

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI ABRAHAM P. GEORGE, AM & GEORGE GEORGE K., JM

I.T.A. Nos.224/Coch/2016
Assessment Year : 2011-12

The Assistant Commissioner of Income-tax, Kottayam.	Vs.	St. Mary's Rubbers Private Ltd., 54B/IX, Parathodu Panchayath, Koovapally P.O., Kanjirapally Kottayam-686 518. [PAN: AAHCS 5763Q]
(Revenue-Appellant)		(Assessee-Respondent)

Revenue by	Shri A. Dhanaraj, Sr. DR
Assessee by	Shri Prasanth Srinivas,CA

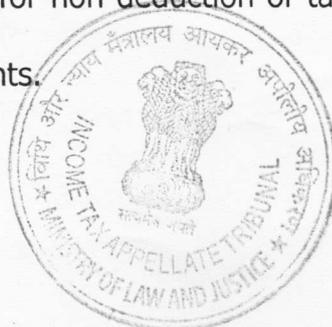
Date of hearing	14/06/2017
Date of pronouncement	15/06/2017

ORDER

Per ABRAHAM P.GEORGE, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is directed against an order dated 10/03/2010 of the CIT(A).

2. Revenue, through its grounds, is aggrieved on the deletion of disallowance of Rs.60,80,063/- made by the Assessing Officer u/s. 40(a)(ia) of the Income Tax Act, 1961 (in short 'the Act') for non deduction of tax at source on payments made by the assessee to C&F agents.



3. Facts apropos are that the assessee, a manufacturer and seller of centrifuged latex, had filed its return of income for the impugned assessment year, declaring income of Rs.70,89,989/-. An assessment u/s. 143(3) was completed on 21/12/2011, computing total income of the assessee at Rs.77,87,140/-. Thereafter, the assessment was reopened for a reason that shipping freight of Rs.9,70,828/- was paid without deducting tax at source. During the course of assessment proceedings, it was noted by the Assessing Officer that assessee had paid Rs.60,80,063/- as clearing and forwarding charges to one M/s. Mark Logistics. Claim of the assessee before the Assessing Officer was that these were reimbursement of expenditure incurred by the said agent. As per the assessee, said C&F agent was incurring expenditure on its behalf and therefore, it was not liable to deduct tax at source. However, Assessing Officer was not impressed. According to him, the assessee should have deducted tax at source on the payments effected to M/s. Mark Logistics. Since assessee had not deducted such tax, Assessing Officer applied section 40(a)(ia) of the Act and made a disallowance of Rs.60,80,063/-.

4. Aggrieved, assessee moved in appeal before the CIT(A). Before the CIT(A), assessee produced a statement from M/s. Mark Logistics. According to this statement, the amounts given by the assessee to M/s. Mak Logistics were reimbursement of expenditure. In the said statement, M/s. Mark Logistics certified

that expenditure was incurred on behalf of the assessee and not C&F charges. They also stated that they had deducted tax at source while effecting payments to various persons with whom they had entrusted the work of the assessee. Ld. CIT(A) sought a remand report from the Assessing Officer. As per the CIT(A), in the remand report, the Assessing Officer has admitted that amounts paid by assessee to M/s. Mark Logistics were re-imburements. CIT(A) held that payment of Rs.60,80,063/- made by the assessee to M/s. Mark Logistics were in the nature of reimbursement of expenditure and the payments received by them were not C&F charges. Relying on the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Narmada Valley Fertilizer Co. Ltd. (361 ITR 0192), the CIT(A) held that for re-imburement of expenditure, deduction of tax was not required. He deleted the disallowance made u/s. 40(a)(ia) of the Act.

5. Ld. DR, assailing the order of the CIT(A), submitted before us that assessee had paid Rs.60,80,063/- for the services received by the assessee from M/s. Mark Logistics, which were contractual in nature. According to him, these were not reimbursement of expenditure and even if it was reimbursement, as per the Ld. DR, there would have been profit booking by M/s. Mark Logistics in-built in the billings. In his opinion, Assessing Officer has rightly considered the payments as liable for deduction of tax at source u/s. 194C of the Act. According to him, CIT(A), merely based on the submissions of the assessee, had allowed the claim of the assessee. Reliance was placed on the judgment of the Hon'ble Jurisdictional High Court in the



case of CBDT vs. Cochin Goods Transport Association (236 ITR 993) and the judgment of the Hon'ble Apex Court in the case of Associated Cement Co. Ltd. vs. CIT and another (201 ITR 435).

6. In reply, Ld. AR submitted that the Delhi Bench of this Tribunal in the case of ITO vs. Deepak Bhargawa in I.T.A. No. 343/Del/2012 dated 13th November, 2014 had clearly held that section 194C would not be applicable for reimbursement of expenditure. As per the Ld. AR, facts of this case were very similar to that case. Reliance was also placed on the decision of the Bangalore Bench of this Tribunal in the case of DCIT vs. Dhanyaa Seeds (P) Ltd. (42 taxmann.com 277) and that of the Hon'ble Gujarat High Court in the case of Pri. CIT vs. Consumer Marketing (India) (P.) Ltd. (64 taxmann.com 16).

7. We have heard the rival submissions and perused the orders. Certificate issued on 23.08.2014 by M/s. Mark Logistics reads as under:

*"St. Mary's Rubbers Private Ltd.,
54B/IX, Parathodu Panchayath,
Koovapally P.O., Kanjirapally
Kottayam-686 518.*

Dear Sir,

23.08.2014

*Amounts re-imbursed by you towards expenditure
incurred by us on your behalf during the financial year
2008-09 – clarification - regarding*

During the financial year 2008-09 we have received the following amounts from you towards RE-IMBURSEMENT of expenditure incurred by us on your behalf, on which we have deducted tax at source, wherever applicable. Date wise list is enclosed separately.

Documentation charges	10,854
Postage, courier, grounding charges	181,300
Certificate of origin, invoice legislation etc.	24,300
Transportation by road in goods carriage	2,681,528
Self stuffing charges	80,400
Sundry charges	217,700
Tally wages paid	44,500
Handling charges paid	489,497
Other expenses	<u>2,349,984</u>
Total (Rs.)	<u>6,080,063</u>

Yours faithfully,

(Authorized signatory
(Name and designation
For MARK LOGISTICS
sd/-
Shaji Kurian
Manager

Enclosure List of amounts reimbursed by you as stated above"

7. M/s. Mark Logistics has also given details of bills, copies of which are placed in paperbook pgs. 23 to 32 and these also clearly show that they were claiming reimbursement of expenditure incurred by them on behalf of the assessee. In the case of Deepak Bhargava (supra), where also the question was disallowance u/s. 40(a)(ia) of the Act for non deduction of tax at source on payments effected to



clearing and forwarding agents, what was held by the Tribunal is reproduced hereunder:

"6.1 The CIT(A) has categorically held that the amount of Rs.18,16,637/- is nothing but reimbursement of expenses incurred by the payee on behalf of the assessee. Copies of the few bills raised by the two agencies were placed on record at Pages 40 to 66 of the assessee's paper book. On perusal of the same, it is clearly evident that these are nothing, but reimbursement of expenses incurred by the clearing agencies on behalf of the assessee. Therefore, these amounts did not constitute income of the clearing agent and no TDS was required to be made thereon. Therefore, the provision of Section 194C will not be applicable in respect of reimbursement of expenses."

The Tribunal, while giving the above decision, had also considered the effect of CBDT Circular No.715 dated 08.08.1995 and also ruled that the said Circular was applicable only where consolidated bills were raised inclusive of contractual payments and re-imburement of actual expenditure. Same view was taken by the Bangalore Bench of this Tribunal in the case of DCIT vs. Dhanyaa Seeds (P) Ltd. (supra). Hon'ble Gujarat High Court in the case of Pr. CIT vs. Consumer Marketing (India) (P.) Ltd.(supra) held that when separate bills are there for reimbursement of expenditure received by C&F agent, TDS was not required to be made on reimbursement. It is an admitted position in the case before us that assessee had in addition to reimbursement of expenses, separately paid brokerage and commission Rs.2,52,410/- which was subjected to disallowance in the original assessment. Considering all these, we are of the opinion that the CIT(A) was justified in deleting the disallowance made u/s. 40(a)(ia) of the Act. We do not find any reason for interference with the order of the CIT(A) .

8. In the result, the appeal of the Revenue stands dismissed.

Pronounced in the open court on 15-06-2017.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 15th June, 2017

GJ

Copy to:

1. St. Mary's Rubbers Private Ltd., 54B/IX, Parathodu Panchayath, Koovapally P.O., Kanjirapally, Kottayam-686 518.
2. Assistant Commissioner of Income-tax, Kottayam.
3. The Commissioner of Income-tax(Appeals), Kottayam.
4. The Pr. Commissioner of Income-tax, Kottayam
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

Sd-

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin



CERTIFIED TRUE COPY

[Signature]
Assistant Registrar
Income-tax Appellate Tribunal
Cochin Bench

[Signature]