

IN THE INCOME TAX APPELLATE TRIBUNAL, "D" BENCH  
MUMBAI  
BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIALMEMBER

ITA No. 1489/MUM/2024  
(A.Y.2014-15)

ACIT – 24(1), Room.no.601, 6 <sup>th</sup> Floor, Piramal Chambers, Lalbaug, Parel, Mumbai – 400012.	Vs.	Raj Clearing Agency, 303/D Wing, Jayant Apartment, Sahar CargoComplex, Andheri(East), Mumbai-40099.
PAN/GIR No. AAIFR0443E		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant by	Smt.Mahita Nair, Sr. DR
Respondent by	Shri. Sanjay R. Parikh.AR

सुनवाई की तारीख/Date of Hearing	03.09.2024
घोषणा की तारीख/Date of Pronouncement	27.09.2024

**ORDER**

**PER PAVAN KUMAR GADALE, JM:**

The appeal is filed by the revenue against the order of National Faceless Appeal Centre (NFAC), Delhi / CIT(A) passed u/sec 250 of the Act. The revenue has raised the following grounds of appeal:

1. (a) *On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.2,46,07,278/- without appreciating the fact that the case of the assessee for the AY 2014-15 was reopened considering the*

*fact that the assessee has not deducted the TDS on the payment of Rs.2,46,07,278/- made to its related party i.c. M/s. Capricorn Logistics Pvt. Ltd.*

*2 (b) On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.2.46,07,278/- without appreciating the fact that the assessee failed to furnish the basic details as called for by the AO during the reassessment proceedings as well as during the appeal proceedings to establish the genuineness of the expenses claimed on account of Agency charges of Rs.2.46,07,278/- to M/s. Capricorn Logistics Pvt. Ltd.*

*3 (c) On the facts and circumstances of the case and in law, Ld CIT(A) has erred in holding that the notice u/s 148 and Assessment Order passed u/s 147 r.w.s. 143(3) are void ab-initio on the ground that no speaking order has been passed by the A.O. on the objections raised by the assessee without appreciating the fact that the assessee filed the objection at the fag end of the time barring assessment and the AO was constrained to deal with the Objection in the assessment order.*

*4 (d) On the facts and circumstances of the case and in law, Ld CIT(A) has erred in holding that the notice u/s 148 and Assessment Order passed u/s 147 r w.s. 143(3) are void ab-initio on the ground that there is wrong observation made by the AO by considering particulars of payment made persons specified u/s 40A(2)(b) | Clause 23 of Tax Audit Report] without appreciating that reference to clause 23 of Tax Audit Report has been made only for the amount paid to M/s. Capricorn Logistics Pvt. Ltd.*

*5 (e) On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.2,46,07,278/- without appreciating that basic facts for application of TDS provision, i.e. nature of the services rendered by M/s. Capricorn Logistics Pvt. Ltd remained unexplained in the reassessment proceedings as well as before the Ld. CIT(A).*

*6 (f) On the facts and circumstances of the case and in law, Ld. CIT(A) has erred in deleting the addition of Rs.2,46.07.278/- without appreciating the fact that extracts of the 26AS of M/s. Capricorn Logistics Pvt. Ltd. submitted by the assessee before*

*the Ld. CIT(A) is without digital footprints and hence said details requires further verification.*

*7 (g) The appellant craves leave to amend or alter or add a new ground which may be necessary.*

2. The brief facts of the case that the assessee is a partnership firm and is engaged in the business as customs house agent. The assessee has filed the return of income for the A.Y 2014-15 on 18.10.2014 disclosing a total income of Rs. 2,47,15,170/- and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for limited scrutiny under CASS to verify "Large other expenses claimed in the profit & Loss account, receipts u/s 194C and 194J (as per 26AS) are more than the receipts shown in ITR, tax credit (and receipts) in ITR is less than tax credit in 26AS, mismatch in sales turnover reported in audit report and ITR. Accordingly, the Assessing Officer (AO) has issued notice u/sec 143(2) and u/sec 142(1) of the Act. In response to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details and explained the working pattern/ methodology of the assessee. The AO dealt with the facts and the modus operandi of the customs clearance charges on imports and exports. On perusal of financial statements, the AO found that the assessee has debited/claimed Custom Clearance Charges of Rs 4,11,17,242/- in the Profit & Loss account and majority of these expenses are incurred in cash and self made vouchers and a show cause notice was issued. The

assessee has filed the explanations and details vide letter dated 15.12.2016 referred at Para 4 of the order. Whereas the A.O was not satisfied with the explanations as most of the cash expenses are by self made vouchers and has disallowed @6% of the cash expenses which worked out to Rs. 17,99,142/-. On the Second disputed issue with respect to transportation and loading / unloading charges, the AO found that the assessee has incurred expenditure in cash and cheque as per the annexure and most of the cash expenses are self made vouchers and has disallowed @6% of the cash expenses works out to Rs.1,92,275/- . The last disputed issue with respect to delay in payment/deposit of ESIC and PF, as the assessee has not deposited the employees contribution within the due date prescribed under the respective Act and the A.O made disallowance of Rs.2,50,995/- and has assessed the total income of Rs.2,69.57.580/- and passed the order u/sec 143(3) of the Act dated 29.12.2016. And on further appeal, the CIT(A) has granted partial relief and partly allowed the assessee appeal.

3.Subsequently, the A.O found that in the Tax Audit Report u/sec44AB of the Act Form.no.3CD, the assessee has disclosed that it has paid to one of the partners M/s Capricon logistics Pvt Lt an amount of Rs,2,46,07,278/- as Agency Charges and TDS is not deducted. hence as per the provisions of section 40(a)(i) of the Act,30% of claim of expenditure has to be disallowed. Hence the A.O has

reason to believe that the income has escaped assessment and issued notice u/sec148 of the Act. In compliance, the assessee has filed the return of income on 23.04.2021 disclosing a total income of Rs.2,66,05,160/-. Further the A.O has issued notice u/sec 142(1) of the Act calling for the details and documents relating to claim of Agency Charges. Since there was no proper compliance to the notice on the disputed issue and the assessee has raised objections on the reopening of the assessment. The A.O relied on the Tax Audit Report for the quantification of payments to the partner M/s Capricon logistics Pvt Ltd and the discrepancies found in the nature of services rendered, Finally the A.O has rejected the objections of the assessee and made addition of Rs,2,46,07,278/- and assessed the total income of Rs,5,12,12,438/- and passed the order u/sec147 r.w.s 144B of the Act dated 30-03-2022.

4. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) has considered the grounds of appeal, statement of facts, findings of the AO and the submissions of the assessee referred at Page 5 Para 11 to 34 of the order and has deleted the addition and allowed the assessee appeal. Aggrieved by the CIT(A)order, the revenue has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld. DR submitted that the CIT(A) has erred in deleting the addition overlooking the findings of the Assessing officer that the assessee could not substantiate with the documentation and information on the Agency services and the Ld.DR relied on the AO order and prayed for allowing the revenue appeal. Per Contra, the Ld. AR supported the order of the CIT(A) and substantiated the submissions with the paper book.

6. We heard the rival submissions and perused the material on record. The sole disputed issue envisaged by the Ld.DR that the CIT(A) has erred in deleting the addition overlooking the findings of the Assessing Officer that the assessee has not deducted the TDS on payments pertaining to the Agency services. Further the A.O has relied on the Tax Audit report clause 23 with respect to the payments made without deduction of TDS. Whereas the Ld.AR submitted that the relevant clause 23 of the Form.No.3CD pertains to “reporting of particulars of payment made to specified persons u/sec40A(2)(b) of the Act” and demonstrated the Form.No.3CD placed at page 17 and in particular at Page 23 - clause no 23 along with Annexure D , where the details of payments made to the partner M/s Capricon logistics Pvt Lt is mentioned and TDS was also deducted on the quantum of the Agency services u/sec194C of the Act placed at page 36 of the paper book. At this juncture, we considered it appropriate to refer to the observations of the CIT(A) in granting relief

to the assessee dealt at Page16 Para 35 of the CIT(A) order read as under:

*“35. APPELLATE DECISION:*

*The principal observations of the Assessing Officer is that from the 3CD report (clause 23) that the assessee has paid to one of the Partners M/s. Capricorn Logistics Pvt. Ltd. amount of Rs.2,46,07,278/- as Agency Charges on which TDS was not deducted. Therefore, as per the provisions of section 40a(ia), thirty percent of the said expenditure is required to be added back in the total income of the assessee. Hence, the case was re-opened as per the provisions of section 147 of the I.T. Act, 1961 (hereby referred to as the Act) with the approval of the concerned higher authorities. Accordingly, notice u/s. 148 was issued on 25.03.2021. In response to the notice, the assessee filed its return of income on 23.04.2021 declaring total income at Rs.2,66,05,160/-*

*A notice u/s. 142(1) was issued to furnish various details and documents with respect to above payments and the details of TDS deducted. The A.O. has further asked to substantiate such a payment for the purpose of business. The appellant filed objections on 02.02.2022 and further details thereafter. The appellant also availed video conferencing which was provided on 30.3.2022. After verification, the A.O, has stated that the claim of the appellant in respect of expenditure of Rs 2,46,07,278/- stated in Audit Report u/s 44AB is not explainable and there is no TDS deducted as per the provisions of u/s 194J on the said payment. The appellant filed objections on 02.02.2022 regarding re- assessment notice u/s 148 but the Assessing Officer as per para no.-9 of his order did not accept the objections. The A.O. added the said payment to the Returned Income.*

*The appellant has made submissions wherein it is stated that A.O. observed clause no.-23 of Audit Report in Form No 3CD and concluded that the Agency charges of Rs.2,46,07,278/- was paid to M/s Capricorn Logistics Pvt. Ltd. without deducting TDS. Therefore, the case was reopened u/s 147 of*

*the I T. Act. The Return was filed in response to the said notice on 23.04.2021. The reasons for re-opening were provided on 10.12.2021 and the objection was filed by letter dated 02.02.2022. The said objections were not disposed-off by speaking order. Thereafter, show cause notice was received on 27.03.2022 proposing to make the addition of the above agency charges. The Appellant made detailed submissions on 28.03.2022 and also opted for video conference which was held on 29.03.2022.*

*The appellant submitted that the objections raised against the reasons for re-opening were not disposed off by speaking order as required by the order of Supreme Court in the case of GKN Driveshafts (India) Ltd. Appeal No. 7731 of 2002. Therefore, the appellant submits that the Assessment Order passed is null and void as it has not followed the guidelines of the Supreme Court. The appellant further submitted that clause no.-23 of Tax Audit Report u/s 44AB of the I.T. Act is relating to payments made to relative parties u/s 40A(2)(b) but the A.O. wrongly considered this clause no. 23 being payment of without deduction of TDS. In support of the same, the appellant submitted the extract of clause no. 23 of the said Audit Report for perusal and record. The appellant therefore submitted that the said notice u/s 148 is void ab initio since the facts relied upon by the A.O. is totally wrong. The appellant further submitted that the TDS is deducted on the payments to Capricorn Logistics Pvt. Ltd. in respect of clearing and forwarding agency charges and submitted the relevant TDS certificates and copy of 26AS. The said agency charges are paid from year to year for the business of the appellant. The appellant therefore submitted that even on merit of the case, the said addition is not sustainable as TDS is deducted as per the provisions of the I.T. Act.*

*I have considered and perused the submissions and documents submitted before me by the appellant. The order of the Assessing Officer and his observations and conclusions are also perused and considered. At the outset, I am not inclined to agree with the additions made by the Assessing Officer for the following reasons. The A.O. has considered clause no.-23 of the*

*Tax Audit Report u/s 44AB for issue of notice u/s 148 of the I.T. Act. The A.O. stated that the clause no.-23 has reported non deduction of TDS for payment made to Capricorn Logistics Pvt. Ltd. However, this is wrong observations by the A.O. because clause no.-23 is relating to "particulars of any payment made to persons specified u/s 40A(2)(b)". The extract of clause no.-23 was submitted and considered by me. Secondly, I have gone through the Assessment Order and observed that the A.O. has not stated that how and when he has disposed-off the objections raised by the appellant against the reasons for re-opening. The appellant also raised in his submission point that the A.O, failed to consider the objections and no speaking order has been passed and received by the appellant dealing with the objections. Therefore, I agree that the A.O. has not passed the required speaking order. On both the points discussed above, the notice u/s 148 and Assessment Order passed u/s 147 r.w.s. 143(3) are void ab-initio. However, on the merits of the case, it is submitted that the TDS is deducted on the payments made to Capricorn Logistics Pvt. Ltd. and the relevant supporting's are submitted for perusal and record. The A.O. observation that the TDS is not deducted is incorrect observation because he relied on clause no.-23 of Tax Audit Report which is not relevant clause for TDS deduction. The relevant clause of non-compliance of TDS reporting is 21(B) (ii) of Tax Audit Report. In the said clause under the head non-compliance details, the name of Capricorn Logistics Pvt. Ltd. is not reported. In view of the above observation and facts and circumstances, the appellant deserves to succeed and the addition made by the A.O. is deleted. The appellant gets the relief of Rs.2,46,07,278/-.*

*In the result, the appeal of the assessee is ALLOWED."*

7. We find the CIT(A) has dealt on the facts, provisions of Act, submissions of the assessee and the clause 23 of the Tax Audit Report –Form. No 3CD to clear the wrong observations of the Assessing Officer. Further the said clause relate to reporting of particulars of payments made to specified persons u/sec40A(2)(b) of the Act and the

assesse has reported the payments made to one of the partner M/s Capricon logistics Pvt Lt in the F.Y.2013-14. The CIT(A) has considered these factual information and passed a reasoned order. Accordingly, we do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the revenue.

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 27.09.2024.

Sd/-  
**(BR BASKARAN)**  
**ACCOUNTANT MEMBER**

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

Mumbai, Dated: 27/09/2024

KRK

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,  
(Dy./Asstt. Registrar)ITAT,  
Mumbai