/2023  
A.Y. 2011-12  
IAL Logistics India Pvt. Ltd.

they [*Service Tax Authorities*] observed that assessee received services from M/s. Speedy [*for exports of container of its clients i.e. of the principal company i.e. M/s. IAL Container Liner UK Ltd*] for the period between Oct, 2010 to June, 2011 and that assessee has received rebates totaling to Rs.8,27,200/- from M/s. Speedy for which assessee had issued debit notes to M/s. Speedy. And the Service Tax Authorities determined assessee's Business Auxiliary Services, a service rendered by assessee to M/s. Speedy and levied Service Tax Amounting to Rs.85,202/- on M/s. IAL Logistic India Pvt. Ltd. According to the AO, from the aforesaid action of *Service Tax Authorities* it appears that the assessee has retained the rebates and had used the above rebates for promotion of M/s. Speedy amongst its clients. According to the AO, the Service Tax Authorities has treated the amount retained by the assessee as consideration from *Business Auxiliary Service* provided to M/s. Speedy Multimodes Ltd. In view of the above, according to the AO, the assessee company rendered service and earned income of Rs.8,27,200/- which was treated as income from undisclosed sources. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) wherein the assessee brought to the notice of the Ld. CIT(A) that assessee had shown net income of Rs.5,76,899/-, which was from (i) Income from house property (rental income) of Rs.11,61,720/- and (ii) income from business income was loss of (Rs.5,84,821/-). According to the assessee, in the relevant year under consideration, it was hardly in the business and there was no business income or any shipping expenditure incurred during the year, and in fact, it had incurred loss in the business. According to the



ITA No.793/Mum/2023  
A.Y. 2011-12  
IAL Logistics India Pvt. Ltd.

assessee, it was pointed out to AO that in the year 2016, service tax survey was conducted on **another group company M/s. IAL India Ltd.** And the information the AO used to re-open the assessment [which has been forwarded by DG Central Excise Intelligence, Mumbai] was related to the other entity and not that of the assessee. Therefore, according to assessee, the AO erred in relying on the irrelevant information which was not pertaining to the assessee, wherein it was stated that assessee had used the service of M/s. Speedy Multimode Ltd. to store the export freight of its clients and beneficiary of rebate. Whereas, according to the assessee, it has not carried out any business in the relevant year, and had only rental income and had not dealt with M/s Speedy. And on the basis of the aforesaid facts it requested the AO to verify the facts and to bring on record any material like bank statement of M/s. Speedy Multimode or the confirmation of the CFS to verify the veracity of the facts stated by the assessee. And also requested the AO to issue notice u/s 133(6) of the Act to M/s. Speedy Multimode verify the facts. However, the aforestated plea of the assessee was rejected and Ld. CIT(A) confirmed the action of the AO. Aggrieved, the assessee is before us.

4. We have heard the Ld. DR and perused the records. The facts aforestated are not repeated for the sake of brevity. The AO based on information from the DG Central Excise Intelligence, Mumbai that during the period between Oct, 2010 to June 2011, the assessee has engaged the service of M/s. Speedy Multimode Ltd and used the CFS of M/s. Speedy Multimode Ltd to store the export freight of its clients



*ITA No.793/Mum/2023*

*A.Y. 2011-12*

*IAL Logistics India Pvt. Ltd.*

for which M/s. Speedy Multimode Ltd gave rebates totaling Rs.8,27,200/- which was alleged to have not been passed by assessee to its clients i.e. the same was retained by it. According to the AO, on this transaction the Service Tax Authorities had levied service tax of Rs.85,202/- on assessee. And therefore, according to AO, the assessee had rendered service and earned an income of Rs.8,27,200/- which has not been disclosed and was treated as undisclosed income of the assessee. On appeal, the Ld. CIT(A) has confirmed the action of the AO. However, we note that the main plea of the assessee is that it has not carried out any business in the relevant year and had only rental income. According to the assessee, another group company was surveyed by Service Tax Authorities i.e. M/s.IAL Logistics India Ltd. and based on this information, AO had erroneously re-opened the assessment of assessee. It is noted that assessee contested the allegation of AO that assessee did not disclose the income from M/s. Speedy Multimodes Ltd. and denied the allegation of receiving any rebates and asserted that it has not used the service of M/s. Speedy Multimode Ltd. And also requested the AO to issue notice u/s 133(6) of the Act and to verify the bank statement of M/s. Speedy Multimode Ltd and also to confront M/s. Speedy Multimode Ltd. about the fact that assessee didn't had any business with M/s. Speedy. When the assessee has asserted that it didn't use any service of M/s. Speedy Multimode Ltd in the year under consideration, according to us, the bare minimum the AO ought to have done was to verify the veracity of the assertion made by assessee by conducting enquiry rather than stating that assessee had failed to file any documents to support the



ITA No.793/Mum/2023  
A.Y. 2011-12  
IAL Logistics India Pvt. Ltd.

assertion that it has not used the service of the M/s. Speedy Multimode Ltd. We wonder as to how anyone can prove the negative. So the AO in the aforesaid facts, erred in asking the assessee to prove that it didn't use any service of M/s. Speedy, and as noted, the assessee cannot be asked to prove the negative. In the light of the aforesaid discussion, we set aside the impugned action of the Ld. CIT(A) and restore the assessment back to the file of the AO for denovo assessment. And the AO is directed to provide all the materials adverse against the assessee (given by DG Central Excise Intelligence) as well as direct him to conduct inquiry from M/s. Speedy Multimode Ltd as to whether the assessee had used services ( as alleged by AO) of CFL with M/s. Speedy Multimode Ltd or whether any rebate had been given to assessee as informed by Service Tax Authorities. Needless to say, the assessee be granted opportunity of hearing, and opportunity to rebut the evidences if necessary. And thereafter, AO to pass order in accordance to law.

5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 12/12/2023.

Sd/-  
(S RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Sd/-  
(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 12/12/2023.  
Vijay Pal Singh, (Sr. PS)



ITA No.793/Mum/2023  
A.Y. 2011-12  
IAL Logistics India Pvt. Ltd.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai