

IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” Bench, Mumbai  
Before Shri B.R. Baskaran (AM)& Pawan Singh (JM)

I.T.A. No. 4432/Mum/2014  
(Assessment Year 2009-10)

M/s. RBBR Exports 2 <sup>nd</sup> Floor Sonawala Building 65, Mumbai Samachar Marg Fort, Mumbai-400 023. (Appellant)	Vs.	ITO 12(1)(4) Room No. 115/134 Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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PAN No.AAEFR3930J

Assessee by	None
Department by	Shri B.S. Bist
Date of Hearing	27.7.2016
Date of Pronouncement	27.7.2016

ORDER

Per B.R. Baskaran (AM) :-

The appeal of the assessee is directed against the order dated 21-03-2014 passed by Ld CIT(A)-23, Mumbai and it relates to the assessment year 2009-10. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the disallowance of Rs.11,27,381/- made by the AO u/s 40(a)(ia) of the Act.

2. None appeared on behalf of the assessee, even though the hearing was adjourned on last occasion at the specific request of the assessee's counsel. Hence we proceed to dispose of the appeal ex-parte, without the presence of the assessee.

3. We heard Ld D.R and perused the record. The AO noticed that the assessee has paid a sum of Rs.11,27,381/- to the C & F agent without deducting tax at source. Hence the AO disallowed the same by invoking the provisions of sec. 40(a)(ia) of the Act. The Ld CIT(A) also confirmed the same.

4. We notice that the assessee had taken the plea that the above said sum represents reimbursement of expenses and hence no tax is deductible at source. In our view, the C & F agent is acting as an agent of the assessee, meaning thereby, the expenses have been incurred by the agent on behalf of the assessee. Hence, in our view, the tax should have been deducted at source from the payments, which are attracted by the TDS provisions, either by the C & F agent or by the assessee. It is not clear as to whether the C & F agent has deducted tax at source from the payments.

5. Further we notice that the break up details of the above said amount of Rs.11,27,381/- is not available on record. We notice that the AO has made the disallowance without examining as to whether all the payments are attracted by TDS provisions or not? Under these set of facts, we are of the view that this issue requires fresh examination at the end of the AO. Accordingly, we set aside the order passed by Ld CIT(A) and restore the matter to the file of the AO with the direction to examine this issue afresh by obtaining the break-up details of the above said sum of Rs.11,27,381/-, the items which attract TDS provisions, the payments which require TDS deduction etc. and/or such other details as may be found necessary. The assessee is also directed to co-operate with the AO for expeditious completion of the assessment.

6. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 27.7.2016

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 27/7/2016

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//

*PS*

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai