

आयकर अपीलीय अधिकरण “A” न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

**BEFORE SHRI MAHAVIR SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.2408/Mum/2012

(निर्धारण वर्ष / Assessment Year : 2005-06)

Aditya Logistics (I) Pvt. Ltd., D-388 Industrial Area, MIDC Kukshet Village, Navi Mumbai, Mumbai – 400 705.	<u>बनाम/</u> v.	A.C.I.T. 10(3), Aayakar Bhavan, M.K. Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AADCM6294N		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by	Shri M. Subramanian
Revenue by :	Shri A. Ramachandran

सुनवाई की तारीख /**Date of Hearing** : 14-6-2016

घोषणा की तारीख /**Date of Pronouncement** : 08-09-2016

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee company, being ITA No. 2408/Mum/2012, is directed against the appellate order dated 9th March, 2012 passed by learned Commissioner of Income Tax (Appeals)- 22, Mumbai (hereinafter called “the CIT(A)”), for the assessment year 2005-06, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 8th December, 2011 passed by the learned Assessing Officer (hereinafter called “the AO”) u/s 143(3(ii) r.w.s. 147 of the Income Tax Act, 1961 (Hereinafter called “the Act”).

2. The grounds of appeal raised by the assessee company in the memo of appeal filed with the Income Tax Appellate Tribunal, Mumbai (hereinafter called "the Tribunal") read as under:-

"1. On the facts and in the circumstances of the case and in law, the assessment order passed u/s 143(3)(ii) r.w.s. 147 of the I.T. Act is invalid and bad in law.

2. On the facts and in the circumstances of the case and in law, the learned C I T(A) erred in dismissing the appeal without giving full and proper opportunity of being heard in the matter.

3. On the facts and in the circumstances of the case and in law, the learned C I T (A) erred in dismissing the appeal without considering fully and properly the evidences submitted in terms of a paper book as well as the submissions made during the course of hearing proceedings.

4. On the facts and in the circumstances of the case and in law, the learned C I T (A) erred in not dealing with additional grounds of appeal raised during the course of hearing proceedings.

5. On the facts and in the circumstances of the case and in law, the learned C I T (A) erred in holding that the reopening of the assessment by the A.O. is valid.

6. On the facts and in the circumstances of the case and in law, the learned C.I.T (A) erred in upholding the disallowance of Rs.2,13,52,044/- made u/s 40(a)(ia) of the Act.

7. On the facts and in the circumstances of the case and in law, the learned C. I. T (A) erred in holding that the additional evidence cannot be admitted under rule 46A of the I.T. Act, 1961."

3. The Brief facts of the case are that the assessee has filed its return of income u/s 139 of the Act on 28th October, 2005 which was processed u/s 143(1) of the Act on 18th March, 2006. Later on the assessment was completed by Revenue u/s 143(3) of the Act on 24th December, 2007 assessing total income at Rs. 66,54,560/- i.e. the returned income was accepted by Revenue in the assessment framed u/s 143(3) of the Act.

Thereafter, proceedings u/s 147 of the Act were initiated by Revenue after recording the following reasons for reopening the assessment:-

“In the instant case, return of income was filed on 28.10.2005 declaring total income of Rs. 66,54,560/-. Assessment was completed u/s 143(3) assessing total income at Rs.66,54,560/- on 24.12.2007.

Subsequently, it has been noticed that the gross receipts credited to the P&L a/c amount to Rs. 6,86,78,419/- whereas, the gross receipts as per TDS certificates amounted to Rs. 13,31,69,110/- on which TDS credit of Rs. 28,66,207/- is claimed.

Therefore, I have reason to believe that income of Rs. 6,44,90,691 (133169110 – 68678419) has escaped assessment within the meaning of section 147 of the Act due to failure on the part of the assessee to disclose truly and fully all material facts.

Notice u/s 148 of the Act, is therefore, issued.”

Notice u/s 148 of the Act was issued on 25th March, 2011 after obtaining the approval from the learned CIT-10, Mumbai which was duly served on the assessee on 1st April, 2011. The assessee vide letter dated 05.05.2011 requested to treat the return of income filed u/s 139 of the Act on 28.10.2005 as return filed in response to notice issued u/s 148 and requested to provide the reasons recorded for issuance of notice u/s 148 of the Act. The said reasons were communicated to the assessee vide letter dated 12 May, 2011. The A.O. noticed that the gross receipts as per the TDS certificates for which the credit was claimed by the assessee exceeded the total credits to the P&L a/c and hence the income on which credit for tax deducted at source was claimed by the assessee was not offered to tax correctly, therefore, the details and reconciliation were called for. The assessee submitted that the total freight received from the own vehicles and the attached vehicles amounted to Rs. 15,66,57,479/- comprising of freight of Rs. 5,80,12,857/- from own vehicles and freight of Rs. 9,86,44,622/- from attached vehicles. It was also

submitted that freight of Rs.8,79,79,061/- paid to the attached vehicles was reduced from the freight received from the attached vehicles and net amount of Rs. 1,06,65,562/- was credited to the P&L a/c along with freight of Rs. 5,80,12,857/- from own vehicles. The assessee also furnished copies of TDS payment challans before the A.O. . The assessee was asked by the AO to furnish the details of freight paid and TDS thereon along with documentary evidences and on perusal of the details furnished by the assessee vide letter dated 02.12.2011, various discrepancies were noticed in respect of deduction of tax at source from the freight payments, the details of which are as under:-

FREIGHT AND TDS DETAILS MISMATCH

Name of the party	Freight	The amount on which TDS was made by the assessee	Difference
A Subba Raju	4,05,259	3,65,479	39,780
M/s Allied Surface (I) Pvt. Ltd.	59,006	0	59,006
M/s Ambika Road Carriers	1,12,910	93,774	19,136
M/s Anand Roadways	13,31,168	6,04,940	7,26,228
Appa Rao	2,20,430	2,20,427	3
M/s Avtar Cargo Carrier	5,81,667	42,066	5,39,601
Balasuramanium	6,74,797	0	6,74,797
M/s Dashmesh Roadlines	4,53,058	2,51,533	2,01,525
M/s Dhillon Roadlines	2,63,233	2,24,555	38,678
G. Subba Rao	2,61,000	0	2,61,000
M/s Ghoman Road Carrier	5,84,037	3,86,275	1,97,762
M/s Giriraj Transport Company	2,50,873	1,83,969	66,904
M/s Gobind Carriers	21,47,168	17,12,272	4,34,896
M/s Harsh Cargo Movers	7,97,910	48,699	7,49,211
M/s Himmat Roadlines	21,33,555	19,04,809	2,28,746
M/s Jai Transport	50,324	44,400	5,924
M/s Jodhpur Bombay Freight Carrier	1,82,304	1,68,129	14,175
K. Jaganadhan	1,10,266	0	1,10,266
M/s Kaleswari Lorry Supply, Vizag	6,68,100	0	6,68,100

M/s Kamal Saroop Roadways	5,37,405	4,36,429	1,00,976
M/s Karnataka Rayalseema Roadlines. Vizag.	2,70,940	0	2,70,940
M/s Khalsa Bulk Movers	3,97,448	2,61,701	1,35,747
M/s Khalsa Freight Carrier	12,03,533	8,50,553	3,52,980
M/s Khalsa Roadways	8,97,902	7,39,403	1,58,499
M. Ramesh	1,67,973	0	1,67,973
M/s Maharashtra M.P. Roadlines	1,69,914	0	1,69,914
M/s Mahendra Transport, Vizag	1,40,165	0	1,40,165
Mohammed Saiifiullah	17,33,290	0	17,33,290
M/s Mookambika Enterprises	96,954	0	96,954
M/s Navjot Road Carrier	1,64,030	21,420	1,42,610
M/s New Indore Agra Roadways	3,08,090	2,88,383	19,707
M/s New Visakha Roadlines, Vizag	11,50,130	0	11,50,130
M/s Nilesh Roadlines	18,11,325	9,21,429	8,89,896
M/s Om Transports Co.	3,35,622	3,15,649	19,973
P. Venkanna	3,82,000	0	3,82,000
P. Demudu Babu	2,78,762	0	2,78,762
P.V. Ramana	1,67,699	0	1,67,699
Punniyamurthy	37,44,919	0	37,44,919
R. Lalitha	61,369	0	61,369
R.R. Naidu	66,000	0	66,000
M/s Raipur Goods Carriers	1,19,308	85,168	34,140
M/s Raj Transport Co.	4,27,543	3,88,310	39,233
M/s Ranchi Bombay Roadways	93,74,588	92,22,109	1,52,479
M/s Sai Durga Tpts. Vizag	83,950	0	83,950
Sanjay Chopra	94,596	0	94,596
M/s Sharma Transports, Vizag	96,000	0	96,000
M/s Shirdi Sai Transport, Vizag	15,36,535	0	15,36,535
M/s simran Freight Carrier	1,06,266	86,704	19,562
M/s Sodi Bharat Transport Co	96,619	56,923	39,696
M/s Sri Durgadevu Roadlines, Vizag	1,01,650	0	1,01,650
M/s Sri Ganesh Caro Carrier	13,48,417	0	13,48,417
M/s Sri Jagdambe Roadways	1,88,233	1,29,875	58,358
M/s Sri Kanya Transports	17,73,477	17,58,994	14,483
M/s Sri Rajyalaxmi Transports	9,14,537	5,13,543	4,00,994
M/s Sri Shyam Freight Carrier	85,041	0	85,041
M/s Sri Venkateshwara Lorry Services	6,75,420	0	6,75,420
M/s Sridevi Transports Vizag	11,38,335	0	11,38,335
M/s Suvarna Transports, Vizag	1,10,000	0	1,10,000
M/s Uttam Road Carrier	2,48,209	2,11,295	36,914

TOTAL			2,13,52,044
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The assessee submitted that the provisions of chapter XVII-B of the Act were duly complied with and there was no discrepancy. It was submitted that in the case the payment or credit was less than Rs. 20,000/- or the parties submitted Form No. 15H, no TDS was deducted. From the perusal of the above table, the A.O. observed that tax has not been deducted from the above payments of freight as per the provisions of Chapter XVII-B, which are all above Rs. 50,000/- and the details of parties submitting form no 15H was also not submitted by the assessee. Therefore, the aggregate of the freight expenditure amounting to Rs. 2,13,52,044/- was disallowed by the AO u/s 40(a)(ia) of the Act for non-deduction of tax at source and the said sum was added to the total income of the assessee by the A.O. vide assessment order dated 8th December, 2011 passed u/s 143(3)(ii) r.w.s. 147 of the Act.

4. Aggrieved by the assessment order dated 8-12-2011 passed by the A.O. u/s 143(3)(ii) read with Section 147 of the Act, the assessee filed its first appeal before the Id. CIT(A).

5. Before the Id. CIT(A), the assessee objected to the reopening of the assessment and submitted that during original assessment proceedings, all the details including reconciliation of TDS was submitted before the AO which although has not been discussed in original assessment order u/s 143(3) of the Act dated 24.12.2007 but the A.O. has duly applied his mind on the reconciliation of TDS on freight payments. The Id. CIT(A), on perusal of the assessment order u/s 143(3) of the Act dated 24.12.2007 observed that the A.O. has nowhere made any reference to the reconciliation of TDS on freight payments and hence it appears that no such query was raised by the A.O. during the original assessment proceedings u/s 143(3) of the Act. The

assessee submitted that the said reconciliation was duly submitted and produced the copy of letter dated 18-12-2007 addressed to the AO which was submitted before the A.O. with respect to reconciliation of TDS on freight payments. However, the ld. CIT(A) observed that nothing as such has been mentioned in that letter nor there is a reference of any enclosure thereto, hence, the assessee has not substantiated its claim of deduction of TDS on freight payments. Thus, the ld. CIT(A) observed that the assessment order u/s 143(3) of the Act dated 24th December, 2007 was passed by the A.O. without application of mind on the issue of reconciliation of TDS on freight payments. The ld. CIT(A) also rejected the contentions of the assessee that the A.O. has not given the reasons recorded, however, the so called extract available with the assessee as mentioned in the submissions before the ld. CIT(A) is the same which has been recorded in the assessment order was the observation of learned CIT(A). The ld. CIT(A) further observed that the assessee could not produce before him any letter addressed to A.O. (before complying with the notice of re-opening) objecting to the extract of reason recorded, copy of which was provided to it. The assessee contended that on the material already considered by the A.O. during original assessment proceedings, re-opening has been done, however, in the original assessment made there was no application of mind since neither the material was called for by A.O. nor provided by the assessee and hence there is no question of application of mind was the observations of the learned CIT(A). It was observed by the learned CIT(A) that due opportunity has been given by the A.O. to the assessee but the assessee has failed to comply with the same. The ld. CIT (A) accordingly held that there is no merit in the contentions of the assessee and the reopening of the assessment by the A.O. was held as valid by the learned CIT(A) vide appellate orders dated 09-03-2012. On merits , the assessee contended before the ld CIT(A) that no TDS was deducted wherein payment was less than Rs 20000/- or in aggregate during the year was less than Rs. 50,000/ as per provisions of Section 194C of the Act , or where the

parties have submitted form no 15-I . The assessee submitted the details in support of contentions before the learned CIT(A) as additional evidences which was rejected by the learned CIT(A) on the grounds that the assessee was given sufficient opportunity by the AO and the assessee failed to produce these evidences before the AO and as per Rule 46A of Income Tax Rules, 1962, the assessee does not satisfy the requirements of Rule 46A of Income Tax Rules, 1962 for admission of additional evidences and hence the same were not admitted by learned CIT(A) vide appellate order dated 09-03-2012.

6. Aggrieved by the appellate order dated 09-03-2012 passed by the ld. CIT(A), the assessee is in further appeal before the Tribunal.

7. The ld. Counsel for the assessee, at the outset, submitted that the original assessment order was passed on 24th December, 2007 u/s 143(3) of the Act while reopening has been done u/s 147/148 of the Act. Assessment order u/s 143(3) r.w.s 147 of the Act has been passed on 8th December, 2011. The reasons were duly recorded and notice u/s 148 of the Act was issued on 25th March, 2011. The reasons supplied to the assessee, which are as under:-

“In the instant case, return of income was filed on 28.10.2005 declaring total income of Rs. 66,54,560/-. Assessment was completed u/s 143(3) assessing total income at Rs.66,54,560/- on 24.12.2007.

Subsequently, it has been noticed that the gross receipts credited to the P&L a/c amount to Rs. 6,86,78,419/- whereas, the gross receipts as per TDS certificates amounted to Rs. 13,31,69,110/- on which TDS credit of Rs. 28,66,207/- is claimed.

Therefore, I have reason to believe that income of Rs. 6,44,90,691 (133169110 – 68678419) has escaped assessment within the meaning of section 147 of the Act due to failure on the part of the assessee to disclose truly and fully all material facts.

Notice u/s 148 of the Act is, therefore, issued”

The ld. Counsel submitted that on perusal of the reasons, there is a mis-match between the gross receipts credited to the P&L account of Rs. 6,86,78,419/- as compared to the gross receipts as per TDS certificate amount of Rs. 13,31,69,110/-. There is no addition made by the authorities below on account of this mis-match of gross receipts as well as the amount as reflected as per the TDS certificate, while additions have been made on account of non-deduction of TDS under Chapter XVII-B of the Act. The decision of Hon'ble Bombay High Court in the case of CIT v. Jet Airways (I) Ltd., [2011] 331 ITR 236 (Bom) is clearly applicable to the instant case and the additions are not sustainable. The re-opening is not valid as no addition has been made by the authorities on account of the reasons on which the assessment was reopened u/s 147/148 of the Act.

8. The ld. D.R., on the other hand, relied upon the order of the ld. CIT(A).

9. We have considered the rival contentions and also perused the material available on record. We have observed that the assessee has duly filed the return of income u/s. 139 of the Act which was selected for scrutiny and assessment u/s 143(3) of the Act was duly completed on 24th December, 2007 accepting the returned income. The case was reopened u/s 147/148 of the Act on the ground that there was a mis-match in the gross receipts as declared in return of income filed with Revenue vis-à-vis gross receipts as reflected as per TDS certificates. The reasons recorded for reopening were duly supplied to the assessee. The assessee has given reply explaining that the freight paid to the attached vehicles was reduced from the freight received from the attached vehicles and the net amount was credited to the P&L account along with the freight received from own vehicles. Thus the reason for

the mis-match has been duly explained by the assessee which was accepted by the Revenue and no addition has been made by the Revenue on this ground. The Revenue has made the addition on some other ground i.e. non deduction of TDS on payment of freight. In our considered view, the ratio of the decision of Hon'ble Bombay High Court in the case of Jet Airways (I) Ltd.(supra) is directly applicable to the instant case and the addition made by the Revenue cannot be sustained. We order deletion of the addition made by the A.O. and as sustained by the learned CIT(A). We order accordingly.

10. In the result, appeal filed by the assessee in ITA No. 2408/Mum/2012 for the assessment year 2005-06 is allowed.

Order pronounced in the open court on 8th September, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक: 08-09-2016 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 08-09-2016

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व.नि.स./ R.K., Ex. Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "A" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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