THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 09.01.2013

\+ **ITA 604/2012**

CIT ... Appellant

versus

HARDARSHAN SINGH ... Respondent

Advocates who appeared in this case:
For the Appellant : Mr Rohit Madan
For the Respondent : Mr S. Krishnan

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE R.V.EASWAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM 17463/2012

The delay in re-filing is condoned.

This application stands disposed of.

ITA 604/2012

1. The revenue is aggrieved by the order dated 26.08.2011 passed by the Income Tax Appellate Tribunal in ITA 1447/Del/2011 pertaining to the assessment year 2007-08. Before the Tribunal, the assessee, who was aggrieved by the orders passed by the Assessing Officer as well as the

Commissioner of Income Tax (Appeals), had, *inter alia*, taken the ground that the addition of ₹ 8,51,43,744/- by invoking the provisions contained in Section 40(a)(ia) of the Income Tax Act, 1961 (hereinafter referred to as 'the said Act') was erroneous.

2. The assessee has four trucks and is in the business of transporting goods. He also carries on the business of a commission agent by arranging for transportation of goods through other transporters. Initially, the assessee filed a return on 31.10.2007 declaring a total income of ₹ 8,57,684/-. The return was picked up on scrutiny and a notice was issued under Section 143(2) of the said Act. During the scrutiny proceedings, the assessee was required to file a revised profit and loss account. On 18.12.2009, the revised profit and loss account was filed by the assessee, wherein the details of income and expenses were given. The same is as under:-

Expenses		**Income**	
Particulars	**Amount**	**Particulars**	**Amount**
Direct Expenses		**Direct Expenses**	
Lorry Booking Expenses	8,51,43,744/-	Own Booking Income	36,50,803/-
Own Booking Expenses	25,91,248/-	Lorry Booking Income	8,51,43,744/-

Indirect Expenses	28,03,903/-	Indirect Expenses	
Net Profit	8,57,684/-	Booking Commission	26,02,032/-
Total	**9,13,96,579/-**	**Total**	**9,13,96,579/-**

3. On going through the above table, it becomes clear that the assessee had shown two kinds of businesses. One is the 'lorry booking' business and the other is the 'own booking' business. Insofar as the 'own booking' business is concerned, there is no dispute that the payments received by the assessee were after deduction of tax. However, insofar as the 'lorry booking' business is concerned, it has been the stand of the assessee that the income derived from that business was by way of booking commission which has been shown at ₹ 26,02,032/-. The rest of the money received from the clients was passed on entirely to the lorry owners/ transporters. That is why the lorry booking expenses and the lorry booking income are identical.

4. The whole issue in the present appeal is whether the assessee was liable to deduct TDS under Section 194C of the said Act. According to the assessee, insofar as the 'lorry booking' business is concerned, there is no contract of carriage between the assessee or any other person. The

contract is between the clients and the lorry owners/ transporters, in which the assessee only acts as a facilitator or as an intermediary. This stand has been taken by the assessee right from the stage of the assessment up to the Tribunal.

5. Unfortunately for the assessee, the Assessing Officer as also the Commissioner of Income Tax (Appeals) did not agree with this contention of the assessee and both of them held that the assessee was not an intermediary or a facilitator but, there was a privity of contract between the assessee and the clients for carriage of goods. The Tribunal, however, has reversed this finding by holding that the assessee had no privity of contract for carriage of goods with the clients and that the assessee merely acted as a facilitator or as an intermediary. The Tribunal observed as under:-

> "5.3 We have considered the facts of the case and submissions made before us. We may explain the contents of the bill as mentioned above. The assessee raised a bill no. 3916 dated 26.03.2007 on the aforesaid Delhi Assam Roadways and asked it to arrange the trucks of the capacity of 25 tons on his behalf. The bill amount was Rs. 70,000/- and Rs. 50,000/- were paid to Ram Kishan, driver. Second bill of same number and date shows the contract value at Rs. 70,000/- and balance payable at Rs. 20,000/-. The challan no. 3916 of the same date shows balance freight at Rs. 17,900/- and commission of Rs. 2,100/-. This details show that a contract has been entered into between the two parties for a

> sum of Rs. 70,000/- and advance payment of Rs. 50,000/- has been made through the driver of the Delhi Assam Roadways. The assessee has not done the work of actual transportation of goods. He earned only the commission of Rs. 2,100/-. Thus, it becomes clear that the assessee acted as intermediary between the client and Delhi Assam Roadways Corporation Ltd. The company carried the goods and the advance received from the customer was handed over to the driver of the company. In the final bill, the advance and the commission of the assessee were deducted from the bill amount of Rs. 70,000/- and the assessee had to receive commission of Rs. 2,100/- from the company. According to us, it cannot be said that assessee really entered into the contract of transportation of goods. He merely acted as an intermediary. Thus, the facts seem to be similar to the facts in the case of Grewal Brothers (supra) although the provisions of Partnership Act make the position of law somewhat messy. In the case of Cargo Linkers, the assessee acted as an intermediary between the exports and the airlines. It received the amount from the exporter and handed over the same to the airline, who paid commission. These facts are also nearer to the facts of the case at hand. Accordingly, following this decision, it is held that the assessee was not liable to deduct tax at source. In view thereof, no addition could have been made u/s 40(ia). Thus, ground no.1 is allowed."

6. Before us, the learned counsel for the revenue sought to argue that the assessee was the 'person responsible' for paying as provided in Section 194C read with Section 204 of the said Act. However, that would only apply if there was privity of contract of carriage between the assessee and its clients. On facts, the Tribunal has held that the assessee

was merely a facilitator or an intermediary and that it did not enter into any contract for carriage of goods with its clients.

7. It is also the case of the assessee that it did not undertake any carriage of goods by itself through its trucks / lorries other than in respect of its 'own booking' business which has already suffered TDS at the time of receipt of payments by the assessee. The learned counsel for the respondent/ assessee referred to the decision of a Division Bench of this Court in the case of ***CIT v. Cargo Linkers: (2009) 179 Taxman 151 (Del)***. We find that the said decision covers the case of the assessee in its favour. In ***Cargo Linkers*** *(supra)*, the assessee was a partnership firm carrying on the business of clearing and forwarding agents and booking cargo for the transportation abroad by various airlines operating in India. The assessee collected freight charges from the exporters who intended to send the goods through a particular airline and paid the amount to the airline or its general sales agents and for the services rendered, the assessee charged commission from the airlines. According to the Assessing Officer, in that case, the assessee was liable to deduct tax at source on the payments made to the airlines. As can be noticed, the factual position is somewhat similar to the facts of the present case. Here

also, the assessee collects freight charges from the clients who intended to transport their goods through separate transporters. The entire amount collected from the clients is paid to the transporters after deducting commission from the said amount.

8. In ***Cargo Linkers*** *(supra)*, it was contended on behalf of the assessee that the assessee was not the 'person responsible' for making payment in terms of Section 194C of the said Act. In that case, the Tribunal had also noted and found as a matter of fact that the assessee was nothing but an intermediary between the exporters and the airlines as it booked cargo for and on behalf of the exporters and mainly facilitated the contract for carrying goods. The principal contract was between the exporter and the airline. This court, in ***Cargo Linkers*** *(supra)*, agreed with the view of the Tribunal which had mainly decided an issue of fact, namely, the nature of the contract between the parties concerned. The Court also observed that it had also been found as a matter of fact that the contract was actually between the exporter and the airline and the assessee was only an intermediary and, therefore, it was not the 'person responsible' for deduction of tax at source in terms of Section 194C of the said Act.

9. We feel that the decision in ***Cargo Linkers*** *(supra)* completely covers the case in favour of the assessee and against the respondent. The Tribunal has already found as a matter of fact that the contract was between the assessee's clients and the transporters and that the assessee had mainly acted as a facilitator or as an intermediary.

10. In this view of the matter, no question of law arises for our consideration. The appeal is dismissed.

BADAR DURREZ AHMED, J

R.V.EASWAR, J

JANUARY 09, 2013
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