LION MERCANTILE P. LTD. vs. INCOME TAX OFFICER

BOMBAY TRIBUNAL

SAKTIJIT DEY, JM & RAMIT KOCHAR, AM.

ITA No. 5998/Mum/2014

Jun 27, 2018

(2018) 53 CCH 0248 MumTrib

Legislation Referred to

Section 40(a)(ia), 194C, 143(3)

Case pertains to

Asst. Year 2010-11

Decision in favour of:

Assessee(Partly)

Business Expenditure—Reimbursements to custom house agents—Non-deduction of tax at source—Disallowance—Assessee had paid/reimbursed custom duty charges to its agent and claimed that agent made payment of custom duty on behalf of assessee which was reimbursed and no income-tax was required to be deducted at source—AO concluded that consolidated amount including custom duty paid to government became subject to deductibility of income-tax at source u/s. 194C—AO disallowed claim made by assessee for reimbursements to custom house agents on account of failure of assessee to deduct tax at source—CIT(A) upheld order of AO—Held, payment of custom duty to Government on import of goods even if paid through agent by way of reimbursement would not warrant deduction of income-tax at source within provisions of Act—Assessee's appeal allowed.

Held

We have considered rival contentions and perused the material on record. We have gone through the CHA agent sample invoices which are placed in first paper book page 29-30 and we are of the view that the AO committed grave error wherein CMC charges paid were only Rs. 67.00 of which reference number was 78100 as per debit note of CHA agent placed in paper book while the amount picked up by the AO in his assessment order was CMC charges of Rs. 78,100/- as against actual amount of Rs. 67/- . This claim of debit was raised by CHA agent namely Niranjan Shipping Agency Pvt. Ltd. on the assessee vide debit note no. 3023 dated 20-10-2009 which was towards reimbursement of expenses including custom duty paid to government on behalf of the assessee on import of goods of the aggregate value of Rs. 3,78,626/-(pb/page 30) , out of which custom duty paid was to the tune of Rs. 3,20,455/- . The assessee has also placed on record custom charges receipts issued by GOI (custom departments) to contend that custom duty was paid to Government and no TDS was required to be deducted at source within provisions of Chapter XVII-B of the 1961 Act. Our attention was also drawn to invoices raised separately by the Niranjan Shipping agency P. Ltd. which is placed in paper book page no. 29 towards their service charges and claim has been made by the assessee that income-tax was duly deducted at source on all services charges paid to Niranjan Shipping Agency P. Ltd. within mandate of Chapter XVII-B of the 1961 Act. We have gone through the material before us and we have observed that M/s Niranjan Shipping Agency P. Ltd. has raised debit notes for reimbursement of expenses including custom duties, insurance etc.. The disallowance has been made on the grounds that custom duty paid by CHA agent on behalf of the client will also get aggregated and will call for deduction of income-tax at source within the mandate of Chapter XVII-B with which we donot agree and in our considered view payment of custom duty to Government on import of goods even if paid through CHA agent by way of reimbursement will not warrant deduction of income-tax at source within provisions of the 1961 Act and no additions were warranted which we hereby order to be deleted subject to verification to a limited extent by the AO that the amount of Rs. 26,07,533/- as were disallowed by the authorities below do actually constitute custom duty paid by CHA to government on behalf of the assessee on import of goods which is to be verified by the AO with reference to books of accounts maintained by the assessee and other evidences as may be produced by the assessee. The assessee succeeds on this ground as indicated above. We order accordingly.

(Para 11)

Conclusion

Custom duty paid to government by way of reimbursement through agent does not attract warrant of deduction of tax at source.

In favour of

Assessee

Income—Refund of Custom duty—Addition—Validity thereof—Assessee was only debiting net amount of custom duty paid after adjusting refund due of custom duty on account of SAD paid which was charged in lieu of VAT/CST and later refunded by government after verification that imported goods suffered VAT/CST—AO ordered for addition in respect of refund of Custom duty—CIT(A) upheld order of AO—Held, no addition was warranted so far as refund of custom duties was concerned because it never entered Profit and Loss account—Moreover, material was not placed on record to prove that no deduction whatsoever was claimed of refund by assessee while computing income and thus for limited purposes matter was restored to file of AO for verifying contention of assessee vis-a-vis its books of accounts that assessee never claimed deduction of said custom duty (SAD)—Assessee's appeal allowed.

Held

The next addition is with respect to the additions to the income of an amount of Rs. 6,40,888/- being refund of custom duty (SAD) receivable by the assessee from custom department as at year end.We have perused from the ledger account submitted(pb/page 10 and 37) of custom duty charges(imports) and custom duty refund that as per these ledger extracts the assessee is only debiting net amount of custom duty paid after adjusting the refund due of custom duty on account of SAD paid which is charged in lieu of VAT/CST and later refunded by government after verification that imported goods suffered VAT/CST and hence to avoid double taxation the said amount of custom duty consisting of special additional duties which were levied in lieu of VAT/CST are refunded . The total amount receivable as at year end as is reflected in ledger extract was Rs. 6,40,888/- while an amount of Rs. 1,54,227/- was received in the year itself towards claim of refund of SAD. The refund of custom duties (SAD) receivable from custom authorities is required to be shown as loans and advances under the head 'current asset, loans and advances' which as per audited accounts produced before us is infact so reflected (pb/97) and when the invoices are raised for sale of material and VAT/CST is paid on the said material, the claim is lodged with custom department for refund of special additional duties(SAD). Under these circumstances, no additions is warranted so far as refund of custom duties is concerned because it never entered Profit and Loss account and hence no addition is warranted. However, material is not placed on record to prove that no deduction whatsoever was claimed of this SAD refund by the assessee while computing income and thus for limited purposes the matter is restored to the file of the AO for verifying the contention of the assessee vis-a-vis its books of accounts that the assessee never claimed the deduction of said custom duty (SAD) component as expenses to the tune of this refund receivable amount of Rs. 6,40,888/- of additional custom duty is concerned and only net amount of custom duty paid was claimed as an expense by the assessee in its return of income filed with the Revenue. In any case learned CIT(A) has given direction to the AO for verifying the same on above lines as we held in this order and we are confirming the directions of learned CIT(A). We order accordingly.

(Para 12)

Conclusion

If income derived from refund of custom duties does not enter in profit and loss account, then no addition could be made on same.

In favour of

Assessee

Business Expenditure—Addition—Validity thereof—Assessee raised sale invoice in favour of C company/concern for goods sold by assessee to said concern and instead of making payments to assessee against said invoice, said concern made

payments through banking channel to F company on behalf of assessee—Assessee adjusted said payments made by debtor directly to creditor of assessee through journal voucher adjustments in its books of account—AO held that payments made to party from whom purchases were made by assessee otherwise than through account payee cheque or account payee bank draft was held to be in violation of provisions of Section 40A(3)—AO disallowed purchases of goods and made additions—CIT(A) upheld AO's order—Held, payment made directly by assessee's debtor to assessee's creditor through approved banking mode as prescribed in s 40A(3) in settlement of inter-se transaction between debtor and creditor will not trigger provisions of s 40A(3) and hence no disallowance as was made by Revenue was warranted under these circumstances—Addition was deleted—Assessee's appeal allowed.

Held

We have considered rival contentions and perused material on record. We have observed that assessee has made purchases from M/ Flora Texculture P. Ltd. and to the tune of Rs. 10,41,394/- payments were made by M/s Challenger Trade Link (India) Private Limited directly to said concern M/s Flora Texculture P. Ltd. on behalf of the assessee instead of the assessee making payments directly to said concern M/s Flora Texculture P. Ltd. for its purchases. The assessee had raised sale invoice to the tune of Rs. 10,41,394/- in favour of M/s Challenger Trade Link (India) Private Limited for goods sold by the assessee to said concern and instead of making payments to the assessee against said invoice, the said concern M/s Challenger Trade Link (India) Private Limited made payments through banking channel to M/s Flora Texculture P. Ltd. on behalf of the assessee. The assessee adjusted said payments made by debtor directly to the creditor of the assessee through journal voucher adjustments in its books of account. The genuineness and bonafide of the transactions of sale and purchases made by the assessee is not disputed by Revenue. The identities of the parties is also not doubted/disputed by Revenue. The payments of Rs. 10,41,394/- made by M/s Challenger Trade Link (India) Private Limited was through approved banking modes to M/s Flora Texculture P. Ltd. which is also not doubted by Revenue. There were other sales to the tune of Rs. 3,83,838/- made by the assessee to said concern M/s Challenger Trade Link India Private Limited on 24-12-2009 for which payments through banking channels was made by the said concern to the assessee on 21-12-2009 and 19-2-2010. The confirmation of said party namely M/s Challenger Trade Link India Private Limited is also placed on record in pb/page 11. The certificate dated 07-09-2013 issued by State Bank of India on behest of M/s Challenger Trade Link India Private Limited for making payment to said concern Flora Texculture P. Ltd. is also placed on record at page 12/pb. Section 40A(3) is undisputedly anti tax avoidance provision to check evasion of taxes and to discourage movement of funds exceeding monetary limits specified in Section 40A(3) in the economy otherwise than through the prescribed modes of payments viz. account payee cheques or account payees drafts or the use of electronic clearing system through a bank account with a view to discourage movements of funds of large magnitude otherwise than through prescribed and approved banking channels in order to check evasion of taxes . The Section 40A(3) only stipulate positive condition of making payment to a person in prescribed and approved modes of banking channel which in the instant case was met as the payee M/s Flora Texculture Private Limited was paid through approved modes although payments were made by M/s Challenger Trade Link (India) Private Limited on behalf of the assessee and the said party namely M/s Challenger Trade Link (India) Private Limited is identifiable, transactions are undisputedly genuine, verifiable, audit trails are available and are through banking channel in an approved mode which is again not disputed by Revenue but the only grievance of the Revenue is that the payment should have been made by the assessee to its creditor namely M/s Flora Texculture Private Limited instead of directing M/s. Challenger Trade Link (India) Private Limited to make payment through approved banking modes on its behalf in settlement of sales made by assessee to said concern M/s. Challenger Trade Link (India) Private Limited directly to M/s Flora Texculture Private Limited against consideration payable by the assessee for purchases made by the assessee from said concern namely M/s Flora Texculture Private Limited . The cardinal rational and objective being to plug evasion of taxes so as to ensure that unaccounted money of the tax-payer does not get recycled in the form of cash payments towards ghost expenditures or ghost payees which are out of ambit of tax net and also that recipient of money is traceable and brought within ambit of taxation if the payments are made through approved banking means and both the tax-payer and the payee does not escape the tax- net by making or receiving payments in cash , thus onus is cast while making payment of expenses that payment of higher magnitude exceeding stipulated thresholds be made only through prescribed and approved modes of payments through banking channel. In our considered view based on evidence on record and keeping in view factual matrix of the case, the said payment made directly by assessee's debtor namely M/s Challenger Tradelink P. Ltd. to assessee's creditor namely M/s. Flora Texculture P. Ltd. through approved banking mode as prescribed in Section 40A(3) in settlement of inter-se transaction between debtor and creditor will not trigger provisions of Section40A(3) and hence no disallowance as was made by Revenue is warranted under these circumstances. We hereby order for deletion of the said addition to the tune of Rs. 10,41,394/- made by the authorities below u/s 40A(3). We order accordingly.

(Para 15)

Conclusion

Payment made directly by assessee's debtor to assessee's creditor through approved banking mode as prescribed in Section 40A(3) in settlement of inter-se transaction between debtor and creditor will not trigger provisions of Section40A(3).

In favour of

Assessee

Counsel appeared:

Sharad Patel for the Assessee.: Rajesh Kumar Yadav,DR for the Revenue

RAMIT KOCHAR, AM.

1. This appeal, filed by the assessee, being ITA No. 5998/Mum/2014, is directed against appellate order dated 03.06.2014 passed by learned Commissioner of Income Tax (Appeals)-20, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2010-11, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 05.03.2013 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2010-11.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

> *" 1) The CIT (A) has erred in law & on the facts of the case in confirming the additions made by the Assessing Officer with respect to Job Charges amounting to Rs. 16,06,052/- by applying the provisions of section 40(a)(ia) of the Act and considering the same as non genuine expenses*
>
> *2) The CIT (A) has erred in law & on the facts of the case in confirming the action of the Assessing Officer in disallowing the reimbursement of Custom House Agent amounting to Rs. 26,07,533/- by applying the provisions of section 40(a)(ia) of the Act.*
>
> *3) The CIT (A) has erred in law & on the facts of the case by not accepting the facts on record that that amount of Rs. 6,40,888/- is refund of customs duty and therefore the same is not an income of the Assessee*
>
> *4) The CIT (A) has erred in law & on the facts of the case in disallowing the purchases of Rs. 10,41,394/- by applying the provisions of 40A(3) of the Act on the ground that the Assessee has made the payment through journal entry and not made the payment through account payee cheque.*
>
> *The Appellant craves leave to add, alter or modify the above grounds of appeal."*

3. The assessee is engaged in the business of trading, manufacturing and processing of yarn/textiles. During the course of assessment proceedings u/s 143(3) r.w.s. 143(2) of the 1961 Act , the AO observed that assessee has only filed financial statements while the assessee did not submitted tax audit reports along with its annexures/schedules. The assessee was asked to submit tax audit report and copies of TDS returns along with its annexures/schedules. The assessee submitted tax audit report wherein at relevant column in the said tax audit report , the auditors stated that the assessee did not complied with provisions of the 1961 Act so far as deduction of tax at source under Chapter XVII-B is concerned which non-compliances were marked as Annexure to the tax audit report by the auditors but the said annexure containing details of non compliances were not furnished by the assessee before the AO which is one of the main grievances of the Revenue in this appeal before us.

The assessee during assessment proceedings submitted following details of manufacturing expenses incurred by it as under:-

Job charges (shirting)	Rs. 16,06,052/-
Job charges (Yarn)	Rs. 70,14,809/-
	Rs. 86,20,860/-

The AO observed that the assessee deducted income-tax at source on job charges to the tune of Rs. 65,95,409/-. The AO observed so far as job charges(shirting) of Rs. 16,06,052/- is concerned, no income-tax was deducted at source by the assessee company nor the same was paid to the credit of Government before the due date. The assessee was asked to submit the details by the AO wherein the assessee was show-caused as to why job charges paid on shirting totalling to Rs. 16,06,052/- should not be disallowed u/s. 40(a)(ia) of the 1961 Act for non deduction of income-tax at source. The assessee in response filed copy of ledger account "Job Charges(Shirting)" without providing addresses of the said parties or vouchers or bills or invoices thereof issued by said job workers which is again one of the main grievance of the Revenue in this appeal before us. The assessee

however submitted that job charges were paid to various contractors and it did not exceeded the limits specified under the Act for leviability of income-tax deduction at source within the provisions of 1961 Act and hence no income-tax was required to be deducted at source within the provision of Chapter-XVII B of the Act. The AO concluded that facts brought on record by the assessee are without any invoices, bills, vouchers or addresses of the parties to the whom payments were made and hence the explanation offered by the assessee could not prove genuineness of the said parties as no evidence has been brought on record to establish the credibility or worthiness of the contractors mentioned in the ledger account of job charges (shirting). The AO invoked provision of Section 194C and since the income-tax was not deducted at source , the additions were made to the income of the assessee to the tune of Rs.16,06,052/- u/s. 40 (a)(ia) of the 1961 Act by the AO , vide assessment order dated 05.03.2013 passed by the AO u/s 143(3) of the 1961 Act.

4. Aggrieved by the assessment order dated 05.03.2013 passed by the AO u/s 143(3) of the 1961 Act, the assessee filed first appeal before learned CIT(A) and contended as under:-

> *"Based on the specific Query of the Assessing Officer, the Assessee had submitted the following documents: the copies of the same are enclosed herewith.*
>
> *i. Tax Audit Report with relevant annexure vide its letter dated 13/12/2012.*
>
> *ii. Ledger account of Job Charges vide its letter dated 08/11/2012 reflecting therein the name and the amount paid to each job worker,*
>
> *iii. Explanation vide letter dated 04/0.2/2013 that no TDS is deductible on job charges (Shirting) paid to each job workers since the amount paid to each party is below threshold limit*
>
> *The Assessing officer had stated in Assessment Order on page 1 paragraph 4.1 that he has seen the assessee's letter dated 23/10/2012 and since the assessee did not submit the Tax Audit report, he has asked assessee to submit the Tax Audit report by issuing notice u/s 142(1) dated 21/10/2012. This dearly shows that the notice u/s 142(1) was backdated by putting the date two days prior to the submission made by the assessee i.e. on 23/10/2012.*
>
> *In spite of all the above documents and explanation made during several hearings from October 2012 to March 2013 by the authorized representative, the Assessing Officer, without confronting the Assessee or the Authorized representative who happens to be the Tax auditor of the assessee company that the particular Annexure to the Tax Audit Report is missing and without justifying that the TDS is deductible even on amounts below Rs. 20,000/- to each job worker has simply disallowed the entire job work charges (Shirting) of Rs.16,06,052/- by applying the provision of section 40(a)(ia) of the Act This is also a case of denying Natural Justice to the assessee.*
>
> *The Assessing Officer did not understand the Tax Auditor's remark in point 27a of the Tax Audit report. The remark 'NO' means the assessee did not comply fully all the provisions i.e. the assessee on several occasions paid TDS with few days of delay which has been given in the Annexure attached. In short, the Assessing Officer did not read the entire comment of Auditor i.e. NO, /as per annexure attached" for the point no. 27a and formed his misunderstanding.*
>
> *It is further submitted that after receiving the reply dated 04/02/2013 the Assessing officer did not ask for any further documents like invoices, bills and vouchers. This is supported by the fact that no amount has been disallowed out of Job Charges (Yarn).*
>
> *SUBMISSION*
>
> *From the above documents and explanation submitted, your Honor will agree that the liability to deduct TDS is not there, since the total amount paid to each job worker is less than the limit prescribed under the law and the Assessing Officer has not confronted the assessee with his finding that some documents required by him is missing. Therefore, the disallowance of entice job charges [Shining] of Rs. 16,06,052/- applying the provision of u/s 40(a)(ia) is bad in law and hence may please be deleted."*

The learned CIT(A) rejected the contentions of the assessee and upheld the addition as were made by the AO vide appellate order dated 03.06.2014 passed by learned CIT(A), by holding as under:-

> *" 3.3 I have considered the finding of the Assessing Officer and rival submission of the appellant, carefully. I find that appellant has failed to establish the genuineness of claim of job charges (shirting) of Rs.16,06,052/- . By order sheet noting dated 30.10.2012. appellant was asked by the Assessing Officer to produce the parties and furnish their full names and addresses. Case was fixed for compliance on 08.11.2012 but on this day of hearing, nothing was submitted. After taking failure of the assessee on record, Assessing Officer has further issued, a showcause notice asking appellant for its explanation as to why such disallowance should not be made u/s.40(a)(ia). It is very evident that by letter dated 04.02.2013, appellant has not explained the genuineness of job charges and has merely clarified that job charges were paid to various contractors and such charges did not exceeds the limit liable for TDS, hence no TDS could made. Apparently, no proper evidence was given to the Assessing Officer as to how appellant was not responsible for making TDS and how there were many job contractors. These persons were also not produced before*

the Assessing Officer nor were their full name and addresses given, hence it is found beyond doubt that appellant has not established its claim and has given very evasive reply to the Assessing Officer, hence from both angles, i.e. genuineness and violation of Section 194C, such disallowance of expenditure is found to be sustainable. Accordingly, the finding of the Assessing Officer is approved and disallowance of expenditure is sustained.

Thus in nutshell as per version of the authorities below , the assessee did not submitted complete particulars of the job contractors such as their addresses, invoices or bills and also could not prove their credibility or worthiness nor these parties could be produced by the assessee before the authorities below which led to the additions having been made by the AO which later stood confirmed by learned CIT(A) in his appellate orders dated 03-06-2014.

5. Aggrieved by the appellate order dated 03-06-2014 passed by learned CIT(A), the assessee has come in an appeal before the tribunal . The assessee has filed before the tribunal two paper books , the first paper book was filed on 23.08.2017 and second paper book was filed on 29.05.2018, the first paper book which was filed on 23.08.2017 contained documents vide page no. 1 to 116 which were certified by the assessee to be true documents which were filed before the authorities below during the course of proceedings before the AO and learned CIT(A), while the second paper book contained evidences by way of invoices issued by job workers which are by way of additional evidences filed for the first time before the tribunal. It is contended by Ld. Counsel for the assessee that the assessee is engaged in the business of trading and manufacture of yarn/Textiles. It was submitted that assessee did not own any factory and it is getting job work done from outside from job workers for fibre and yarn manufacturing. It was submitted that so far as job charges relating to yarn manufacturing is concerned they were allowed by the AO , while job charges paid for shirting were disallowed by the authorities to the tune of 100% of such job charges aggregating to Rs. 16,06,052/-. It was submitted by learned counsel for the assessee that the name and addresses of the parties to whom job charges were paid were duly furnished before the AO and payments were made through cheque. Our attention was drawn to page no. 39 and 39A of the first paper book to contend that the name and addresses of the person to whom job charges were paid were duly furnished before the authorities below. This fact is disputed by both AO and learned CIT(A) in their respective orders wherein it is stated by these authorities that addresses of the job workers were not given which prevented further enquiry . As per Revenue, these parties (job workers) were also not produced before the authorities below. Our attention was drawn to page number 23-24 of the first paper book , wherein notice dated 21.01.2013 issued by the AO u/s 142(1) seeking details of job charges and income-tax deducted at source on these job charges is placed. It was submitted that disallowance was made by the AO u/s. 40(a)(ia) .Our attention was drawn to page no 25 of the first paper book wherein reply dated 07.01.2013 is placed and also to page no. 21 wherein reply dated 04-02-2013 filed before the AO is placed. Our attention was also drawn to page no. 40 to 78 of the first paper book wherein ledger accounts of job charges (shirting) of these job workers are placed and it was submitted that all the payments/bills were less than Rs. 20,000/- and in aggregate the job charges paid to each of the job worker was less than Rs. 50,000/- and hence there was no requirement of deduction of income-tax at source within the provisions of Section 194C of the 1961 Act and hence the income-tax was not deducted at source on these job charges. Our attention was drawn to page no. 112 which is schedule to form no. 3CD wherein detail of activities of manufacturing carried on by assessee is placed. The assessee drew our attention to second paper book /page 2 wherein the appellate order of learned CIT(A) for assessment year 2006-07 is placed to contend that disallowance made by the AO were deleted by learned CIT(A).

6. The Ld. DR on the other hand submitted that there were allegedly job charges(shirting) to the tune of Rs. 16.06 lacs which were paid by the assessee to job workers on which no income-tax was deducted at source. Our attention was drawn to the para 4.4 of the assessment order passed by the AO. It was submitted that the AO could not issue notices u/s 133(6) nor summons could be issued to the job workers u/s 131 as complete details were not furnished by the assessee before the authorities below which prevented enquiry into the matter. It was submitted that the auditors mentioned in their tax-audit report that the assessee did not complied with the provisions of the 1961 Act so far as income-tax deduction at source is concerned. The assessee, however, did not furnish annexure to the tax audit report which contained details of such non compliance of provisions of the 1961 Act so far as income-tax deduction at source is concerned. The learned DR would rely on the orders of the authorities below.

The Ld. Counsel for the assessee in rejoinder drew our attention to page 39 of first paper book to contend that details were submitted before the AO. Our attention was also drawn to page 1 of second paper book to contend that balance sheet , profit and loss account and schedules were duly submitted before the AO on 19-11-2012. It was also brought to our notice that vide first paper book / page 35, vide letter dated 13-12-2012 filed before the AO the copies of balance sheet, profit and loss account and tax audit report with annexure and schedule were duly submitted before the AO. Our attention was also drawn to page no 40 of the first paper book wherein complete detail of job charges are placed . The Ld DR submitted that the contentions of the learned counsel for the assessee are wrong as the AO was consistently asking for the details which were not submitted which prevented further enquiry of the matter. The learned DR submitted that in any case admittedly invoices of job workers submitted by the assessee during the proceedings before the tribunal are additional evidences which cannot be admitted by the tribunal without confronting the same to the AO and hence the matter need to be restored to the file of the AO for fresh adjudication wherein the AO shall consider these invoices on merits.

7. We have considered rival contentions and perused the material on record. The assessee is engaged in the business of trading and manufacturing of yarn/textiles. The assessee did not own any factory and was getting manufacturing done through job workers and job charges were claimed to be paid for yarn manufacturing and shirting. So far as job charges as were paid for yarn manufacturing there is no dispute between rival parties . The dispute has arisen between rival parties so far as job charges paid for shirting to the tune of Rs. 16,06,052/- is concerned. The AO disallowed entire amount of job charges paid for shirting

to the tune of Rs. 16,06,052/- as no income-tax was deducted at source within the mandate of Chapter XVII-B of the 1961 Act and also the assessee did not submitted complete details before the authorities below which prevented further enquiry to establish genuineness of these job charges. It is the contention of the AO that only names of the parties i.e. job workers to whom said amount of Rs. 16,06,052/- was allegedly paid was furnished by the assessee and no addresses were given of these job workers which prevented conducting of further enquiries by Revenue . The assessee admittedly did not furnish copies of invoices/bills before the authorities below which is now been submitted before the tribunal for the first time as additional evidences and it is claimed that the payments were made through cheque, the disallowance was made by Revenue u/s. 40(a)(ia) as the payments were allegedly made on which income-tax was not deducted at source u/s 194C of the 1961 Act. Both the authorities have given concurrent finding of the fact that the assessee did not furnish complete details of the job workers etc and only the name of job workers were specified. The assessee has produced in the first paper book a list of job workers wherein job charges paid to each job worker is specified along with their addresses and correspondingly amount paid to each of the said job workers is specified which is infact disputed by Revenue on the ground that addresses were not furnished by the assessee before the authorities below. The assessee has also produced copies of invoices raised by the job workers which is in the form of additional evidences filed for the first time before the tribunal and it is claimed that there was no requirement of deduction of income-tax within the provisions of Section 194C as is contained in Chapter XVII-B of the 1961 Act as it is claimed that each payment was below Rs. 20,000/- and in aggregate amount paid in the year to each of job workers was less than Rs. 50,000/- to each of the job worker and hence it is claimed that there was no requirement to deduct income-tax at source with in the provisions of the 1961 Act . The assessee did not produce these parties before the AO and as well before the learned CIT(A) . Under these circumstances in our considered view the matter need to be restored to the file of the AO for fresh adjudication of the issue on merits in accordance with law in set aside proceedings wherein the AO shall pass denovo orders on merits after admitting additional evidences filed by the assessee . Needless to say that the AO will grant proper and adequate opportunity of being heard to the assessee in accordance with law in accordance with principles of natural justice. The AO shall also admit and consider on merits all explanations and evidences submitted by the assessee in its defence. We clarify that we have not commented on merits of the issue under consideration. This ground of appeal is allowed for statistical purposes. We order accordingly.

8. The second issue relates to disallowance of reimbursements to custom house agents (CHA) amounting of Rs. 26,07,533/- which was disallowed u/s. 40(a)(ia) of the Act. The AO observed that the assessee has paid/reimbursed custom duty charges to M/s. Niranjan Shipping Agency Pvt. Ltd to the tune of Rs. 32,48,421/- but no income-tax was deducted at source within provisions of 1961 Act. The AO observed that the said M/s Niranjan Shipping Agency Pvt. Ltd is acting as an agent for goods imported by the assessee and the assessee reimbursed custom duty paid by the said CHA to custom department(GOI) on behalf of the assessee on import of goods made by the assessee in its name. The assessee pleaded that said M/s Niranjan Shipping Agency Pvt Ltd is merely CHA agent for the assessee and the goods were imported by the assessee in its name . It was submitted that all import documentation including bill of entry made by the custom department is in the name of the assessee and the CHA merely made payment of custom duty on behalf of the assessee which is reimbursed by the assessee to said CHA agent and no income-tax was required to be deducted at source on reimbursement of these government dues within the mandate of Chapter XVII-B of the 1961 Act. The AO rejected the contentions of the assessee and in its assessment order , the AO detailed one sample bill of the said CHA agent wherein it detailed various type of charges such as CFS-sea bird charges, MC charges, custom duty charges, logistic charges, insurance charges and stamp duty charges which were comprised in the bill of said CHA agent. Thus, the AO concluded that it is hit by provisions of Section 194C and the consolidated amount including custom duty paid to government becomes subject to deductibility of income-tax at source u/s 194C. The AO relied upon circular no. 723 dated 19.09.1995 and circular no. 715 dated 08.08.1995 and held that the assessee was liable to deduct income-tax at source on payment made to CHA agent including reimbursement of custom duty paid on behalf of the assessee for import of goods as these payments are contractual in nature. The AO however allowed credit of refund of custom duty receivable from government to the tune of Rs. 6,40,888/- which as per AO was already taxed in the hands of the assessee and the rest of the amount of Rs. 26,07,533/- was brought to tax by the AO in its assessment order dated 05-03-2013 passed u/s 143(3).

9. Aggrieved by the assessment order dated 05-03-2013 passed by the AO u/s 143(3), the assessee carried the matter in appeal before learned CIT(A) who dismissed the appeal of the assessee vide appellate order dated 03-06-2014 passed by learned CIT(A) by holding as under:-

> *"4.3 I have considered the issue under appeal, carefully. I find that appellant has not explained properly as to how entire amount of Rs. 32,48.421/- is only an reimbursement of the custom duty. The so called ledger account submitted by the Ld. A.R. reveals nothing but the name of the Niranjan Shipping Agency Pvt. Ltd. and Debit & Credit of accounts that does not reveal as to what was the actual nature of expenditure. Assessing Officer has mentioned that such charges under reference includes CFS charge, service charges, insurance charges, packing charges, freight and forwarding charges. Appellant has not rebuted such finding of the Assessing Officer with any contrary evidence.*
>
> *If services has been rendered by Niranjan Shipping Agency Pvt. Ltd. on behalf of the appellant, while making payment, it is the responsibility of the appellant to make TDS but as evident from the fact on record that appellant has not made any TDS on such payment made to CHA hence such expenditure shown by the appellant is liable for disallowance u/s. 40(a)(ia). Thus considering the fats of the case and failure on the part of the appellant to substantiate its claim that it is only reimbursement of custom duty and not of charge of other services, the disallowance of expenditure is therefore, sustained."*

10. Aggrieved by the appellate order dated 03-06-2014 passed by learned CIT(A), the assessee has come in an appeal before the tribunal and our attention was drawn by learned counsel for the assessee to page no. 29 to 34 of the first paper book filed with the tribunal to contend that it is the custom duty charges which were reimbursed by the assessee to CHA agent along with other taxes and charges . Our attention was drawn to page no. 10/first paper book wherein the ledger account of the custom duty paid is placed and it was submitted that total custom duty paid was of Rs. 32,48,421/- out of which there was claim of Rs. 7,95,115/- of refund of additional custom duty(SAD) paid receivable from custom authorities. It was submitted that Rs. 7.95 lacs being refund receivable of SAD in lieu of VAT is reduced and the balance amount was charged to Profit and Loss Account which is reflected in the said ledger account. Our attention was also drawn to page no. 37 of the first paper book to contend that Rs. 6,40,888/- was receivable as SAD refund as at the year end out of total claim of Rs. 7,95,115.10 because Rs 1,54,227/- was actually received as refund from custom authorities during the financial year itself and hence balance amount of Rs.6,40,888/- was net receivable as SAD refund as at year end. Thus, it was submitted that while making disallowance the AO reduced the amount of Rs. 6,40,888/- from the total custom duty of Rs. 32,48,421/- paid by the assessee which ultimately led to disallowance of Rs.26,07,533/- being the net amount on the ground that no tax was deducted at source u/s 194C of the 1961 Act. The learned DR would rely on the orders of the authorities below.

11. We have considered rival contentions and perused the material on record . We have gone through the CHA agent sample invoices which are placed in first paper book page 29-30 and we are of the view that the AO committed grave error wherein CMC charges paid were only Rs. 67.00 of which reference number was 78100 as per debit note of CHA agent placed in paper book while the amount picked up by the AO in his assessment order was CMC charges of Rs. 78,100/- as against actual amount of Rs. 67/- . This claim of debit was raised by CHA agent namely Niranjan Shipping Agency Pvt. Ltd. on the assessee vide debit note no. 3023 dated 20-10-2009 which was towards reimbursement of expenses including custom duty paid to government on behalf of the assessee on import of goods of the aggregate value of Rs. 3,78,626/-(pb/page 30) , out of which custom duty paid was to the tune of Rs. 3,20,455/- . The assessee has also placed on record custom charges receipts issued by GOI (custom departments) to contend that custom duty was paid to Government and no TDS was required to be deducted at source within provisions of Chapter XVII-B of the 1961 Act. Our attention was also drawn to invoices raised separately by the Niranjan Shipping agency P. Ltd. which is placed in paper book page no. 29 towards their service charges and claim has been made by the assessee that income-tax was duly deducted at source on all services charges paid to Niranjan Shipping Agency P. Ltd. within mandate of Chapter XVII-B of the 1961 Act. We have gone through the material before us and we have observed that M/s Niranjan Shipping Agency P. Ltd. has raised debit notes for reimbursement of expenses including custom duties, insurance etc.. The disallowance has been made on the grounds that custom duty paid by CHA agent on behalf of the client will also get aggregated and will call for deduction of income-tax at source within the mandate of Chapter XVII-B with which we donot agree and in our considered view payment of custom duty to Government on import of goods even if paid through CHA agent by way of reimbursement will not warrant deduction of income-tax at source within provisions of the 1961 Act and no additions were warranted which we hereby order to be deleted subject to verification to a limited extent by the AO that the amount of Rs. 26,07,533/- as were disallowed by the authorities below do actually constitute custom duty paid by CHA to government on behalf of the assessee on import of goods which is to be verified by the AO with reference to books of accounts maintained by the assessee and other evidences as may be produced by the assessee. The assessee succeeds on this ground as indicated above. We order accordingly.

12. The next addition is with respect to the additions to the income of an amount of Rs. 6,40,888/- being refund of custom duty (SAD) receivable by the assessee from custom department as at year end.We have perused from the ledger account submitted(pb/page 10 and 37) of custom duty charges(imports) and custom duty refund that as per these ledger extracts the assessee is only debiting net amount of custom duty paid after adjusting the refund due of custom duty on account of SAD paid which is charged in lieu of VAT/CST and later refunded by government after verification that imported goods suffered VAT/CST and hence to avoid double taxation the said amount of custom duty consisting of special additional duties which were levied in lieu of VAT/CST are refunded . The total amount receivable as at year end as is reflected in ledger extract was Rs. 6,40,888/- while an amount of Rs. 1,54,227/- was received in the year itself towards claim of refund of SAD. The refund of custom duties (SAD) receivable from custom authorities is required to be shown as loans and advances under the head ‘current asset, loans and advances ’ which as per audited accounts produced before us is infact so reflected (pb/97) and when the invoices are raised for sale of material and VAT/CST is paid on the said material, the claim is lodged with custom department for refund of special additional duties(SAD). Under these circumstances, no additions is warranted so far as refund of custom duties is concerned because it never entered Profit and Loss account and hence no addition is warranted. However, material is not placed on record to prove that no deduction whatsoever was claimed of this SAD refund by the assessee while computing income and thus for limited purposes the matter is restored to the file of the AO for verifying the contention of the assessee vis-a-vis its books of accounts that the assessee never claimed the deduction of said custom duty (SAD) component as expenses to the tune of this refund receivable amount of Rs. 6,40,888/- of additional custom duty is concerned and only net amount of custom duty paid was claimed as an expense by the assessee in its return of income filed with the Revenue. In any case learned CIT(A) has given direction to the AO for verifying the same on above lines as we held in this order and we are confirming the directions of learned CIT(A). We order accordingly.

13. The next addition is on account of disallowance of purchases made by the assessee from Flora Texculture P. Ltd. to the tune of Rs. 10,41,394/- u/s 40A(3) of the 1961 Act on the grounds that payments to the said party from whom purchases were made by the assessee namely Flora Texculture P. Ltd. was made by assessee otherwise than through account payee cheque or account payee bank draft which was held to be in violation of provisions of Section 40A(3). The assessee did not made payment to the said concern M/s Flora Texculture P. Ltd. from whom purchases were made directly but the payment to the tune of Rs. 10,41,394/- were made by M/s Challenger Trade Link (India) Private Limited to whom the assessee sold goods for

invoice value of Rs. 10,41,394/- for which payments were made by M/s Challenger Trade Link (India) Private Limited directly to M/s Flora Texculture P. Ltd. on behalf of the assessee and the assessee reflected the said payment by passing journal voucher wherein the inter-se accounts of above stated debtor and creditor were adjusted/squared off in its books of accounts. The copies of ledger accounts and confirmations were enclosed by the assessee. The AO treated the said payments as been made in violation of provisions of Section 40A(3) as payments were made otherwise than through account payee cheque or account payee bank draft. The said additions were later confirmed by learned CIT(A) in his appellate order dated 03-06-2014 by holding as under:-

> *" 6.1 Ground No.4 is against the disallowance of purchase made from Floratex Culture Pvt. Ltd. of Rs.10,41,394/-. According to the Assessing Officer, instead of making payment through account payee cheque, it has been shown through journal entry by squaring the account. Out of total purchases assessee company has shown expenses otherwise than a/c payee cheque, hence the claim of the appellant has been denied and disallowance for purchase has been made,*
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> *6.2 On other hand, it is contended that Assessing Officer has wrongly disallowed this genuine expenditure without any valid basis. Assessee has purchased goods from Floratex Culture Pvt. Ltd. of Rs 10,41,394/- and has sold the goods to M/s. Challenger Tradelink Pvt. Ltd. who is the customer of the assessee. Both these parties are in the same market where assessee does business hence with mutual understanding, M/s, Challenger Tradeiink had made payment directly to Floratex Culture Pvt. Ltd. through cheque on behalf of the appellant and therefore appellant has made journal entry to square the liability. Therefore, there is no violation of law u/s. 40A(3).*
>
> *6.3 I have considered the issue under appeal , carefully. I find that appellant has shown purchases from Floratex Culture Pvt. Ltd. of Rs. 10,41,394/- but has not made payment through account payee cheque or D.D. or through banking channel, hence provision of law u/s 40A(3) has been violated . The payment through journal entry adjustment cannot be regarded as not in violation of Section 40A(3). I find force in the finding of the Assessing Officer, hence the disallowance made u/s 40A(3) is sustained.*
>
> *6.4 In the result, Ground No. 4 is dismissed."*

14. Aggrieved by the appellate order dated 03-06-2014 passed by learned CIT(A) , the assessee has come in an appeal before the tribunal. It has been contended by learned counsel for the assessee that Section 40A(3)) is anti tax avoidance measure and it is applicable when the payments are made otherwise then through account payee cheque or account payee draft i.e. mainly when payments are made in cash . It was submitted by learned counsel for the assessee that in the instant case the payments have been made vide adjustments through journal entries between the two parties mainly M/s Flora Texculture P. Ltd. and M/s Challenger Trade Link (India) Private Limited being creditor and debtor respectively and Section 40A(3) has no applicability to the fact situation. The assessee did not made payment to the said concern M/s Flora Texculture P. Ltd. from whom purchases were made but the payment to the tune of Rs. 10,41,394/- were made through approved banking mode by M/s Challenger Trade Link (India) Private Limited to whom the assessee sold goods for invoice value of Rs. 10,41,394/- directly to M/s Flora Texculture P. Ltd. on behalf of the assessee from whom the assessee made purchases and the assessee reflected the said payment by passing journal voucher wherein the inter-se accounts of above stated debtor and creditor were adjusted. The copies of ledger accounts and confirmations were enclosed. Certificate from banker is also enclosed reflecting making payment vide banking channels. The Ld. DR relied upon the order of the authorities below.

15. We have considered rival contentions and perused material on record. We have observed that assessee has made purchases from M/ Flora Texculture P. Ltd. and to the tune of Rs. 10,41,394/- payments were made by M/s Challenger Trade Link (India) Private Limited directly to said concern M/s Flora Texculture P. Ltd. on behalf of the assessee instead of the assessee making payments directly to said concern M/s Flora Texculture P. Ltd. for its purchases. The assessee had raised sale invoice to the tune of Rs. 10,41,394/- in favour of M/s Challenger Trade Link (India) Private Limited for goods sold by the assessee to said concern and instead of making payments to the assessee against said invoice, the said concern M/s Challenger Trade Link (India) Private Limited made payments through banking channel to M/s Flora Texculture P. Ltd. on behalf of the assessee. The assessee adjusted said payments made by debtor directly to the creditor of the assessee through journal voucher adjustments in its books of account. The genuineness and bonafide of the transactions of sale and purchases made by the assessee is not disputed by Revenue. The identities of the parties is also not doubted/disputed by Revenue. The payments of Rs. 10,41,394/- made by M/s Challenger Trade Link (India) Private Limited was through approved banking modes to M/s Flora Texculture P. Ltd. which is also not doubted by Revenue. There were other sales to the tune of Rs. 3,83,838/- made by the assessee to said concern M/s Challenger Trade Link India Private Limited on 24-12-2009 for which payments through banking channels was made by the said concern to the assessee on 21-12-2009 and 19-2-2010. The confirmation of said party namely M/s Challenger Trade Link India Private Limited is also placed on record in pb/page 11. The certificate dated 07-09-2013 issued by State Bank of India on behest of M/s Challenger Trade Link India Private Limited for making payment to said concern Flora Texculture P. Ltd. is also placed on record at page 12/pb. Section 40A(3) is undisputedly anti tax avoidance provision to check evasion of taxes and to discourage movement of funds exceeding monetary limits specified in Section 40A(3) in the economy otherwise than through the prescribed modes of payments viz. account payee cheques or account payees drafts or the use of electronic clearing system through a bank account with a view to discourage movements of funds of large magnitude otherwise than through prescribed and approved banking channels in order to check evasion of taxes . The Section 40A(3) only stipulate positive condition of making payment to a person in prescribed and approved modes of banking channel which in the instant case was met as the payee M/s Flora Texculture Private Limited was paid through approved modes although payments were

made by M/s Challenger Trade Link (India) Private Limited on behalf of the assessee and the said party namely M/s Challenger Trade Link (India) Private Limited is identifiable, transactions are undisputedly genuine, verifiable, audit trails are available and are through banking channel in an approved mode which is again not disputed by Revenue but the only grievance of the Revenue is that the payment should have been made by the assessee to its creditor namely M/s Flora Texculture Private Limited instead of directing M/s. Challenger Trade Link (India) Private Limited to make payment through approved banking modes on its behalf in settlement of sales made by assessee to said concern M/s. Challenger Trade Link (India) Private Limited directly to M/s Flora Texculture Private Limited against consideration payable by the assessee for purchases made by the assessee from said concern namely M/s Flora Texculture Private Limited . The cardinal rational and objective being to plug evasion of taxes so as to ensure that unaccounted money of the tax-payer does not get recycled in the form of cash payments towards ghost expenditures or ghost payees which are out of ambit of tax net and also that recipient of money is traceable and brought within ambit of taxation if the payments are made through approved banking means and both the tax-payer and the payee does not escape the tax- net by making or receiving payments in cash , thus onus is cast while making payment of expenses that payment of higher magnitude exceeding stipulated thresholds be made only through prescribed and approved modes of payments through banking channel. In our considered view based on evidence on record and keeping in view factual matrix of the case, the said payment made directly by assessee's debtor namely M/s Challenger Tradelink P. Ltd. to assessee ' s creditor namely M/s. Flora Texculture P. Ltd. through approved banking mode as prescribed in Section 40A(3) in settlement of inter-se transaction between debtor and creditor will not trigger provisions of Section40A(3) and hence no disallowance as was made by Revenue is warranted under these circumstances. We hereby order for deletion of the said addition to the tune of Rs. 10,41,394/- made by the authorities below u/s 40A(3). We order accordingly.

16. In the result, appeal of the assessee is partly allowed as indicated above.

O rder pronounced in the open court on 27.06.2018

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