

आयकर अपीलीय अधिकरण “एफ ” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“F” BENCH, MUMBAI

माननीय श्री अमरजीत सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI AMARJEET SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकरअपील सं./ I.T.A. No.2828/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

Vilas Transport Company 103/104, Vyapar Bhavan P. Demello Road, Carnac Bunder, Mumbai-400 009	बनाम/ Vs.	ITO – 13(2)(1), Aaykar Bhavan M. K. Road Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAAFV-0760-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकरअपील सं./ I.T.A. No. 3779/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

ITO – 17(3)(5), Aaykar Bhavan M. K. Road Mumbai-400 020	बनाम/ Vs.	Vilas Transport Company 103/104, Vyapar Bhavan P. Demello Road, Carnac Bunder, Mumbai-400 009
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAAFV-0760-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Ajay Singh– Ld. AR
Revenue by	:	Ms. Usha Gaikwad – Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	27/07/2021
घोषणा की तारीख / Date of Pronouncement	:	02/08/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid cross-appeals for Assessment Year (AY) 2011-12 arises out of the order of learned Commissioner of Income-Tax (Appeals)-28,

Mumbai [CIT(A)] dated 23/03/2016 in the matter of assessment framed by Ld. Assessing Officer (AO) u/s 143(3) on 28/03/2014.

2. The assessee is aggrieved by confirmation of certain disallowance u/s 40(a)(ia) and confirmation of disallowance on account of mismatch in receipts as reflected by the assessee vis-à-vis receipts as reflected in Form No.26AS. These two issues are adjudicated first.

3.1 The disallowance u/s 40(a)(ia) was made by Ld. AO since the assessee paid professional fees of Rs.0.93 Lacs & legal fees of Rs.11.11 Lacs without deduction of tax at source. The addition was confirmed by Ld. CIT(A).

3.2 Before us, Ld. AR seek benefit of second proviso to Sec.40(a)(ia) by submitting that the respective payees has offered this income in their return of income and paid due taxes thereupon and therefore, the disallowance is not sustainable. We concur with these submissions of Ld. AR. Accordingly, we restore this issue to the file of Ld. AO with a direction to the assessee to adduce requisite evidences / documents to show the fulfillment of the requirement of second proviso to 40(a)(ia) read with first proviso to Section 201(1). This ground stand allowed for statistical purposes.

3.3 The second addition of Rs.11.42 Lacs stem from the fact that the assessee reflected receipts of Rs.24.58 Lacs from an entity namely M/s Geetapuram Port Services. However, this amount was reflected as Rs.36 Lacs in ITS data. The assessee explained that the difference arises in view of the fact that billing was erroneously done to JSW Industries, a sister concern of the group. It was submitted that the payment was received from JSW group who had deducted TDS against

the same. However, Ld. AO added the same to the income of the assessee which was confirmed by Ld. CIT(A).

3.4 The Ld. AR reiterated that difference arises due to the fact that billing was erroneously done in the name of group concern. The Ld. AR also placed on record reconciliation, Form 26AS and ledger accounts in support of the submissions. Prima-facie, the arguments of Ld. AR has strength. The dispute is a matter of reconciliation only. Therefore, we direct Ld. AO to re-verify the above claim after appreciating the relevant documents as placed on record. If the billing is done in other name and the same has already been accounted for by the assessee as business receipts, the same could not be added again. This ground as well as the assessee's appeal stand allowed for statistical purposes.

Revenue's Appeal

4.1 The revenue is aggrieved by deletion of addition of Rs.346.61 Lacs as made by Ld. AO u/s 40A(3). The relevant facts are that the assessee was engaged as clearing agent on behalf of its principal. The assessee reflected gross receipts of Rs.947.89 Lacs and claimed expenditure of Rs.898.44 Lacs. The differential i.e. Rs.49.44 Lacs was credited to Profit & Loss account on which net profit of Rs.7.01 Lacs was declared.

4.2 The assessee received gross agency charges including reimbursement of expenditure from three of its principal. The reimbursement was in the nature of stevedoring charges, sweeping labour charges and handling labour charges for loading & unloading. Thus, these expenses were mostly in the nature of labour charges paid by assessee on behalf of the principal in cash. The payment was supported by internally prepared cash vouchers with payment labour sheet. However, Ld. AO observed that the vouchers were not signed by

employee of the principal and the payments were not verifiable. Further, few of these charges were shown as payable at year-end in the Balance Sheet. Therefore, Ld. AO, invoking the provisions of Sec.40A(3), disallowed cash expenditure of Rs.346.61 Lacs. The Ld. CIT(A), following the decision of Tribunal in assessee's own case for AY 2007-08, ITA No.2600/Mum/2011 dated 24/11/2015 deleted the disallowance. Aggrieved, the assessee is in further appeal before us.

4.3 Upon careful consideration of material facts, it is undisputed fact that the assessee has incurred expenditure on behalf of its principal and claimed the reimbursement of the same which is evidenced by the ledger account as placed on record. The net agency commission earned by the assessee has been credited to its Profit & Loss Account. We find that stated expenditure is in the nature of petty labour charges which has been incurred by the assessee on behalf of its principal. Similar issue arose in assessee's case for AY 2007-08 wherein the bench, in para 6 of the order, held that the provisions of Sec.40A(3) would not be attracted to such payment. There is no new material before us to deviate from the earlier view of the bench. Facts are pari-materia the same in this year. Since Ld. CIT(A) has merely followed the order of Tribunal, no fault could be found in deleting the impugned addition. By confirming the stand of Ld. CIT(A), we dismiss the appeal of the revenue.

5. The assessee's appeal stands allowed for statistical purposes whereas the appeal of the revenue stands dismissed.

Order pronounced on 2nd August, 2021.

Sd/-

(Amarjit Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 02/08/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.