

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"B" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1562/Mds/2015

निर्धारण वर्ष / Assessment Year : 2010-11

M/s Srivathsa Industries,
C/o Sh. T.N. Seetharaman,
Advocate,
#384, (Old No.196), Lloyds Road,
Chennai - 600 086.

v. The Assistant Commissioner of
Income Tax,
Business Circle XII,
Chennai - 600 034.

PAN : AAAPS 9220 L

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri T.N. Seetharaman, Advocate
प्रत्यर्थी की ओर से/Respondent by : Dr. B. Nischal, JCIT

सुनवाई की तारीख/Date of Hearing : 16.09.2015

घोषणा की तारीख/Date of Pronouncement : 20.11.2015

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-5, Chennai, dated 30/03/2015 and pertains to assessment year 2010-11.

2. Shri T.N. Seetharaman, the Ld.counsel for the assessee, submitted that the first issue arises for consideration is with regard to disallowance of ₹5,99,266/- towards freight charges and annual maintenance charges paid by the assessee, for non-deduction of tax. The Ld.counsel submitted that he was instructed not to press this ground before this Tribunal. The Ld.counsel has also made an endorsement to this effect in the appeal folder.

3. Dr. B. Nischal, the Ld. Departmental Representative, submitted that he has no objection to dismiss the ground with regard to disallowance of ₹5,99,266/- as not pressed.

4. In view of the above, the ground of appeal raised by the assessee with regard to disallowance of ₹5,99,266/- is rejected as not pressed and the addition made by the lower authority is confirmed.

5. The next ground of appeal is with regard to disallowance of ₹2,00,292/- towards purchase of leather.

6. Shri T.N. Seetharaman, the Ld.counsel for the assessee, submitted that the assessee has paid ₹2,00,292/- to M/s Azeem Leather Exports for purchase of leather. The Assessing Officer

disallowed the claim of the assessee on the ground that no confirmation letter was produced before him. According to the Ld. counsel, the assessee has furnished copies of the accounts of the party, confirmation of accounts showing details of materials purchased and the payment made by the assessee for purchases. However, ignoring the details filed by the assessee, the Assessing Officer rejected the claim of the assessee on the ground that no confirmation letter was filed. The CIT(Appeals) rejected the claim of the assessee on the ground that no bank account of the assessee was produced before him to confirm the realization of the amount paid by the assessee. According to the Ld. counsel, the assessee in fact purchased leather from M/s Azeem Leather Exports and paid the amount. Therefore, the disallowance made by the Assessing Officer is not justified.

7. On the contrary, Dr. B. Nischal, the Ld. Departmental Representative, submitted that the Assessing Officer issued notice to various persons under Section 133(6) of the Income-tax Act, 1961 (in short 'the Act'), including to M/s Azeem Leather Exports. The notice sent by the Assessing Officer was returned with an endorsement "unclaimed". The assessee has also not furnished

any confirmation from M/s Azeem Leather Exports. The assessee claimed before the Assessing Officer that they could not contact the party concerned, therefore, the confirmation letter could not be filed. In the absence of any other material, according to the Ld. D.R., the Assessing Officer disallowed the claim of the assessee, which was rightly confirmed by the CIT(Appeals).

8. We have considered the rival submissions on either side and perused the relevant material on record. Admittedly, the assessee engaged in the business of manufacturing and export of leather and leather garments. The assessee claimed before the Assessing Officer that it purchased leather to the tune of ₹2,00,292/-. The assessee filed copies of the books of account for the period 01.04.2009 to 31.03.2010 and 01.04.2010 to 31.03.2011. The Revenue authorities have not disputed the purchases made by the assessee. From the orders of the lower authorities it appears they are disputing only the payment. The assessee is in the manufacture of leather and leather garments. Without purchasing the leather, it cannot manufacture leather garments. When the purchase is not doubted, this Tribunal is of the considered opinion that there is no reason to doubt the payment. In those

circumstances, in view of the smallness of the amount of ₹2,00,292/-, this Tribunal is unable to uphold the orders of the lower authorities. Accordingly, the orders of the lower authorities are set aside and the addition of ₹2,00,292/- is deleted.

9. The next ground of appeal is with regard to disallowance of ₹29,56,419/- being the commission paid to foreign agents.

10. Shri T.N. Seetharaman, the Ld.counsel for the assessee, submitted that the assessee engaged agents to market its product in foreign countries. According to the Ld. counsel, the agents market the product of the assessee in the foreign countries and the assessee is paying commission for their service. According to the Ld. counsel, the foreign agents have not rendered any service in India. Therefore, the payment made to foreign agents is not taxable in India, hence, the assessee is not liable to deduct tax under any of the provisions of Income-tax Act. The Ld.counsel placed his reliance on the judgment of the Madras High Court in CIT v. Faizan Shoes Pvt. Ltd. (2014) 367 ITR 155.

11. On the contrary, Dr. B. Nischal, the Ld. Departmental Representative, submitted that the assessee admittedly paid

commission to foreign agents. According to the Ld. D.R., the assessee is depending upon the agents outside India in order to conduct its business. The service of the agents is required for managing the affairs of the assessee smoothly outside India. According to the Ld. D.R., the foreign agents are providing managerial services to market the product in foreign countries. Therefore, the commission paid by the assessee has to be construed as fee for technical services. Hence, the assessee is liable to deduct tax under the provisions of Income-tax Act. Therefore, the CIT(Appeals) has rightly confirmed the disallowance made by the Assessing Officer.

12. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee is engaged in manufacturing leather and leather garments. In order to market its product in foreign countries, the assessee engaged agents and paid commission to them. The question arises for consideration is whether the commission payment made by the assessee is in the nature of fee for technical services or not? This issue was considered by the Madras High Court in Faizan Shoes Pvt. Ltd. (supra). On identical set of facts,

the Madras High Court found that the foreign agent is not providing any technical service for the purpose of running of the business of the assessee in India. Therefore, the commission paid to the agent is not a fee for technical service, hence, the assessee is not liable to deduct tax under Section 195 of the Act. In view of this judgment of Madras High Court, this Tribunal is of the considered opinion that the payment made by the assessee to the agents outside India cannot be construed as fee for technical service. Hence, the assessee is not liable to deduct tax. By following the judgment of Madras High Court in Faizan Shoes Pvt. Ltd. (supra) and for reasons stated therein, the orders of the lower authorities are set aside and the addition of ₹29,56,419/- is deleted.

13. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 20th November, 2015 at Chennai.

Sd/-
(ए. मोहन अलंकामणी)
(A. Mohan Alankamony)
लेखा सदस्य/Accountant Member

sd/-
(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 20th November, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-5, Chennai-34
4. आयकर आयुक्त/CIT-9, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.