

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri S.S. Viswanethra Ravi, JM]

I.T.A No. 1951/Kol/2013
Assessment Year: 2008-09

M/s. ITT Shipping Pvt. Ltd.
(PAN: AAACI5499Q)
(Appellant)

Vs. Assistant Commissioner of Income-tax,
Range-9, Kolkata.
(Respondent)

&

I.T.A No. 1908/Kol/2013
Assessment Year: 2008-09

Deputy Commissioner of Income-tax,
Circle-9, Kolkata.
(Appellant)

Vs. M/s. ITT Shipping Pvt. Ltd.
(Respondent)

Date of hearing: 06.10.2016
Date of pronouncement: 06.10.2016

For the Assessee: Shri Anikesh Banerjee, Advocate
For the Revenue: Shri Dinabandhu Naskar, Addl. CIT, DR

ORDER

Per Shri M. Balaganesh, AM:

Both these appeals by assessee and revenue are arising out of common order of CIT(A)-VIII, Kolkata vide appeal No. 211/CIT(A)-VIII/ Kol/10-11 dated 26.03.2013. Assessment was framed by Addl.CIT, Range-9, Kolkata u/s. 143(3) of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2008-09 vide his order dated 28.12.2010. For the sake of brevity, we dispose of both the appeals by this consolidated order.

2. First we take up assessee’s appeal. The only issue involved in this appeal of assessee is with regard to the disallowance of Rs.14,93,044/- towards freight expenses by the AO u/s. 40(a)(ia) of the Act.

2.1. The AO observed that the assessee has paid freight expenses of Rs.14,93,044/- without deduction of tax at source and accordingly disallowed the same u/s. 40(a)(ia) of the act. Before the Ld. CIT(A), the assessee produced all the details and the same were

subjected to remand proceedings and the Id AO gave a general comment in his remand report without adjudicating the details filed by the assessee. Ld. CIT(A), however, deleted the disallowance on the ground that the same were paid before the end of the previous year by relying on the decision of Special Bench of ITAT, Visakhapatna Bench in the case of Merilyn Shipping & Transport Ltd. Vs. ACIT, ITA No. 477/VIZAG/2008. Aggrieved, the assessee is in appeal before us on the following grounds:

“1. For that the Assessment order u/s. 143(3) of the I. T. Act, 1961 is illegal and void.

2. For that the Freight Expenses of Rs.14,93,044/- on which the assessee received the 15I from different parties. In this case, the TDS is not applicable. Therefore, as the assessee collected Form 15I from the different parties, it is not in default u/s. 201 of the Act. In case of other parties the amount was paid below the taxable limit. So, sec. 40(a)(ia) is not applicable here.

3. For that during the time of remand proceedings no reasonable opportunity was given and without giving any reasonable opportunity for hearing the remand report was passed which is unjustified & bad in law.”

2.2. We have heard rival submissions and gone through facts and circumstances of the case. We find that the assessee need not be aggrieved in the facts and circumstances of the case as the subject mentioned disallowance has been deleted by the Ld. CIT(A). Hence, we dismiss the appeal of the assessee as infructuous.

3. In revenue’s appeal the only issue to be decided is as to whether the Ld. CIT(A) is justified in deleting the disallowance made u/s. 40(a)(ia) of the Act in respect of –

(a)	Payments made to Port Management Board	-	Rs.17,29,970/-
(b)	Stevedoring charges	-	Rs. 5,08,277/-
(c)	Freight charges	-	Rs.14,93,044/-
(d)	Payment made to Indian Registrar of Shipping	-	Rs. 3,52,726/-

The AO observed that the aforesaid payments were made without deduction of tax at source and accordingly invoked the provisions of section 40(a)(ia) of the Act. The Ld. CIT(A) deleted the disallowance on the ground that the payments were made before the end of the previous year and accordingly by placing reliance on the Special Bench decision in the case of Merilyn Shipping & Transport Ltd., supra held that the provisions of section 40(a)(ia) of the Act could not be invoked in the facts and circumstances of the case. Aggrieved, the revenue is in appeal before us on the following grounds:

“1. Ld. CIT(A)'s direction to allow deduction for the following payment is so far as made before the close of the accounting:

- (i) Disallowance u/s. 40(a)(ia) of Rs. 17,29,970/- on account of payment made to PMB.*
- (ii) Disallowance u/s. 40(a)(ia) of Stevedoring Charges of Rs. 50,82,771/- made to two parties*
- (iii) Disallowance of Freight charges of Rs. 14,93,044/-*
- (iv) Disallowance of Rs. 3,52,729/- on account of payment made to Indian Register of shipping.*

2. Ld. CIT(A)'s direction to allow the following payments in so far as made before the close of the accounting year without making any TDS there on as required by the relevant TDS provisions is not following any good law in interpreting the word 'payable' appearing in the provision of section 40(a)(ia) under which the disallowances were made in the assessment by the Assessing Officer."

3.1. At the time of hearing Ld. DR vehemently relied on the order of the Id AO. In response to this, the Ld. AR argued that in respect of Rs.17,29,970/- being payment made to Port Management Board, the same represents supply of fresh water to the ship for which payments were made which does not warrant deduction of tax at source in terms of section 194C of the Act. Hence, provisions of section 40(a)(ia) of the Act could not be invoked in the same, in support of which he placed copies of invoices for the same issued by Port Management Board, Anadaman & Nicobar Islands, Port Blair. He argued that in respect of payments made towards stevedoring charges, no finding has been given by the Id AO in his assessment order as to how the subject mentioned expenditure would fall under the purview of deduction of tax at source. He also submitted the details of stevedoring charges paid to various parties throughout the year including the relevant ledger account which he fairly stated that the same may kindly be directed to be verified by the Id AO and decide the matter accordingly. The Ld. DR also fairly conceded for setting aside of this issue to the file of the Ld. AO. In respect of payments made to Indian Register of Shipping in the sum of Rs.3,52,726/-, the Ld. AR stated that the said party had furnished a certificate u/s. 197(1) of the Act dated 30.11.2007 which is valid upto 31.03.2008, wherein payments to them would have to be made without deduction of any tax at source. Accordingly, he argued that there is no need for the assessee to deduct any tax at source in respect of the said payments.

3.2. In respect of freight expenses paid by the assessee in the sum of Rs.14,93,044/- he argued that all the payments were made to various parties below Rs.50,000/- and hence, provision of section 194C of the Act would not be applicable in the facts and circumstances

of the case and in support of this he filed details of the same. However, he fairly conceded that the same requires examination by the Id AO.

3.3. We have heard rival submissions and gone through facts and circumstances of the case. We find that the Ld. CIT(A) had deleted all the disallowances u/s. 40(a)(ia) of the Act only on the ground that the expenses were paid by the assessee before the end of the previous year. In this regard he had placed reliance on the Special bench Decision of Vizag Tribunal in the case of Merilyn Shipping & Transport Ltd., supra. However, we find that the issue has been held in favour of the revenue by the decision of Hon'ble Calcutta High Court in the case of CIT Vs. Crescent Exports Syndicate (2013) 33 Taxman.com 250 (Cal) wherein it has been held that the provisions of section 40(a)(ia) of the Act would be applicable even if amounts were paid before the end of the previous year.

3.4. In respect of payments made to Port Management Board in the sum of Rs.17,29,970/-, we are convinced on verification of the invoices given by Port Management Board that the said payment is made towards supply of fresh water to the ships. Hence, the same does not fall under the ambit of deduction of tax at source under any of the provisions of the Act. Hence, disallowance made u/s. 40(a)(ia) of the Act to that effect is deleted.

3.5. In respect of payments made in the sum of Rs.50,82,771/- towards stevedoring charges, we find that the Id AO had not given any finding in his order as to how the subject mentioned expenditure would fall under the ambit of provisions of deduction of tax at source. Accordingly, we deem it fit and proper to set aside this issue to the file of the Id AO to give a clear finding in this regard in the light of the evidence submitted by the assessee with regard to the subjection mentioned expenditure.

3.6. In respect of payments made to Indian Register of Shipping in the sum of Rs.3,52,726/-, we are convinced from page 32 of the paper book that the said party had given a certificate u/s. 197(1) issued by the I. T. Department wherein payments made to them has to be made without deduction of Tax at source which has been clearly mentioned. Hence, there is no violation of provision of section 194C of the Act warranting any disallowance u/s. 40(a)(ia) of the Act.

3.7. In respect of payment of freight charges in the sum of Rs.14,93,044/-, we are in agreement with the argument of the Ld. AR which was also considered by the Ld. DR that the issue requires fresh examination by the AO as to whether the payment exceeded in the aggregate of Rs.50,000/- in respect of each party thereby warranting any deduction of tax at source in terms of section 194C of the Act. It is true that no such finding was given in the assessment order in this regard. Accordingly, we deem it fit and proper to set aside this issue to the file of AO to decide this issue afresh in accordance with law after affording reasonable opportunity of being heard to the assessee. The assessee is also at liberty to adduce fresh evidence in support of his contention to justify the claim of expenditure. Accordingly, this aspect of the issue is set aside to the file of the AO.

4. In the result, appeal of assessee is dismissed and that of the revenue is partly allowed for statistical purposes.

Order pronounced in the open court.

Sd/-
(S.S. Viswanethra Ravi)
Judicial Member

Sd/-
(M. Balaganesh)
Accountant Member

Dated : 6th October, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. APPELLANT – M/s. ITT Shipping Pvt. Ltd., 6th Floor, 4, Fairlie Place, Kolkata-01
2. Respondent –ACIT, Range-9, Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.