

आयकर अपीलीय अधिकरण “ई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI

श्री आर.कृ. गुप्ता, न्यायिक सदस्य एवं श्री एन. कृ. बिलैय्या, लष्ठा सदस्य का समक्ष ।
BEFORE SHRI R.K. GUPTA, JM, AND SHRI N. K. BILLAIYA, AM
आयकर अपील सं./I.T.A. No.6100/Mum/2011
(निर्धारण वर्ष / Assessment Year: 2007-2008)

Income Tax Officer, (International Taxation) TDS-2, Mumbai	बनाम / Vs.	M/s. Sun Pharmaceutical Industries Ltd., Corp. Office: Acme Plaza, Andheri-Kurla Road, Andheri, Mumbai- 400057.
स्थायी लष्ठा सं./जीआइआर सं/.PAN/GIR No. : AADCS3124K		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी ओर स /Appellant by	:	Smt. Jotnilakshmi Nayak
प्रत्यर्थी की ओर स/Respondent by	:	Shri Vijay Mehta
सुनवाई की तारीख /Date of Hearing	:	25.06. 2013
घोषणा की तारीख/Date of Pronouncement	:	10 .07.2013

आदश / O R D E R

Per : R.K. Gupta, JM

This appeal filed by the Department against the order of Ld. CIT(A) -11, dated 09.06.2011 relating to the Assessment Year 2007-08.

2. The facts in the case are that assessee remitted a sum of US\$ 4,00,000 to M/s. Scandinavian Health of Taiwan on 01-06-2006 on account of consulting charges/fees. However, the assessee did not deduct tax at source u/s. 195 of the Act, therefore, AO passed an order u/s 201 and 201(1A) of the Act on 4.12.2006 and raised a

total demand of Rs. 24,08,536/-. The assessee preferred appeal before the CIT(A). Thereafter, assessee moved the application before Ld. CIT(A) that since our application u/s 154 is pending before Ld. AO, therefore, this appeal may be treated as withdrawn. Accordingly, the appeal was allowed to be withdrawn by Ld. CIT(A). After that Assessing Officer rejected the application filed u/s 154 stating in his order that there is no mistake apparent on record. Assessee preferred appeal again before the CIT(A) against the order of Ld. AO. Detailed submissions were filed before the CIT(A) along with the paper books.

3. After considering the submissions and perusing the material on record Ld. CIT(A) found that the contract agreement with a Taiwan Company, Scandinavian Health Ltd.(HSL) has been cancelled. Cancellation of contract was also filed. Reliance was placed on the Board Circular No.7 of 2007 dated 23.10.2007. The CIT(A) found that since the contract has been cancelled therefore, there was no point to deduct the TDS. Accordingly, the matter was sent back to the AO to verify the contention laid down in Circular No. 7 of 2007 for a refund of tax already collected and refund the tax so collected if any to the assessee. Now the department is in appeal before the Tribunal. The Ld. DR stated that the AO was correct in holding that there is no apparent mistake in the order passed u/s 143(3) stated that certain new evidences were filed before Ld. CIT(A) and AO was not granted any opportunity.

4. On the other hand, the Ld. AR stated that the CIT(A) has allowed the appeal of the assessee subject to verification of the details and Board Circular, therefore, it is wrong to suggest that AO was not allowed any opportunity.

5. After considering the order of the AO, CIT(A) and the submission of both the parties, we found no infirmity to the finding of the Ld. CIT(A). Finding of the CIT(A) are accorded in para-3 page 14 to 16.

“ 3. I have considered the facts of the case, paper books filed and examined the Circulars carefully. The assessee has also filed the copies of various invoices raised on it in pursuance to the contract by M/s.

Scandinavian Health Ltd. (SHL). Assessee has also filed copy of credit note dated 19-12-2008 in pursuance of cancellation of contract with SHL and the documents showing inward remittance of US\$ 7,99,980/- issued by State Bank of Nova Scotia dated 05-02-2009. Copy of original agreement as well as the copy of cancellation letter are also filed in support of the case.

3.1 In find that the case of the assessee is covered by sub-clause (b) of clause 2 of Circular No. 7 dated 23-10-2007 and it is also covered by clause 2(b) of Circular No. 790 dated 20.04.2000. In para 2.1 of Circular 7 dated 23-10-2007, it is clearly provided that once the amount already remitted in pursuance of a contract has been refund back to the remitted after cancellation of the contract, any income does not accrue to the non-resident. It is also provided in the circular that the amount of tax paid u/s. 195 can be refunded to the deductor with prior approval of the Chief Commissioner of Income Tax. The detailed procedure in this regard is provided in the said circular and certain pre-conditions are to be satisfied, suitable undertaking from the deductor has to be obtained before the refund can be issued. It also specifies that refund can be given only if the non-resident has not filed any return and the time limit for filing of return has already expired.

3.2 I find that the submission of the Ld. Authorized Representative has merit. Once, the contract has been cancelled and the money has been received back, tax already paid for such remittance is no longer payable to the credit to the Government as per law on behalf of non resident and as per the said Circular, refund should be issued to the deductor following the specified procedure and after satisfying the conditions provided in the circular.

3.3 Accordingly, it is held that no tax is payable by the non-resident assessee (SHL) in relation to transactions in pursuance of the contract with the appellant dated 06-07-2006. Accordingly, appeal of the assessee is allowed and the A.O. is directed to verify the condition laid down in Circular No.7 of 2007 for refund of tax already collected and refund the tax so collected, if any, to the assessee by following the procedure laid down in the circular and after ensuring that the conditions given therein are fully satisfied.

6. The above findings are self explanatory which does not require any interference, Ld. CIT(A) has allowed the issue in favour of assessee subject to verify the contention laid down under Board Circular and other details. Therefore, it cannot be said that AO was not allowed any opportunity as the AO has to verify the details before granting any refund of tax if any. Accordingly, we confirm the order of the CIT(A).

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

परिणामतः राजस्व की अपीलें खारिज की जाती है ।

Order pronounced on 10th Day July, 2013 .

आदश की घोषणा दिनांक: 10.07.2013 को की गई ।

SD/-
(N. K. BILLAIYA)

लक्षा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai: दिनांक Dated : 10 .07. 2013

SD/-
(R.K. GUPTA)

न्यायिक सदस्य/ JUDICIAL MEMBER

नि.स/.Pramod Kumar, PS.

आदश की प्रतिलिपि अग्रषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त)अपील (/ The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण ,मुंबई / ITAT, Mumbai**