IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH "F", MUMBAI

BEFORE SHRI RAJENDRA SINGH, ACCOUNTANT MEMBER AND SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No. 8406/Mum/2011
Assessment Year : 2007-08

Asstt. Commissioner of Income tax – 2(3) Romm No.556 Aayaka Bhavan Mumbai.	Vs.	M/s. Volkart Fleming Shipping & Services Pvt. Ltd. Cassinah Building, 21, A.K. Nayak Marg, Fort Mumbai-400 001. PAN No. AAACV 1843 P
(Appellant)		(Respondent)

Appellant by	:	Shri Girish Dave
Respondent by	:	Shri Om Prakash Meena

Date of hearing	:	07/01/2013
Date of Pronouncement	:	07/01/2013

O R D E R

PER RAJENDRA SINGH, AM:

This appeal by the revenue is directed against the order dated 15.9.2011 of CIT(A) for the assessment year 2007-08. The only dispute raised by the revenue in this appeal is regarding the decision of AO to allow retainership charges after admitting fresh evidence.

2. Facts in brief are that the AO during the assessment proceedings noted that the assessee had claimed a sum of Rs.47,65,235/- as retainership charges on account of M/s.FGI A/c. Treasury Forbes div., M/s. Forbes Gotak Limited and

M/s. Forbes Patvolk . The AO observed that the retainership charges were in the nature of professional charges. Therefore, tax was required to be deducted under section 194J. The AO therefore, asked the assessee to furnish the details of tax deducted at source. The assessee vide letter dated 8.12.2009 submitted that it had certificates for Rs.14.00 lacs in respect of tax deducted and other payments were regarding secondment of staff costs which was reimbursement of expenditure and therefore, did not attract TDS provisions. The AO however observed that the assessee had furnished copy of Form-16A only in respect of Rs.9.00 lacs credited to M/s. Forbes Gotak Ltd. The AO also observed that the assessee had not furnished any proof of reimbursement of expenditure. Accordingly the AO disallowed a sum of Rs.38,65,235/- (Rs.47,65,235 – Rs.9,00,000) and added to the total income.

2.1 The assessee disputed the decision of AO and submitted before CIT(A) that the amount disallowed by AO represented reimbursement of expenses to which TDS provisions were not applicable. The assessee produced Expenses Statement from which CIT(A) noted that the debit notes had been raised for expenses like telephone, courier boy, miscellaneous office expenses like zerox charges, stationery charges, use of water, flower etc. CIT(A) therefore, concluded that the payments were reimbursement charges and not for any promotional charges, therefore, TDS provisions were not applicable. CIT(A) accordingly deleted the addition made. The revenue has challenged the deletion of addition to the tune of Rs.33,65,25/- being claimed as reimbursement of expenditure.

3. Before us the ld. Departmental Representative appearing for the revenue assailed the order of CIT(A) and submitted that AO had given a clear finding that the assessee had not produced any proof of reimbursement of expenditure and CIT(A) had considered additional evidence in the form of bills and vouchers the debit notes etc. which had not been produced before AO. It was therefore, urged that the order of CIT() should be set aside. The ld. AR on the other hand submitted that the assessee had filed details vide letter dated 8.12.2009 which had already been taken cognizance by AO and, therefore, it could not be said that the assessee had filed additional evidence before CIT(A).

4. We have perused the records and considered the matter carefully. The dispute is regarding disallowance of expenses on the ground of non deduction of tax at source amounting to Rs.33,65,235/- paid to M/s. Forbes Gotak Ltd. Before the AO assessee vide letter dated 8.12.2009 submitted that the payments were of the nature of reimbursement of expenditure to which TDS provisions were not applicable. The AO observed that the assessee had not furnished proof of reimbursement of expenses. Before CIT(A) it appears that the assessee had produced Expenses Statements along with debit notes from which CIT(A) concluded that payment represented reimbursement of expenditure. From the order

of CIT(A) it is not clear as to how payments represented reimbursement of expenditure. The order of CIT(A) is not a reasoned and speaking order. Since AO has given a clear finding that no evidence had been produced regarding reimbursement of expenditure CIT(A) was required to give opportunity to AO regarding any evidence produced in support of reimbursement of expenditure. In our view, order of CIT(A) can not be sustained. We, therefore, set aside the order of CIT(A) and restore the issue back to him for passing a fresh order after allowing opportunity of hearing to the AO in respect of evidence produced by the assessee to prove the reimbursement nature of expenses and after hearing the assessee.

5. In the result, appeal of the revenue is allowed for statistical purposes.

Order pronounced in the open court on 07.01.2013.

Sd/-	**Sd/-**
(AMIT SHUKLA)	**(RAJENDRA SINGH)**
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dated: 07.01. 2013.
Jv.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT(A) Concerned, Mumbai
The DR " " Bench

True Copy

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.