ITAT remanded matter as assessee failed to produce evidence regarding reimbursement of actual exp.

Summary – The Visakhapatnam ITAT in a recent case of Best India Tobacco Suppliers (P.) Ltd., (the Assessee) held that where assessee had not deducted TDS on payments made to C&F agents towards reimbursement of expenses incurred by C&F agent on behalf of assessee, since assessee had not furnished C&F agreement and material with regard to said reimbursement, matter was to be remanded back for necessary verification

Facts

- The assessee had incurred expenditure relating to export charges for purpose of clearing and forwarding charges consisting of payments towards customs duties, transport charges, postage expenses, commission to the C&F agent and the service tax. It was also explained that all the expenses included under the head export charges except the service charges/commission to C&F agent were pertaining to reimbursement of actual expenses incurred by the C&F agent on behalf of the assessee.
- The Assessing Officer (AO), during the assessment proceedings found that the assessee has debited export charges of Rs. 158 crore to the profit & loss account but not deducted the TDS. Therefore, the Assessing Officer disallowed the entire sum of Rs. 158 crore under section 40(a)(ia) and added same back to the income.
- On appeal, the Commissioner (Appeals) found that a sum of Rs. 33.76 lakhs out of the payment made to Shipping Agents was incurred towards local transportation charges and the same are excludible from the purview of deduction of tax at source under section 194C(6) and a sum of Rs. 1.23 crores was paid towards the ocean freight and TDS is not deducted since the same constitute the reimbursement of expenses. Accordingly, deleted the addition of Rs. 1.5 crores made by the Assessing Officer.

Held

- According to sub-section 6(6) of section 194C it is observed that TDS is not required to be made in the case of engaging the vehicles in business of plying, hiring or leasing goods carriages, with a condition that contractor should own 10 or less than 10 goods carriages at any time during the previous year and furnish a declaration to that effect along with Permanent Account Number. It is apparent from the above, that the vehicles should be used by the assessee in the business of plying, hiring or leasing goods carriages and contractor should own 10 or less than 10 goods carriages and furnish the declaration to that effect and also furnish a Permanent Account Number. Whereas in the assessee's case, the payment was made to the Shipping Agents stated to be towards the transportation charges and the assessee has not taken the goods carriages for using them in the business of plying, hiring or leasing of goods carriages. The Commissioner (Appeals) also did not give

any finding regarding the number of vehicles owned by the contractor and PAN No. of the contractor. Therefore, section 194C(6) has no application in the assessee's case. However the Commissioner (Appeals) held that the payment was towards reimbursement of expenses but no finding was given by the Assessing Officer in this regard and the Commissioner (Appeals) did not afford any opportunity to the Assessing Officer to verify the nature of expenses with the agreement and supporting bills of transportation or the tickets of Railway, Road Carriers etc., Hence in all fairness it is just and fair to remit the matter back to the file of the Assessing Officer to verify the nature of payment with the C&F agreement, relevant bills of authenticated transport operators and decide the issue afresh on merits after giving opportunity to the assessee.

- The second issue in this case is the payment made to the Shipping Agents to the extent of Rs. 1.23 crore deleted by the Commissioner (Appeals) stating that the payments are covered by section 172. Section 172 deals with the application of TDS in case of shipping business of non-residents. In the case of the assessee, the payments were made to local Shipping Agents, hence section 172 has no application in the case of the assessee. Though the Commissioner (Appeals) quantified the sum of Rs. 1.23 crore as ocean freight and stated to be reimbursement of expenses, the Commissioner (Appeals) has neither given the break up nor referred the issue to the Assessing Officer to verify the correctness of the claim of the assessee and complete details are not made available before us during the course of hearing. The bills produced before us do not show that the entire payments were made for ocean freight. The assessee also did not furnish the C&F agreement entered by the assessee with the shipping agencies. In case, the expenses were incurred for ocean freight, the assessee is entitled for deduction and no TDS is required to be made on the ocean freight since the ocean freight and the reimbursement of actual expenses does not include the profit element. However, the assessee has furnished the copies of the bills issued by Shipping Agents but not supported the expenditure with relevant vouchers of payment of ocean freight either from Port Authorities or from the ship or from customs authorities. In addition the expenses claimed over and above the ocean freight must be established by the assessee that the same represent the reimbursement of expenses with relevant evidences. Therefore, in all fairness, the issue should be remitted back to the file of the Assessing Officer to make detailed verification of the nature of expenses with relevant bills and supporting evidences and to decide the deductibility of TDS and consequent disallowance under section 40(*a*)(*ia*). Accordingly, the Assessing Officer is directed to examine the issues and redo the same after giving opportunity to the assessee. In the result appeal of the revenue is allowed for statistical purpose.