IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)

SHRI RAJPAL YADAV, JUDICIAL MEMBER
and
BEFORE SHRI B.C. MEENA, ACCOUNTANT MEMBER

ITA No.2846/Del./2011
(Assessment Year : 2008-09)

ACIT, Circle 15 (1), New Delhi.	vs.	M/s. Result Services Pvt. Ltd., 8, Balaji Estate, Guru Ravi Dass Marg, Kalkaji, New Delhi.
		(PAN : AAACR0505N)
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Suresh Ramchandaran
REVENUE BY : Dr. Devender Singh, CIT DR

ORDER

PER B.C. MEENA, ACCOUNTANT MEMBER :

This appeal filed by the revenue emanates from the order of the CIT (Appeals)-XVIII, New Delhi dated 28.02.2011 for the Assessment Year 2008-09.

2. The assessee company is engaged in the business of direct marketing, advertisement and sales promotion. The return of income was filed on 30.09.2008 declaring income at Rs.11,46,223/-. The assessment was finalized after making a disallowance u/s 40a(ia) of Income-tax Act, 1961 of Rs.56,23,456/-. The CIT (A) deleted the addition by holding as under :-

"4.2 I have carefully considered the assessment order and the submissions made by the ld. AR in this regard. As per the facts of this case, the appellant company is a 100% subsidiary of the holding company M/s McCann-Erickson (India) Pvt. Ltd. M/s McCann Erickson has taken on rent office premises in Delhi and Mumbai vide separate lease deeds with the landlords. M/s McCann has permitted common use of the above premises by the appellant company. The full rent for the premises have been paid directly by the holding company to the landlords after deducting tax at source u/s 194-1 of the Act. During the year under consideration, the appellant has paid Rs.56,23,456/- to M/s McCann towards its portion of rent on account of the above use of office premises. The AO has disallowed the above payment u/s 40(a)(ia) by holding that TDS should also have been deducted by the appellant company on the above amount u/s 194-1 of the Act. In this regard, it is argued by the Id. AR that the above arrangement has been in existence for the last 10-15 years and has been accepted by the department without making any additions. It is argued that the AO has wrongly presumed that the lease deed does not permit use of the above premises by subsidiary company, whereas actually the said lease deeds do permit the appellant to allow use of the said premises by its subsidiaries and group entities. Copy of the lease deeds are furnished by the Id. AR which had also been furnished before the AO during assessment proceedings. It is argued that in any case TDS on the full amount has been made by the parent company as per law and the reimbursement of a part of it by the appellant company is not separately exigible to TDS in terms of the amended clause (i) of Explanation to section 194-1 of the Act. It is further argued that the relation between the holding company and the appellant is not that of a lesser and lessee and hence the said payment cannot be subject to TDS u/s 194-I. Under the facts and circumstances as stated above, I find that the impugned addition made by the AO cannot be sustained either on facts or in law. The same is, therefore, deleted.

3. Revenue is in appeal before us by taking the following ground :-

"1. That on the facts and circumstances of the case and in law, the Ld. C!T(A) has erred in deleting the addition of Rs.56,23,456/- made by the AO u/s 40(a)(ia) of the IT Act, 1961. The Ld. CIT(A) has not appreciated the fact that for the

purpose of section 194-1 in the explanation (i) of the said section the 'Rent' means any payment whatever name called under any lease, sub lease, tenancy or any agreement or arrangement for the sue of (either separately or together) any (a) land or (b) building or (c) land appurtenant to building (including factory building) etc. whether or not any or all of the land or building are owned by the payee. Therefore, the' subsidiary company was liable to deduct tax on the rent payment made to the holding company.

2. The appellant craves to be allowed to add any fresh grounds of appeal and/or delete or amend any of the grounds of appeal."

4. The only issue involve din the appeal is against the deletion of addition of Rs.56,23,456/- made u/s 40a(ia) of the Income-tax Act, 1961. While pleading on behalf of the revenue, the ld. DR relied on the order of the Assessing Officer and also submitted that the CIT (A) has failed to appreciate the fact that for the purpose of section 194-I in Explanation (i) of that section, the rent has been defined as 'rent' means any payment whatever name called under any lease, sub lease, tenancy or any agreement or arrangement for the sue of (either separately or together) any (a) land or (b) building or (c) land appurtenant to building (including factory building) etc. whether or not any or all of the land or building are owned by the payee. He pleaded that during the year, the company has debited the amount of Rs.64,86,806/- as expenditure on account of rent. Out of this, an amount of Rs.56,23,456/- was paid to the holding company, M/s. McCann Erickson India Pvt. Ltd. No TDS was deducted on this amount. The payment has been made by the subsidiary

company to the holding company for the use of the factory building. Therefore, as per the definition of the rent as provided in Explanation (i) of section 194-I of the Act, such arrangements for the use of factory premises was liable to deduct tax on the payment of the rent on the holding company. Since the assessee has not deducted TDS, therefore, provisions of section 40a(ia) read with section 194-I are clearly applicable to the facts of the assessee's case, therefore, Assessing Officer was justified in making the addition and the CIT (A) has wrongly deleted the addition and he prayed to set aside the order of the CIT (A).

5. On the other hand, the ld. AR relied on the order of the CIT (A) and pleaded that this expenditure of Rs.56,23,456/- was a reimbursement of the rent paid to the holding company. This rent was in respect of two properties located at Delhi and Mumbai. In Delhi, the property was hired by the holding company from CEPCO Industries Pvt. Ltd. As per clause 5 at page 31 (further covenant with Lessor) of the Lease Deed, the premises were to be used by the subsidiary and associate companies as well. The liability to pay the rent was of the Lessee (holding company). For the Mumbai premises, as per clause 7 (d) of Lease and Licence Agreement between National Organic Chemical Industries Limited and Mafatlal Industries Ltd. and holding company, Mccann Erickson India Pvt. Ltd., the premises were allowed to be used by the subsidiaries, affiliates, group entities and associates. Assessee

had paid the amount as reimbursement for the use of premises as per agreement. Therefore, this amount was reimbursement to the holding company. Ld. AR further pleaded that holding company has debited in the books of account rent only related to the portion occupied by it only. Mccann Erickson India Pvt. Ltd. was not deriving any rental income and it has not declared any rental income under the head 'Income from house property'. It is also submitted that this position continued for several years, even when the provisions of section 40a(ia) were not in existences. The provisions of section 194-I were inserted in statute by Finance Act, 1994, w.e.f. 1.6.1994, The amendment in section 40 (a) w.e.f. 01.04.2006 by Taxation Law (Amendment) Act, 2006 shall not effect the factual position with regard to this. Assessee was reimbursing the amount of rent to holding company since many past years. Without deducting TDS, there is no material change in law and facts on the issue. Facts remain the same. Therefore, any deviation in revenue's stand shall be a violation of rule of consistency. The intent of the assessee to recognize the transaction as a reimbursement is also evident from the audited accounts and also to the note to tax audit report. Ld. AR also relied on the following decisions:-

(i) CIT vs. Woodward Governor India Pvt. Ltd. – 294 ITR 451 (Del.);

(ii) CIT vs. Rajiv Grinding Mills (Delhi) – 142 Taxman 567;

(iii) CWT vs. RKKR International (P) Ltd. (Delhi), - 145 Taxman 322;

(iv) CIT vs. Neo Polypack Ltd. – 245 ITR 492 (Del.);

(v) Union of India vs. Satish Panna Lal Shah – 249 ITR 221 (SC)

(vi) Berger Paints India Ltd. vs. CIT – 266 ITR 99 (SC)

Ld. AR submitted that the order of CIT (A) may be sustained.

6. We have heard both the sides. The assessee is a 100% subsidiary of holding company of Mccann Erickson India Pvt. Limited. Mccann Erickson India Pvt. Ltd. has taken on rent office premises located at Delhi and Mumbai. Copies of these two Lease and Licence deeds entered with the landlords are on record. The holding company, Mccann Erickson India Pvt. Ltd., has permitted assessee to use part of theses premises. Assessee had reimbursed the amount to holding company without deducting TDS. The rent for the whole premises was paid directly by the holding company to the Lessors and the tax was deducted as per provisions of section 194-I of the Income-tax Act, 1961. The clause 5 of the lease deed for Delhi premises dated 22.10.2007 between CEPCO Industries Pvt. Ltd. and Mccann Erickson India Pvt. Ltd. read as following :

> "5. The LESSEE may use the Demised Premises or parts thereof for their commercial use as well as for the offices of its subsidiaries and associates and allied companies and for the purposes of companies / firms and business in which the Directors of the LESSEE are interested or concerned, however, any such companies / subsidiaries shall not acquire any interest in the Demised Premises and liability for payment of rent, other outgoing, etc. shall remain sole responsibilities of the LESSEE."

Similarly, the Lease & Licence Agreement between National Organic Chemical Industries Limited and Mafatlal Industries Limited and Mccann Erickson India Pvt. Ltd. also provide in clause 7 (d) as under :-

> "d. Not to sub-let or give on leave and license basis or on any other basis the Licensed Premises or any portion thereof, nor permit any third party to use and occupy the Licensed Premises or any portion thereof save and except to its subsidiaries, affiliates, group entities, associates, which shall be without any prior written consent of the Licensor."

The assessee is paying rent to the holding company as reimbursement since last many years. This position has been accepted by the department all through and it has been never disputed even when provisions for TDS were on statute since 1994. Section 194-I of the Income-tax Act, 1961 was inserted in Act w.e.f. 01.06.1994. Similarly, this position was also not disputed even after the amendment in section 40(a)(ia) of the Act by the Taxation Law (Amendment) Act, 2006 w.e.f. 1.4.2006. on this issue, there is no material change in the facts and law during the year under consideration. The lease deed provides for use of the premises by the subsidiary companies. The actual payments made by the lessee (holding company) to the lessor and necessary tax was deducted therefrom. The holding company has also not debited the whole of rent to its books of account. It has only debited the rent which pertains to the part of the premises occupied by it. Therefore, in our considered view, there was no lessor and lessee relationship between the holding company and assessee where the provisions of section 194I are

attracted. Keeping these facts in view, we find merits in the order of the CIT (A) in deleting the addition made u/s 40(a)(ia) of the Act. We sustain the order of the CIT (A) and dismiss revenue's appeal.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in open court on this 28th day of June, 2012.

Sd/-	**sd/-**
(RAJPAL YADAV)	**(B.C. MEENA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated the 28th day of June, 2012
TS
Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT (A)-IX, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.