INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCHES, MUMBAI

BENCH: D

BEFORE SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

<table>
<tr><td colspan="3">ITA 5856/MUM/2025
निर्धारणवर्ष/AssessmentYear:2022-23)</td></tr>
<tr><td>MAERSK INDIA PRIVATE LIMITED

UNIT NO.402, GODREJ TWO, PIROJSHANAGAR, EASTERN EXPRESS HIGHWAY, VIKHROLI (EAST), MUMBAI
400079</td><td rowspan="2">Vs.</td><td>JOINT COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 4(3)

ROOM NO.420, KAUTILYA BHAVAN, BKC
MUMBAI- 400 051</td></tr>
<tr><td>अपीलार्थीAppellant</td><td>प्रत्यर्थी Respondent</td></tr>
<tr><td colspan="2">Permanent Account Number of Assessee:</td><td>AAHCM0698N</td></tr>
<tr><td colspan="2">अपीलार्थीद्वारा/Appellant represented by:</td><td>Shri Manish Kanth Adv.</td></tr>
<tr><td colspan="2">प्रत्यर्थीद्वारा/Respondent represented by:</td><td>Shri Prasma Prakash Tewari Sr.DR.</td></tr>
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सुनवाईकीतारीख/Date of conclusion of hearing:	**01-Jul-2026**
घोषणाकीतारीख/Date of pronouncement:	**24-Jul-2026**

आदेश / ORDER

PERSHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:

This appeal is filed by the Assessee against the order of Ld. The Commissioner of Income Tax (Appeals), NFAC, dated 17-Jul-2025 for the Assessment Year 2022-23. The assessee has raised the following grounds of appeal:

> *1. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the disallowance made by the Assessing Officer of 30% under section 40(a)(ia) of the Act on the total payment of IN 4,12,065 made by the*

Appellant to Container Shipping Line Association (CSLA), on the ground of non-deduction of tax at source.

Your Appellant prays that the deduction of expenditure of IN 1,23,620 disallowed by the learned AO and CIT(A) be kindly allowed.

2. On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the disallowance made by the Assessing Officer under section 40(a)(ia) of the Act, of 30% from the payment of professional fees of 21,30,350 to Soumiachandran KN by your Appellant, despite deduction of tax at source.

Your Appellant prays that the deduction of expenditure of INR 39,105 disallowed by the learned AO and CIT(A) be allowed.

3.On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in upholding the disallowance of expenses made by the Assessing Officer of INR 1,27,44,990 under section 37(1) of the Act from the genuine year end provisions made on best estimate basis following the mercantile system of accounting.

Your Appellant prays that the deduction of expenditure of INR 1,27,44,990 disallowed by the learned AO and CIT(A) be allowed.

4.Without prejudice to the above, on the facts and in the circumstances of the case and in law, the learned CIT(A) has erred in not appreciating that the Appellant had already suo moto disallowed 30% of the expenditure under section 40(a)(ia), and any disallowance of the balance 70% genuine business expenditure is bad in law and would result in double disallowance of expenditure incurred wholly and exclusively for the purposes of business.

2. The brief facts of the case are that the assessee is a company engaged in the business of providing shipping agency services in India to Maersk A/S, Denmark, and also renders support and crewing services to its associated enterprises. For Assessment Year 2022-23, the assessee filed its return of income on 30.11.2022 declaring a total income of ₹21,68,06,070/-.

3. During the assessment proceedings, the Assessing Officer noticed that the assessee had not deducted tax at source on certain payments. During the year,

the assessee had made payment towards reimbursement of legal and counsel fees amounting to ₹4,12,065 paid to Container Shipping Line Association (CSLA) and payment of professional fees of ₹1,30,350 made to Mr. Soumiachandran K.N. The assessee submitted that the payment made to CSLA was reimbursement of membership-related expenses and did not constitute professional or technical fees on which TDS was required to be done. The Assessing Officer, however, observed that the amounts paid was reimbursement of lawyer's fees and counsel fees incurred for obtaining professional legal services. Since the assessee had debited these payments under the head "Professional Fees", the Assessing Officer held that tax was required to be deducted under section 194J of the Act. Accordingly, the Assessing Officer disallowed 30% of the payment of ₹4,12,065, amounting to ₹1,23,620 under section 40(a)(ia) of the Act. In respect of the payment made to Mr. Soumiachandran K.N., the Assessing Officer observed that the assessee did not provide explanation regarding non-deduction of tax at source and, therefore, the Assessing Officer disallowed 30% of the payment amounting to ₹39,105 under section 40(a)(ia) of the Act. Thus, the Assessing Officer made a total disallowance of ₹1,62,725 under section 40(a)(ia) of the Act.

4. The Assessing Officer further examined the year-end provisions created by the assessee. The Assessing Officer observed that the assessee had made provisions amounting to ₹1,82,07,129 towards professional and technical

expenses where the identity of the "payees" was not available at the year end. The assessee had voluntarily disallowed 30% of the said provision amounting to ₹54,62,139 under section 40(a)(ia) of the Act, while computing its income. The assessee submitted that the provisions were created on an estimated basis in accordance with the mercantile system of accounting, were reversed on the first day of the succeeding financial year and the actual expenditure was accounted for on receipt of invoices from the vendors. The assessee also contended that since the payees were not identifiable and the liability had not crystallised in favour of any particular person, there was no obligation to deduct tax at source.

5. The Assessing Officer did not accept the explanation. He observed that the assessee itself had admitted that the amount payable and the identity of the payees were uncertain. According to Ld. AO, the assessee was unable to establish the nature of the expenditure, failed to identify the beneficiaries of the provisions and was unable to demonstrate that the estimates were made on a reasonable basis. The Assessing Officer held that there being no reasonable certainty regarding the estimates, the provisions were contingent in nature. The Assessing Officer held that the year-end provisions were contingent liabilities and hence not allowable under section 37(1) of the Act. Since the assessee had already voluntarily disallowed ₹54,62,139 under section 40(a)(ia) of the Act, the Assessing Officer disallowed the balance amount of ₹1,27,44,990 under section 37(1) of the Act. Consequently, the Assessing Officer made additions of

₹1,29,07,715 towards disallowance under section 40(a)(ia) of ₹1,62,725 and disallowance under section 37(1) of ₹1,27,44,990.

6. Aggrieved by the assessment order, the assessee a preferred an appeal before the learned CIT(A). The learned CIT(A) upheld the action of Ld. AO and confirmed disallowance made under section 40(a)(ia) of the Act. With respect to the issue relating to the year-end provisions, the learned CIT(A) agreed with the Assessing Officer that the provisions created by the assessee were not supported by invoices, details of payees or any material to show that liability had crystallized. Accordingly, Ld. CIT[A] also confirmed these additions.

7. The assessee is in appeal before us against the order passed by CIT(Appeals) dismissing the appeal of the assessee.

8. We have heard the rival contentions and perused the material on record.

9. Ground No. 1

This ground relates to the disallowance of ₹1,23,620 being 30% of the payment of ₹4,12,065 made to Container Shipping Line Association (CSLA) under section 40(a)(ia) of the Act on the ground that tax was not deducted at source.

10. The learned counsel for the assessee drew our attention to pages 104, 105 and 107 of the Paper Book and submitted that the impugned payment was not in the nature of fees for professional or technical services paid by the assessee to CSLA. It was submitted that CSLA, being a mutual association of container shipping lines, had incurred legal and professional expenses for the common benefit of its members and thereafter allocated the actual expenditure amongst the participating members. The assessee was merely one of the beneficiaries to whom 1/25th of the total expenditure had been allocated. Thus, according to the learned counsel, the payment made by the assessee was towards reimbursement of assessee's proportionate share of the common expenditure incurred by CSLA and did not contain any element of income in the hands of CSLA.

11. We have carefully considered the submissions and examined the documentary evidence placed on record. Pages 104, 105 and 107 of the Paper Book clearly demonstrate that the legal professional expenses were initially incurred by CSLA and thereafter apportioned amongst its members, including the assessee, on an agreed basis. The assessee merely reimbursed its share of the actual expenditure incurred by the Association. Nothing has been brought on record by the Revenue to establish that CSLA recovered any amount over and above the actual expenditure incurred or any profit or income element was embedded in such recovery.

12. Further, from page 260 of the Paper Book, we observe, that while making payment to the concerned legal professionals, CSLA had duly deducted tax at source in accordance with the provisions of the Act. Therefore, the statutory obligation to deduct tax at source was discharged by CSLA at the stage of payment to the actual recipients of the professional fees.

13. The learned CIT(A), upheld the disallowance on the ground that the assessee had accounted for the same under the head "Professional Fees". In our considered opinion, the nomenclature adopted in the books of account cannot determine the true character of the transaction. The real nature of the payment has to be seen from the facts on record and the documentary evidence available on record. The material placed before us shows that the assessee merely reimbursed its share of the common legal and professional expenditure incurred by CSLA. The recovery by CSLA from its members was only towards common expenditure and not towards any professional services rendered by CSLA to the assessee.

14. In these circumstances, we are of the considered view that the impugned payment were in the nature of a pure reimbursement of actual expenditure without any income element in the hands of CSLA. Consequently, the provisions relating to deduction of tax at source are not attracted.

15. Accordingly, Ground No. 1 of the assessee is allowed.

16. Ground No. 2

With respect to the payment of ₹1,30,350/- made to Mr. Soumiachandran K.N., we find that the assessee itself has deducted tax at source on the said payment and has deposited the same to the credit of the Central Government. Once the assessee has, on its own understanding of the transaction and the applicable provisions of the Act, deducted tax at source, the assessee cannot now be permitted to contend that tax was not required to be deducted.

17. Under section 40(a)(ia) of the Act, where tax is deductible on an expenditure and is deducted and paid subsequently, the deduction is allowable in the year in which the tax is deducted and paid, subject to fulfilment of the conditions prescribed under the Act. Therefore, no prejudice is caused to the assessee, as the expenditure is not permanently disallowed but only postponed to the year in which the statutory conditions are fulfilled. In these facts, we find no infirmity in the action of the Revenue in not allowing the deduction in the assessment year under consideration. However, the assessee would be entitled to claim deduction of the said expenditure in the relevant subsequent assessment year in accordance with the provisions of the Act, subject to verification by the Assessing Officer regarding the deduction and payment of tax at source and fulfilment of the other statutory requirements.

18. Accordingly, this ground of appeal is allowed for statistical purposes.

19. Ground Number 3 and 4:

This ground relates to the disallowance of ₹1,27,44,990 made under section 37(1) of the Act in respect of the year-end provisions created by the assessee. The Assessing Officer treated the provisions as contingent liabilities primarily on the ground that the assessee had not been able to furnish details regarding the nature of the expenditure, the identity of the parties, the basis of quantification and the material to prove that the liabilities had crystallised during the relevant previous year. The learned CIT(A) affirmed the action of the Assessing Officer on the same reasoning.

20. During the course of hearing before us, the learned counsel for the assessee placed a chart containing the break-up of the provision of ₹1,82,07,129. The chart contains the names of the respective parties, the amount of provision made in each case and a brief description of the underlying dispute or claim, such as commercial disputes, recovery proceedings, cheque dishonour cases, detention and demurrage claims, labour disputes, customs proceedings, contractual disputes and other pending litigations. According to the learned counsel, this break-up was produced before us to demonstrate that the provisions were not general or ad hoc provisions but were made with reference to specific parties and for specific issues.

21. It is, however, an admitted position that the aforesaid detailed break-up and the supporting particulars were not furnished before either the Assessing Officer or before the learned CIT(A). Consequently, neither of the Authorities had any occasion to examine the correctness of the particulars now placed before us or to verify whether the provisions were supported by evidence and whether the liabilities had actually crystallised during the relevant previous year. Since the entire disallowance made by the Assessing Officer is on the absence of such particulars having been furnished by the assessee, the additional material produced before us for the first time is relevant and needs to be verified, before any conclusion can be drawn.

22. At the same time, merely because the assessee has now furnished a break-up of the provisions, it does not automatically prove that the liabilities are allowable under section 37(1) of the Act. The assessee continues to bear the burden of establishing, by cogent documentary evidence, that each provision is actually an ascertained business liability which had accrued during the relevant year and is allowable in accordance with law. These details need to be verified by the Ld. Assessing Officer.

23. Considering the totality of the facts and in the interest of justice, we deem it appropriate to admit the additional evidence and restore this issue to the file of

the Assessing Officer for de novo adjudication. The Assessing Officer shall examine the chart along with all supporting documents that the assessee may produce in support of each provision and shall verify whether the liability had accrued during the relevant year, whether the provision satisfies the requirements of section 37(1) of the Act and whether the same is supported by supporting evidence. Thereafter, the Assessing Officer shall pass a fresh speaking order in accordance with law after affording reasonable opportunity of being heard to the assessee.

24. Accordingly, this ground of appeal is allowed for statistical purposes.

25. In the combined result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on **24-07-2026**.

Sd/-	Sd/-
VIKRAM SINGH YADAV	**SIDDHARTHA NAUTIYAL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai
Dated: **24-07-2026**.
Sharath, PS

Copy to:

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2	**JOINT COMMISSIONER OF INCOME TAX** **CENTRAL CIRCLE 4(3)** ROOM NO.420, KAUTILYA BHAVAN, BKC MUMBAI- 400 051
3	THE PCIT / CIT,
4	THE D.R., ITAT, MUMBAIBENCH
5	GUARD FILE

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