

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
I.T.A. No. 3981/Del/2010

A.Y. : 2006-07

Income tax Officer,
Ward 13(4),
Room No. 219, C.R. Building,
New Delhi

(Appellant)

vs. M/s ONS Creations Pvt. Ltd.,
D-12/2, Okhla Industrial Area,
Phase-II,
New Delhi – 110 020
(PAN/GIR NO. : AAACO7606H)
(Respondent)

Asseessee by : Sh. Ved Jain & Ms. Rano Jain, CAs.
Department by : Smt. Srujani Mohanty, Sr. D.R.

ORDER

PER SHAMIM YAHYA: AM

This appeal by the Revenue is directed against the order of the Ld. Commissioner of Income Tax (Appeals) dated 03.5.2010 pertaining to assessment year 2006-07.

2. The grounds raised read as under:-

“On the facts and circumstances of the case as well as in law, the Ld. Commissioner of Income Tax (Appeals) erred in deleting the disallowance of ₹ 8,84,881/- made u/s 40(a)(ia) for non-deduction of tax at source on payments of clearing and forwarding charges.

“On the facts and circumstances of the case as well as in law, the Ld. Commissioner of Income Tax (Appeals) erred in deleting the disallowance of ₹ 30,66,703/- made u/s 40(a)(ia) for non-

deduction of tax at source on payments of freight and cartage outward.”

3. The assessee in this case is a private limited company and is engaged in the business of manufacture and export of garments. In this case during the course of assessment proceedings it was noticed that the assessee has claimed clearing and forwarding charges of ₹ 8,84,881/- and freight cartage outward at ₹ 30,66,703/-. The assessee was asked to explain as to why no TDS has been deducted on the payments made to clearing and forwarding agents exceeding ₹ 50,000/- and envisaged u/s 194-C of the Act and as to why it should not be disallowed u/s 40a(ia) of the Income tax Act, 1961. The assessee filed a reply dated 20.12.2008 stating that the expenses have been paid towards the freight charges of airlines to cargo agent as per their demand and same are reimbursed to them when they claim reimbursement from the company by claiming debit note/ by producing invoice of reimbursement on which on TDS liability, if any, either accrue or ever arises at all under the provision of law contained under the provisions of Income Tax Act, 1961. Assessing Officer was not satisfied and he held that as per the provisions of section 194C the assessee is liable to deduct TDS on any work which include carriage of goods and passengers by any mode of transport. Since the assessee has failed to deduct the TDS on clearing and forwarding charges of ₹ 8,84,881/- and freight cartage outward of ₹ 30,66,703/-, an addition of ₹ 39,51,584/- is made to the income declared by the assessee u/s 40a(ia) of the Income Tax Act, 1961.

4. Upon assessee's appeal Ld. Commissioner of Income Tax (Appeals) noted that it was an argument by the assessee that

payment of ₹ 30,66,703/- has been made by the assessee on the basis of separate bills raised by the forwarding agent towards reimbursement of actual and exact amount of freight charges pertaining to the airlines for export of the goods. It was also argued that there is no liability for deduction of TDS on the above payments u/s 194C. It was argued that provision of section 40a(ia) does not apply to such payments made towards reimbursement of actual freight charges paid to the airlines. As regards, the payment of ₹ 8,84,881/- representing clearing and forwarding charges, it was argued that the above amount was paid to various parties as per bills and none of the payments were above ₹ 50,000/- and hence the said payments are not liable to TDS u/s 194C of the Act. Ld. Commissioner of Income Tax (Appeals) concluded as under:-

“On careful examination of the matter, I find that payments made on the basis of separate bills raised for reimbursement of actual freight charges paid to airlines are not covered by the provisions of section 194C read with section 40a(ia) of the Act. I also find that in the related case of ITO vs. Dr. William Schwabe India (P) Ltd (2005) 3 SIT 71 relied upon by the Ld. Authorised Representative, the Jurisdictional High Court has held that the reimbursement of actual vehicle expenses is not covered within the ambit of section 194J, which is akin to the provisions of section 194C. In the said order, the Hon’ble High Court has also taken the support of the CBDT Circular No. 715 dated 08.08.1995 as per which TDS is required to be made only in the cases where bills are raised for gross amount inclusive of professional fees as well as reimbursement of actual expenses and accordingly no TDS is required to be made when bills are

raised separately by the agent only for reimbursement of actual expenses incurred by it. The Hon'ble High Court has also observed that there is no element of profit involved in such bills relating to reimbursement of actual expenses. the ratio of the above judgement is directly applicable to the instant case. Similar decision has also been taken by the Hon'ble ITAT in a number of cases cited by the Ld. Authorised Representative. Thus, as per the statutory provisions contained in section 194C read with section 40a(ia) of the Act and the CBDT's Circular no. 715 dated 8.8.1995 as well as the judicial pronouncements on the subject, the impugned disallowance of ₹ 30,66,703/- cannot be sustained. Further, the disallowance of ₹ 8,84,881/- also cannot be sustained as no payment has been made to any party /agent in excess of ₹ 50,000/- and hence the said payments are not subject to TDS as per the express provisions of section 194C(5). The impugned addition of ₹ 39,51,884/- is therefore, deleted."

5. Against the above order the Revenue is in appeal before us.
6. We have heard the rival contentions in light of the material produced and precedent relied upon.
 - 6.1 Ld. Departmental Representative relied upon the order of the Assessing Officer.
 - 6.2 Ld. counsel of the Ld. Authorised Representative on the other hand supported the order of the Ld. Commissioner of Income Tax (Appeals).
 - 6.3 We have carefully considered the submissions and perused the records. We find that Ld. Commissioner of Income Tax (Appeals) is

correct in holding that provisions of section 40a(ia) does not apply to the payments towards reimbursement of actual freight charges to airlines. In this regard, reliance upon the case of ITO vs Dr. William Schwabe India (P) Ltd 3 SOT 71 is also relevant and supports the case of the assessee. Further CBDT circular no. 71 dated 8.8.1995 had provided that TDS is required to be made only in the cases where bills are raised for gross amount inclusive of professional fees as well as reimbursement of actual expenses and accordingly no TDS is required to be made when bills are raised separately by the agent only for reimbursement of actual expenses incurred by it. Accordingly, no TDS is required to be raised. Thus, addition of ₹ 30,66,703/- cannot be sustained.

6.4 Further, as regards the disallowance of 8,84,881/-, Ld. Commissioner of Income Tax (Appeals) has given a finding that no payments had been made to any party/ agent in excess of ₹ 50,000/-. Hence, the said payments are not subject to TDS, as per the provisions of section 194C.

6.5 In the background of the aforesaid discussion and impugned addition of ₹ 39,51,584/- has correctly been deleted by the Ld. Commissioner of Income Tax (Appeals). Accordingly, we do not find

any infirmity in the order of the Ld. Commissioner of Income Tax (Appeals) in this regard and accordingly, we uphold the same.

7. In the result, the appeal filed by the revenue stands dismissed.

Order pronounced in the open court on 13/05/2011.

Sd/-

**[RAJPAL YADAV]
JUDICIAL MEMBER**

Date 13/05/2011

SRB

Copy forwarded to: -

1. Appellant 2. Respondent
5. DR, ITAT

Sd/-

**[SHAMIM YAHYA]
ACCOUNTANT MEMBER**

3. CIT 4. CIT (A)

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By Order,

Deputy Registrar,
ITAT, Delhi Benches