

**आयकर अपीलीय अधिकरण, मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCHES 'B' MUMBAI**  
सर्वश्री आय.पी. बंसल, न्यायिक सदस्य / एवं  
**BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER /AND**  
श्री डी. करुणाकर रावु, लेखा सदस्य  
**SHRI D.KARUNAKARA RAO, ACCOUNTANT MEMBER**

आयकर अपील सं. / **ITA No.7821/MUM/2010**  
**निर्धारण वर्ष** /Assessment Year 2007-08

The ACIT 13(1), Aaykar Bhavan, Room No.427, 4 <sup>th</sup> Floor, MK Road, Mumbai - 400 020	<b>बनाम/</b> Vs.	M/s.M.Ochhavlal & Co. 124, Narayan Dhuru Street, Mumbai - 400 003.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAFM3904F		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी ओर से/ <b>Appellant by:</b>	Shri Mohit Jain
प्रत्यर्थी की ओर से/ <b>Respondent by :</b>	Shri K.Gopal

सुनवाई की तारीख / **Date of Hearing** : **25/06/2013**  
घोषणा की तारीख / **Date of Pronouncement** : **25/06/2013**

आदेश / ORDER

PER I.P.BANSAL, J.M:

This is an appeal filed by the revenue. It is directed against the order passed by Ld. CIT(A)-24, Mumbai dated 12/8/2010 for assessment year 2007-08. The grounds of appeal read as under:

1. (i) "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in restricting the disallowance of Rs.29,74,199/- to Rs.16,76,409/- made u/s 40(a)(ia) of the I.T.Act,1961 on account of non-deduction of TDS u/s 194C of the I.T.Act,1961 on payment of clearing and forwarding (Transport) charges."

*(ii) While doing so , the Ld.CIT(A) failed to appreciate that as per circular No.715 dated 08.08.1995 issued by the CBDT,- Question No.30- the Tax has to be deducted at source from any sum paid as per the provisions of section 194C of the I.T.Act, 1961 and reimbursements cannot be deducted out of the bill amount for the purpose of tax deduction at source.”*

2. (i) *“On the facts and circumstances of the case and in law, the id. CIT(A) erred in deleting the disallowance of Rs. 5,96,189/- made u/s 40(a)(ia) of the I.T.Act,1961 on account of non-deduction of TDS u/s 194A of the I.T.Act, on interest payment.*

*(ii) While doing so, the Ld.CIT(A) failed to appreciate that due to the lapse on the part of the assessee to furnish the forms No.1 5H to the office of designated CCIT/CIT within the prescribed time limit, the assessee committed default within the meaning of section 197A of the I.T.Act, 1961 r.w. Rule 29C of the I.T.Rules, 1962.”*

3. *“The appellant prays that the order of CIT(A) on the above ground(s) be set aside and that of the Assessment Officer be restored.”*

2. Apropos Ground No.1, during the course of assessment proceedings the A.O noticed that the assess did not deduct tax of clearing and forwarding (transport) charges amounting to Rs.35,72,571/-. The A.O required the assessee to submit the explanation. The assessee submitted a letter which was received by the A.O on 14/12/2009. In the said letter it was submitted that according to bills most of the payments relate to octroi charges, which was separately paid and are not part of billing. Those payments were made on behalf of the assessee by the transport company and in turn assessee has reimbursed them for octroi payment. However, A.O referring to CBDT Circular No.715 and Question No.30 thereof has held that even reimbursement deducted out of bills forms part of the gross amount on which tax is required to be deducted. The A.O has found that such amount was sum of Rs.29,74,199/- which has been added under the provisions of section 40(a)(ia) of the Income Tax Act,1961(the Act) for non-deduction of tax.

3. Before Ld. CIT(A) it was submitted that these payments relate to octroi payments being paid to BMC and reimbursed amounting to Rs.12,97,793/-

and reference was made to the decision of ITAT Jaipur "A" Bench in the case of Jaipur Vidyut Vitran Nigam Ltd. vs. DCIT, (2009) 123 TTJ 888, wherein it has been held that payment of transmission /wheeling/SLDC charges being reimbursement of the cost could not be disallowed under section 40(a)(ia) of the Act, therefore, to the extent of payments relate to octroi amounting to Rs. 12,97,793/- being reimbursement, he provided the relief to the assessee subject to verification of AO and balance addition of Rs.16,76,409/- has been upheld . The department is aggrieved, hence, has raised Ground No.1.

4. At the time of hearing, it was submitted by Ld. A.R that assessee has accepted the sustenance of addition of Rs.16,76,409/- and no appeal has been filed against that.

5. In this view of the situation, we have heard both the parties on this issue. Ld. D.R relied upon the order passed by Ld. AO and on the other hand, Ld. A.R of the assessee relied upon the order passed by Ld. CIT(A). The relief granted by Ld. CIT(A) is limited to octroi component which has been paid by the transporter on behalf of the assessee. It is also not the case of revenue that such amount is not actually paid as octroi. Moreover, Ld. CIT(A) has deleted such addition subject to verification by the AO. If it is an amount paid as octroi on behalf of the assessee, it cannot be said that TDS was deductible upon that. Therefore, we find no infirmity in the relief granted by Ld. CIT(A). We decline to interfere and this ground of the revenue is dismissed.

6. Apropos Ground No.2, during the course of assessment proceedings it came to the notice of AO that assessee did not deduct tax on interest paid by it aggregating to Rs.5,96,189/-. It was submitted that on the basis of Form 15G received from various persons TDS was not deducted out of interest paid to those persons. Since assessee did not furnish copy of Form 15G with CIT (TDS) the A.O held that assessee is not entitled to get deduction of this

amount. According to A.O only obtainment of Form 15G from the parties does not entitle the assessee to make no deduction of tax unless the same is filed before the designated authority. Since assessee did not comply with the requirement of filing Form 15G with the concerned authority, the interest paid by the assessee is liable for disallowance under section 40(a)(ia) of the Act. Accordingly, the A.O disallowed the said amount.

7. In the appeal filed before Ld. CIT(A), it was submitted that assessee had obtained Form 15G from all the concerned persons and such information related to Form 15G was annexed to the quarterly return filed with TIN facilitation center's authorized tax authority. Copy of such annexure filed with quarterly return in respect of Form 15G was placed on record. The disallowance has been made by the AO simply on the pretext that Form 15G is not filed with Commissioner's office. It was submitted that filing Form 15G is one of procedural requirement with which the assessee had complied. Having regard to the information filed in the annexure to return of TDS filed with TIN facilitation center, as designated by the tax authority in this behalf, the assessee should not be penalized for technical/procedural breach. It was also submitted that even during the course of assessment proceedings vide letter dated 15/10/2009 the assessee had furnished the copy of annexure with all Form 15G and taking abundant caution the assessee had also filed copies of Form 15G with the Range TDS Office. Copy of such letter was also placed on record.

8. In this view of the situation, relying upon following decisions Ld. CIT(A) has deleted the addition on the ground that having obtained Form 15G, the assessee was not liable for deduction of tax. The department is aggrieved and has raised Ground No.2.

(i) Sudershan Auto & General finance Vs., CIT, 60 ITD 177 (Del)

(ii) Escorts Employees Ancillaries Ltd. vs. CIT, 74 ITD 1(Del)

9. We have heard both the parties on this issue and their contentions have carefully been considered. The only ground on which the A.O has disallowed the amount is that Form 15G were not filed before CIT(TDS). The A.O is not denying that these forms have been genuinely obtained by the assessee and TDS returns have been filed in due course. If it is so, then assessee has complied with the basic requirement of the Act i.e. obtaining of Form 15G from the person to whom the interest has been paid. Obtainment of Form 15G authorize the assessee for non-deduction of tax. No material has been brought on record to show that any adverse action has been taken by the TDS authorities for the default of the assessee. Therefore, there is no failure on the part of the assessee for non-deduction of tax and it cannot be said that assessee did not deduct tax on the interest payment without authority of law. In view of the situation, we find no infirmity in the decision taken by Ld. CIT(A) vide which it has been held that such addition was liable to be deleted. We decline to interfere and this ground of the revenue is also dismissed.

10. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 25/06/2013

आदेश की घोषणा खुले न्यायालय में दिनांक: 25/06/2013 को की गई।

Sd/-

(डी. करुणाकर रावु / **D.KARUNAKARA RAO**)

लेखा सदस्य / **ACCOUNTANT MEMBER**

Sd/-

(आय.पी. बंसल / **I.P. BANSAL**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated 25/06/2013

**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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

व.नि.स./Vm, Sr. PS