

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री जॉर्जमथन, न्यायिक सदस्य एवं श्री एस.जयरामन, लेखा सदस्य के समक्ष
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND SHRI S.JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपीलसं/I.T.A. No.3157/Chny/2016

निर्धारणवर्ष/Assessment Year: 2012-13

The Deputy Commissioner of Income Tax, Corporate Circle-1(1), Chennai-600 034.	Vs	M/s.Dart Global Logistics P.Ltd, 31, Velachery Road, Little Mount, Saidapet, Chennai-600 015.
		PAN:AAACD3181G
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. B.Sagadevan,JCIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr.G.Seetharaman, C.A

सुनवाईकीतारीख/Date of hearing	:	06.03.2019
घोषणाकीतारीख /Date of Pronouncement	:	06.03.2019

आदेश/ORDER

Per S.JAYARAMAN, AM:

The Revenue filed this appeal against the order of Commissioner of Income Tax (Appeals)-1, Chennai, in ITA No.80/CIT(A)-1/2015-16 dated 08.08.2016 for the assessment year 2012-13.

2. M/s. Dart Global Logistics P.Ltd., the assessee, is in the business of international freight forwarding i.e., it ships goods from the local customer and forwards it to various countries in the world. Similarly, it gets goods from foreign shippers / airlines. While making the

assessment for the assessment year 2012-13, the Assessing Officer disallowed various expenses under section 40(a)(ia) for the reason that such expenditures did not suffer TDS. Aggrieved, the assessee filed an appeal before CIT(A). The Ld. CIT(A) allowed the appeal. Aggrieved against that order, the Revenue filed this appeal with the following grounds:-

"1. The order of the learned CIT(A) is contrary to law, facts and circumstances of the case.

2.1 The learned CIT(A) erred in deleting the addition made U/s.40(a)(ia) of the IT Act, without appreciating the fact that the provisions of section 40(a)(ia) are applicable in this case, as assessee is neither a Consignment Agent nor a Clearing and Forwarding Agent in order to term the payments of the assessee company to various parties as reimbursements, and further the invoices raised by the company does not indicate that the payments are "reimbursements"?.

2.2. The learned CIT(A) ought to have appreciated the fact that, the relationship between the assessee and the payees is not Principal- Agent relation in order to recognize the payments as reimbursements, and further such payments are not supported by written agreements or contracts, indicative of "reimbursements", and therefore liable for Tax deduction at source.

2.3. The learned CIT(A) failed to appreciate the fact that, if the relationship between the assessee (deductor) and the payee (deductee) is Principal- Agent relation, there ought to be commission payments for the services rendered by the agents, whereas in this particular case, there is no such commission payments , which means the parties are not having Principal - Agent relation and therefore the payments are not "reimbursements" and liable for Tax deduction at source.

3. The Ld. DR presented the case on the lines in which the assessment was made by the Assessing Officer and submitted that the assessee is neither a consignment agent nor a CIF agent, it has not

filed any proof in connection with reimbursement of expenditure, Agent and principal relationship is not established, the invoices did not show any agent and principal relationship and there was no written contract. In the circumstances, the claim of reimbursement of charges did not arise and hence, he pleaded that the order of the Assessing Officer may be restored.

4. Per contra, the Ld. AR invited our attention to the order of the Ld CIT(A) and submitted as under :

In respect of freight charges to shipping lines and airlines at ₹19,35,79,659/-, the Ld. AR invited our attention to the order passed by the Assessing Officer dated 29.10.2015 under section 154, wherein the Assessing Officer had accepted the plea that the assessee is not liable to deduct TDS in respect of the exempted parties covered u/s.197. Therefore, this issue is settled and does not survive.

In respect of airport / port charges of ₹20,93,644/-, customs clearance charges, shipping line charges, documentation charges at ₹2,95,95,144/- and handling charges, rent paid for storage of goods, cost of consumables of ₹74,71,127/-, the Ld. AR submitted that TDS is not required to be deducted for reimbursement of actual expenditure incurred on behalf of the customer as :

- a. The assessee acted on behalf of its customers- for the goods transported belonged to the customers.
- b. The assessee is never the owner of the goods kept in the warehouse.
- c. In case of damages to the cargo while being kept in the premises of the aforesaid concerns, the claim can be made only by the owner of the goods.
- d. Duties and taxes in respect of the goods is the liability of the owners and not of the assessee.

4.1 Thus, the Ld AR pleaded that the assessee acted as “pure agent” of the customer (exporter/importer of the goods), while incurring expenses in connection with transportation, storage of goods-in-transit, complies with documentation and shipping requirements, clears the goods with customs, etc. Further, he submitted that the Ld. CIT(A) after examining the books of accounts has given a clear finding that

(a) payments aggregating to ₹308,42,639 (₹ 295,95,144 (para 11) and ₹12,47,495 (para 12) of the CIT(A)’s order) did not exceed the threshold limits u/s 194C and that the AO in his order has also not stated that the payments were in excess of the threshold limits;

(b) for payments aggregating to ₹ 29,52,952, TDS has been deducted; and (c) for the balance of ₹ 53,64,324 TDS is not applicable as they are rebates, discounts and reimbursement of expenses.

Therefore, the Ld. AR submitted that the order of the Ld CIT(A) may be confirmed.

5. The Ld. DR rebutted the arguments stating that assessee furnished details relating to customs clearance charges, shipping line charges , documentation charges etc. during the course of proceeding u/s.154 i.e after the completion of the assessment. Since the Assessing Officer has already completed the assessment, he refused to entertain the claim u/s.154 but for the prima facie case. The Ld. CIT(A) has not given an opportunity to the Assessing Officer to examine these issues. However, based on the assessee's plea, the Ld.CIT(A) allowed the appeal. Therefore, Ld. DR pleaded that the Revenue's appeal may be allowed.

6. We heard the rival submissions and gone through the relevant material. As rightly pleaded by the Ld. AR , the issue in connection with the freight charges to shipping lines & airlines does not survive, since the Assessing Officer has accepted the assessee's stand in his subsequent order passed u/s.154. In respect of airport/port charges, since these were reimbursed by the clients of the assessee to the assessee towards the monies defrayed by the assessee towards these authorities, the CIT(A) has rightly deleted the addition. Therefore, this issue also does not survive.

6.1 In respect of other two issues, viz., custom clearance charges, shipping line charges, documentation charges at ₹2,89,27,057 and other payments viz, handling charges, rent etc at ₹74,71,127/-. since the assessee has not laid proper materials before the Assessing Officer during the course of assessment, these issues are remitted back to the file of the Assessing Officer for a fresh examination. The assessee shall place all the materials in support of its contentions and comply to the requirements of Assessing Officer in accordance with law. The Assessing Officer after affording adequate opportunity to the assessee shall pass a speaking order. The corresponding grounds are treated as partly allowed for statistical purposes.

7. In the result, the appeal of the Revenue is partly allowed for statistical purposes.

Order pronounced in the open court on 6th March, 2019 at Chennai

Sd/-

(जॉर्ज माथन)

(George Mathan)

(न्यायिक सदस्य /Judicial Member)

चेन्नई/Chennai,

दिनांक/Dated 06th March, 2019

Somu

Sd/-

(एस.जयरामन)

(S.Jayaraman)

(लेखा सदस्य / Accountant Member)

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------|-------------------------|------------------------------|
| 1. Appellant | 2. Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |