

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'B' BENCH, KOLKATA**

**Before Shri Pramod Kumar (Accountant Member),  
and Shri George Mathan (Judicial Member)**

I.T.A. No.: 1216 & 1217/ Kol. / 2011  
Assessment years : 2006-07 & 2008-09

*Mitra Logistic Pvt. Ltd. ....Appellant*  
*C/o. D.J. Shah & Co.,*  
*Kalyan Bhavan,*  
*2, Elgin Road, Kolkata-700 020*  
*[PAN : AADCM 7145 E]*

-Vs.-

*Income Tax Officer, .....Respondent,*  
*Ward-9(1), Kolkata,*

&

I.T.A. No.: 1387 & 1388/ Kol. / 2011  
Assessment years : 2006-07 & 2008-09

*Income Tax Officer, .....Appellant*  
*Ward-9(1), Kolkata,*

-Vs.-

*Mitra Logistic Pvt. Ltd. ....Respondent,*  
*C/o. D.J. Shah & Co.,*  
*Kalyan Bhavan,*  
*2, Elgin Road, Kolkata-700 020*  
*[PAN : AADCM 7145 E]*

**Appearances by:**

Shri Miraj D. Shah, for the assessee  
Shri R.K. Saha, D.R., for the Revenue

Date of concluding the hearing : June 19, 2012  
Date of pronouncing the order : June 19, 2012

**O R D E R**

**Per Pramod Kumar:**

1. These two sets of cross appeals are directed against separate but materially identical orders dated 10<sup>th</sup> August, 2011 passed by the CIT(Appeals) in the matter of assessments u/s. 143(3) of the Income Tax Act, 1961 for the assessment years 2006-07 and 2008-09. As these appeals were heard together and these appeals involve some common issues, all the four appeals are being disposed of by this consolidated order.

2. We will first take up the appeals for A.Y. 2006-07.

3. In appeal filed by the Revenue (i.e. 1387/Kol./2011), grievance raised is as follows :-

*“On the facts and in the circumstances of the case, the Id. CIT(A)-VIII erred in law in deciding the appeal in favour of the assessee by deleting the addition u/s. 40(a)(ia) relating to transportation charges of Rs.86,04,049/- where tax was not deducted at the time of payments/ credit”.*

4. Learned representatives fairly agree that as the assessee had filed all the relevant Form 15J with the Department on 05.06.2008, and also before the CIT(A) during the appellate proceedings, the case of the assessee is squarely covered in his favour, by decisions of the coordinate benches in the cases of, among other, Capital Transport Corporation of India -vs.- ITO (ITA No. 1753/Kol./2009). We see no reasons to take any other view of the matter than the view so taken by the coordinate bench, and hold that, in view of the fact that the

assessee has duly filed all the relevant 15J declarations, the CIT(A) was justified in deleting impugned disallowance of Rs.86,04,049/- u/s. 40(a)(ia) r.w.s. 194C.

5. The appeal of the Revenue is thus dismissed.

6. In the appeal filed by the assessee (ITA No. 1216/Kol./2011) for AY 2006-07, grievances raised are as follows :-

*(1) For that in the facts and circumstances of the case the assessment order passed was in violation of principles of natural justice hence is bad in law and be quashed.*

*(2) For that in the facts and circumstances of the case the learned Assessing Officer and learned Commissioner of Income Tax (Appeals) erred in disallowing Rs.14,55,480/- being reimbursement security expense u/s. 40(a)(ia). The said amount being a reimbursement the disallowance was not called for. Thus the disallowance be reversed.*

*(3) For that in the facts and circumstances of the case the learned Assessing Officer and learned Commissioner of Income Tax (Appeals) erred in disallowing Rs.52,032/- being reimbursement service charges u/s. 40(a)(ia). The said amount being a reimbursement the disallowance was not called for. Thus the disallowance be reversed.*

*(4) For that in the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) erred in disallowing Rs.50,000/- being accounting charges u/s.40(a)(ia). The disallowance was unjustified and be reversed.*

*(5) The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.*

7. As regards the above grievances, learned counsel for the assessee submits that there is no dispute about the fundamental position that as long as the payments are for reimbursements, and not expenditure, the tax deduction obligations do not come into play and accordingly, disallowance u/s. 40(a)(i) cannot be made either. In support of this proposition, our attention is invited to a coordinate bench decision in the case of Satyendra Jhunjhunwalla -vs.- ITO (ITA No. 1988/Kol./2009; order dated 11.11.2011). He, however, fairly submits that as this aspect of the matter, i.e. payment being in the nature of reimbursement, has not been examined by the authorities below, the matter can be restored to the file of the Assessing Officer for fresh adjudication in the light of the above principle.

8. Learned Departmental Representative does not oppose the prayer of the assessee, but relies upon the orders of the authorities below nevertheless.

9. In view of the above discussions, we are of the considered view that the matter is to be restored to the file of the Assessing Officer for verification as to whether the payments are in the nature of reimbursements or not, and with a direction that if the payments are indeed in the nature of reimbursements, the disallowance u/s. 40(a)(i), to that extent, will stand deleted. We order so.

10. The appeal of the assessee is thus allowed for statistical purposes in the terms indicated above.

11. To sum up, so far as A.Y. 2006-07 is concerned, while appeal of the Assessing Officer is dismissed, the appeal of the assessee is partly allowed in the terms indicated above.

12. We now take up the cross appeals for the AY 2008-09.

13. Grievance raised in appeal filed by the revenue (i.e. 1388/Kol./2011) is as follows :-

*“On the facts and in the circumstances of the case, the ld. CIT(A)-VIII erred in law in deciding the appeal in favour of the assessee by deleting the addition u/s. 40(a)(ia) relating to transportation charges of Rs.96,01,585/- where tax was not deducted at the time of payments/ credit”.*

14. Learned representatives fairly agree that as the assessee had filed all the relevant Form 15J with the Department on 05.06.2008, and also before the CIT(A) during the appellate proceedings, the case of the assessee is squarely covered in his favour, by decisions of the coordinate benches in the cases of, among other, Capital Transport Corporation of India -vs.- ITO (ITA No. 1753/Kol./2009). We see no reasons to take any other view of the matter than the view so taken by the coordinate bench, and hold that, in view of the fact that the assessee has duly filed all the relevant 15J declarations, the CIT(A) was justified in deleting impugned disallowance of Rs.96,01,585/- u/s. 40(a)(ia) r.w.s. 194C.

15. The appeal of the Revenue is thus dismissed.

16. In the appeal filed by the assessee for AY 2008-09, grievances raised are as follows :-

*(1) For that in the facts and circumstances of the case the assessment order passed was in violation of principles of natural justice hence is bad in law and be quashed.*

*(2) For that in the facts and circumstances of the case the learned Assessing Officer and learned Commissioner of Income Tax (Appeals) erred in disallowing Rs.4,51,110/- being reimbursement staff travelling charges u/s. 40(a)(ia). The said amount being a reimbursement the disallowance was not called for. Thus the disallowance be reversed.*

*(3) For that in the facts and circumstances of the case the learned Assessing Officer and learned Commissioner of Income Tax (Appeals) erred in disallowing Rs.10,32,427/- being reimbursement security charges u/s. 40(a)(ia). The said amount being a reimbursement the disallowance was not called for. Thus the disallowance be reversed.*

*(4) For that in the facts and circumstances of the case the learned Assessing Officer and learned Commissioner of Income Tax (Appeals) erred in disallowing Rs.42,000/- being reimbursement service charges u/s. 40(a)(ia). The said amount being a reimbursement the disallowance was not called for. Thus the disallowance be reversed.*

*(5) For that in the facts and circumstances of the case the learned Commissioner of Income Tax (Appeals) erred in disallowing Rs.50,000/- being accounting charges u/s.40(a)(ia). The disallowance was unjustified and be reversed.*

*(6) The appellant craves leave to press new, additional grounds of appeal or modify, withdraw any of the above grounds at the time of hearing of the appeal.*

17. As regards the above grievances, learned counsel for the assessee submits that there is no dispute about the fundamental position that as long as the payments are for reimbursements, and not expenditure, the tax deduction obligations do not come into play and accordingly, disallowance u/s. 40(a)(i) cannot be made either. In support of this proposition, our attention is invited to a coordinate bench decision in the case of Satyendra Jhunhunwalla –vs.- ITO (ITA No. 1988/Kol./2009; order dated 11.11.2011). He, however, fairly submits that as this aspect of the matter, i.e. payment being in the nature of reimbursement, has not been examined by the authorities below, the matter can be restored to the file of the Assessing Officer for fresh adjudication in the light of the above principle.

18. Learned Departmental Representative does not oppose the prayer of the assessee, but relies upon the orders of the authorities below nevertheless.

19. In view of the above discussions, we are of the considered view that the matter is to be restored to the file of the Assessing Officer for verification as to whether the payments are in the nature of reimbursements or not, and with a direction that if the payments are indeed in the nature of reimbursements, the disallowance u/s. 40(a)(i), to that extent, will stand deleted. We order so.

20. The appeal of the assessee is thus allowed for statistical purposes in the terms indicated above.

21. To sum up while both the appeals filed by the Assessing Officer are dismissed, both the appeals filed by the assessee are allowed for statistical purposes in the terms indicated above.

22. The order is pronounced in the open court immediately upon conclusion of hearing today on 19<sup>th</sup> day of June, 2012.

Sd/-

**George Mathan**  
(Judicial Member)

***Kolkata, the 19<sup>th</sup> day of June, 2012***

*Copies to : (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) The Departmental Representative  
(6) Guard File*

Sd/-

**Pramod Kumar**  
(Accountant Member)

*By order etc*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Kolkata benches, Kolkata*

Laha/Sr. P.S.