

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'K' BENCH  
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.2296/Mum/2022  
(Assessment Year :2018-19)**

DSV Air & Sea Private Limited B-201, B-204 The Qube, M.V.Road Off. International Airport, Approach Road, Marol Andheri East Mumbai – 400 059	Vs.	Additional/Joint/Deputy/ Assistant Commissioner of Income Tax, Income Tax Officer, The National Faceless Assessment Centre Delhi
<b>PAN/GIR No.AACCD3838A</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Nikhil Tiwari a/w. Nishit Shah
Revenue by	Shri Rajendra Chandekar, Sr. DR
<b>Date of Hearing</b>	<b>22/08/2024</b>
<b>Date of Pronouncement</b>	<b>20/11/2024</b>

**आदेश / O R D E R**

**PER RATNESH NANDAN SAHAY (A.M):**

The aforesaid appeal has been filed by the assessee against final assessment order dated 15/07/2022 passed u/s. 143(3) r.w.s. 144C (13) in pursuance of directions given by the DRP dated 21/06/2022 for the A.Y.2018-19.

2. In so far as ground Nos. 1 & 2 raised by the assessee are purely general and ground Nos.3-10 relates to transfer pricing grounds. All these grounds have not been pressed at the time of hearing. Accordingly, ground Nos. 1-10 which have not been pressed are dismissed. Further assessee has also raised additional ground stating that assessment order is barred by limitation in view of Judgment of Madras High Court in Roca Bathrooms has also not been pressed, therefore same is also dismissed as not pressed.

3. Ground No.11 relates to addition on account of bogus purchases amounting to Rs. 85,87,489/-. The brief facts are that the assessee has incurred freight forwarding expenses for the captioned assessment year of approximately Rs. 6.13 crores. Of that, at the time of scrutiny assessment, the learned Assessing Officer ('AO') picked up 4 vendors from whom the assessee has availed services. The following are the 4 vendors:

<b>Name of the vendor</b>	<b>PAN</b>	<b>Amount of disallowance (in Rs.)</b>
Emirates Shipping Line DMCEST	AABCE5724H	40,56,850
Namaste India Aviation Private Limited	AADCN7512J	25,07,770
Lakshmanan	ASCPR5834K	15,17,300

Ramchandran		
Sea Bridge Maritime Agencies Private Limited	AADCS95688	5,05,569
<b>Total</b>		<b>85,87,489</b>

4. In the draft assessment order ld. AO has disallowed the purchases made from the aforesaid parties mainly for the reason that vendor party has not filed its return of income or the vendor party has not filed business return of income. On that basis he has confirmed the entire purchases as 'bogus purchases'. Apart from that in case of one of the party Lakshmanan Ramchandran, he held that assessee has failed to submit any documentary evidences regarding such purchases and also bank statement to prove the correctness of the purchases. Before the ld. DRP assessee submitted sample copy of invoices, copies of screen shots evidencing the payments made through banking channel alongwith relevant extract of the bank statement to prove that parties are not bogus. However, the ld. DRP without considering the submissions made by the assessee rejected the ground and directed the ld. AO to disallow the same that assessee was unable to provide documentary evidences to substantiate the purchases.

5. After hearing both the parties and on perusal of material placed on record, we find that assessee had filed various copies of invoices evidencing the purchases made from these parties

which had been placed in the paper book from pages 124-172. Further Ld. Counsel has also drawn our attention that all the payments were made through banking channels which is evident from the bank statement which has been filed in the paper book from pages 173-179. Our attention was drawn to page 123 of the paper book wherein with regard to all the four parties assessee had shown closing balance and TDS was deducted at the time of payment and all these transactions are duly reflected in Form 16A and also showed documents that from same very parties, assessee had carried out transaction in next year also. With respect two parties, viz., Emirates Shipping Line and Lakshmanan Ramchandran, assessee has also filed GST return in Form 2A and also pointed out that Emirates Shipping Line is still active and other three companies have been amalgamated in the subsequent year.

6. From the perusal of the documents submitted it is seen that in so far as Emirates Shipping Line, the same is agent of Emirates Shipping Agencies India Pvt. Ltd and the services availed by assessee are, carriage handling charges, terminal handling charges, export document fees for which assessee had made payment through cheques and also deducted TDS. In light of these documents, it cannot be held that it is a bogus party or the purchases are not genuine. If a party has not filed return of income for the year under consideration that does not mean the transaction undertaken by the assessee is bogus so as to disallow the entire payment. If the assessee has deducted TDS and also reflected the transaction in the GST return alongwith

bills in support of nature of services used, then how can the transaction be treated as bogus to disallow the expenses debited and thus, addition made on account of bogus purchases cannot be sustained and same is deleted.

7. With regard to other three parties also the same reasons have been given by the ld. AO. It is seen that assessee had received freight services from Namaste India Aviation Private Limited; road transport services from Lakshmanan Ramchandran; and ocean freight, bunker charges, sea charges, port handling charges from Sea Bridge Maritime Agencies Private Limited and for availing these services, assessee has deducted TDS and also filed complete invoices and bank statement to evidence the payment which was there in the DRP also. In light of these documents, it is difficult to hold that these are bogus expenses. Simply because these parties might not have filed the return of income but that does not lead to inference that transaction is bogus. Thus, the addition made by the ld. AO is directed to be deleted.

9. In ground No.12, assessee has raised disallowance pertaining to reversal of provision of lease rent of Rs.53,91,234/-

10. The ld. AO noted that assessee has claimed Rs.54,10,894/- on account of 'any other amount allowable' as deduction. These payment relate to lease rent which assessee each year in straight line manner debited to the profit and loss account. However, the assessee company disallowed the provision created for lease rent in the year of the creation of provision and claimed the deduction

of lease rent in the year in which said provision is reversed. By way of example, our attention was drawn where assessee had created a provision on account of lease rent accrual amounting to Rs.26,14,481/- which was duly disallowed while computing its taxable income for A.Y.2017-18. Similar to A.Y.2017-18 provision amounting to Rs.27,76,753/-/- pertaining to earlier years wherein assessee disallowed the same while computing the taxable income for those assessment years. Considering the fact that provision was duly disallowed and offered to tax in the preceding year, it was appropriately reduced from the business income of the current year on reversal. Thus, the provision which was created and disallowed in the earlier years now on reversal same has been claimed as deduction in the current year by the assessee.

11. Before the ld. DRP, assessee submitted the computation income for A.Y.2017-18 alongwith relevant extract of the financial statement to explain the facts. However, the ld. DRP rejected the objection of the assessee on the ground that assessee had failed to submit the computation of past years before the ld. DRP. Accordingly, the ld. AO while passing the final assessment order disallowed the entire amount of reversal of lease of Rs.53,91,234/-. Before us, assessee had given the summary of amount of provision which was disallowed and amount of reversal of provision which was allowed for multiple previous assessment years. For the sake of ready reference, the said chart alongwith corresponding reference of the documents filed in the paper book is as under:-

<b>Details</b>	<b>Amount</b>	<b>Reference</b>
AY 2014-15 (FY 2013-14)		
Opening Balance (A)	30,84,820	Note 3.3 and 3.7 of the Financial Statements (Page no 202 and 203 of Factual paperbook)
Closing Balance (B)	30,67,405	Note 3.3 and 3.7 of the Financial Statements (Page no 202 and 203 of Factual paper book)
Difference (B-A) - Net amount allowed in the computation of Income of AY 2014-15	-17,415	Refer Computation (Page no. 214 of Factual paper book)
AY 2015-16 (FY 2014-15)		
Opening Balance (C)	30,67,405	Note 6 of the Financial Statements (Page no 206 of Factual paperbook)
Closing Balance (D)	25,94,065	Note 6 of the Financial Statements (Page no 206 of Factual paperbook)
Difference (D-C) - Net amount allowed in the computation of Income of AY 2015-16	-4,73,340	Refer Computation (Page no. 215 of Factual paperbook)
AY 2016-17		
Opening Balance (E)	25,94,065	Note 6 of the Financial Statements (Page no 209 of

		Factual paperbook)
Closing Balance (F)	27,76,753	Note 6 of the Financial Statements (Page no 209 of Factual paperbook
Difference (F-E) - Disallowed in the Computation of Income of AY 2016-17	1,82.688	Refer Computation (Page no. 216 of Factual paperbook)
AY 2017-18		
Opening Balance (G)	27,76,753	Note 6 of the Financial Statements Page no 213 of Factual paperbook)
Closing Balance (H)	53,91,234	Note 6 of the Financial Statements (Page no 213 of Factual paperbook)
Difference (H-G) - Disallowed in the computation of Income of AY 2017-18	26,14,481	Refer Computation (Page no. 217 of Factual paperbook)
AY2018-19		
Opening Balance (I)	53,91, 234	Note 6 and 9 of the Financial Statements Page no 106 of Factual paperbook)
Closing Balance (J)	12,69,097	Note 6 and 9 of the Financial Statements (Page no 106 of Factual paperbook
difference (J-I) - Net amount allowed in the computation of Income of AY 2018-19	-41,22,137	Refer Computation (Page no. 59 of Factual paperbook)

12. Thus, it is seen that assessee whenever creates a provision pertaining to the earlier years, the same has been disallowed while computing taxable income for those assessment years. **Once in the computation, provision has been disallowed and offered to tax in the preceding year then, the assessee is correct in reducing it from business income of the current year on reversal and the same has been claimed as deduction in the current year by taking the net amount of difference between closing balance and the opening balance.** Once these details have been furnished, we do not find any reason to make the disallowance on the reversal of the provision. When same has already been disallowed in the earlier years, accordingly, this issue is decided in favour of the assessee.

13. In ground No.13, assessee has challenged the disallowance pertaining to reversal on profit on sale of asset of Rs.19,660/-.

14. During the relevant assessment year assessee has sold an asset from the block of asset 'plant and machinery'. The same is evident from clause 18 of the Tax Audit Report (TAR). The sale consideration has been duly reduced from the block of asset as per Section 50 of the Act. Since the block of asset did not ceased to exist, therefore, it was not required to consider short term capital gains while computing its taxable income. Hence, the amount of Rs.19,660/- which has been credited to the profit and loss account has been reduced while computing its business income as the said receipt is a capital receipt and hence, claimed as not chargeable to tax. However, ld. DRP has disallowed the

same on the ground that assessee has failed to submit the provision of the past years. Before us our attention was drawn to tax audit report at page 72 so that the profit on sale of assets has been credited in the computation of income. This is evident from schedule of other income placed in pages 218 & 219 of the paper book wherein the profit on sale of fixed assets has been done of Rs.19,660/-. The assessee had reduced the sale consideration from the block of assets as per Section 50 and the block of asset did not cease to exist and hence, it was not required to consider short term capital gains while computing its taxable income. Accordingly, amount of Rs.19,660/- which has been credited to the profit and loss account has been reduced while computing the business income because it is a capital receipt. The only manner in which it could have taxed was as per Section 50 however, once assessee has reduced from the block of asset and said block of asset does not ceased to exist therefore, there is no requirement to consider it for short term capital gains. Accordingly, we do not find any reason for such disallowance made by the ld. AO and the same is allowed.

15. In Ground No.14 assessee has challenged the addition u/s.43B of the Act of Rs.9,33,311/-.

16. The brief facts are that the appellant had reported a returned Income of Rs 60,49,33,680 as per the ROI filed on 30/11/2018. Subsequently, an intimation dated 20/02/2020 was issued under Section 143(1) of the Act wherein the income

was computed at Rs 60,58,66,989 vis-a-vis the returned income of Rs 60,49,33,680.

17. On perusal of the intimation, it was observed that the difference of Rs 9,33,311 (i.e. Rs. 60,58,66,989 minus Rs. 60,49,33,680) was added to the taxable income on account of variance in the deduction claimed under Section 438 of the Act between the ROI and Tax Audit Report ('TAR').

18. The assessee had claimed an amount of Rs 1,13,25,758 pertaining to pre-existing leave encashment liability paid during the captioned year under Section 43B of the Act. The same was duly reported under Clause 26(1)(A)(a) of the TAR. Further, the assessee claimed an amount of Rs 9,33,311 pertaining to leave encashment liability of AY 2018-19 paid during the captioned year under Section 43B of the Act. The same was also duly reported under Clause 26(1)(8)(a) of the TAR.

19. The assessee has claimed a deduction of Rs 1,22,59,069 (i.e. Rs 1,13,25,758 plus Rs 9,33,311) in its ROI filed on 30/11/2018. Similarly, the assessee has claimed an amount of Rs. 1,38,75,505 pertaining to the leave encashment liability of AY 2018-19 which was not paid during the captioned year u/s.43B of the Act. The same was duly reported under Clause 26(i)(B)(b). The assessee has disallowed of Rs.1,48,08,816 (i.e. Rs.1,38,75,505 plus Rs.9,33,311) in its ROI filed on 30/11/2018. In light of the above, there was no deviation / variance in the allowability u/s.43B of the Act as per ROI and TAR. The ld. DRP remanded back this issue to the ld. AO for

verification. The ld. AO issued notice to the assessee to provide its response, however, while submitting the response assessee by mistake could not attach the annexure which was relevant for the submission is now being annexed before us. Since this annexure was not there before the ld. AO, therefore, the matter is remanded back to the ld. AO only for a limited purpose to consider the above factual aspect and grant appropriate relief. Accordingly, ground No.14 is partly allowed for statistical purposes.

20. In ground No.15 relating to short grant of TDS of Rs.5,62,031/- and in ground No.16 relating to non-grant of self-assessment tax of Rs.8,49,68,000/-. It has been stated that assessee had already filed rectification application before the ld. AO. Accordingly, we direct the ld. AO to verify the same and grant credit accordingly. Thus, ground No. 15 & 16 is allowed for statistical purposes.

21. Ground No.17 relating to Section 234B which is consequential and ld. AO is directed to re-compute the interest levied u/s.234B after granting TDS credit and grant of self-assessment tax.

22. Ground No.18 is with regard to initiation of penalty u/s.270A of the Act which is premature. Accordingly, the same is dismissed.

**23. In the result, appeal of the assessee is partly allowed.**

Order pronounced on 20<sup>th</sup> November, 2024.

**Sd/-**  
**(AMIT SHUKLA)**

**JUDICIAL MEMBER**

Mumbai; Dated 20/11/2024  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**