आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई ।

IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI

श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष

Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.2441/Mds./2014

(निर्धारण वर्ष / Assessment Year :2008-09)

Deputy Commissioner of Income Tax, Company circle IV(1), Chennai.	**Vs.**	**M/s.Matrimony .Com Pvt. Ltd.,** 94,TVH Belicaa Towers, 10th floor, Tower-II, MRC Nagar, Mandaveli, Chennai 600 028. **PAN** AADCM 0845 M
(**अपीलार्थी /Appellant**)		(**प्रत्यर्थी/Respondent**)

अपीलार्थी की ओर से / Appellant by : Mr.Joe Sebastian, CIT D.R

प्रत्यर्थी की ओर से/Respondent by : Mr.S.P.Chidambaram Advocate

सुनवाई की तारीख/ Date of hearing : 30.09.2015

घोषणा की तारीख /Date of Pronouncement : 20.11.2015

आदेश / O R D E R

PER A.MOHAN ALANKAMONY , ACCOUNTANT MEMBER:

This appeal is filed by the Revenue, aggrieved by the order of the Learned Commissioner of Income Tax(A)-I, Chennai dated 25.06.2014 in ITA No.874/2010-11/A-1 passed under Sec.143(3) read with Sec. 250 of the Act.

2. The Revenue has raised three elaborate grounds in its appeal, however the crux of the issue is that the Revenue is aggrieved by the order of the Ld. CIT (A), who had deleted the disallowance of Webhosting and Marketing expenses to the tune of ₹6,15,45,661/- made U/s./40(a)(ia) r.w.s 195 of the Act.

3. The brief facts of the case are that the assessee is a company, engaged in the business of matrimonial and other online services, filed its return on 30.09.2008 claiming loss of ₹31,31,22,190/-. Subsequently, the return was taken for scrutiny and assessment U/s.143(3) of the Act was completed on 31.12.2010 wherein the Ld. Assessing Officer made certain disallowances amongst which one of the disallowances was made with respect to webhosting and marketing expenses, aggregating to ₹6,15,45,661/-.

4. During the course of assessment proceedings, it was observed by the Ld. Assessing Officer that the assessee had not deducted tax at source for payments made in respect of Webhosting charges of ₹3,81,31,236/- and marketing expenses of ₹2,34,14,425/- aggregating to

₹6,15,45,661/-. On query by the Ld. Assessing Officer, the assessee had explained that this payment was reimbursement of expenses to the assessee's subsidiary company abroad for payment made by them on behalf of the assessee company for services rendered outside India. Hence, provisions of section 195 of the Act will not be applicable in the case of the assessee company. However, the Ld. Assessing Officer was of the opinion that the provisions of section 195(3) of the Act would be applicable, therefore invoked the provisions of section 40(a)(ia) of the Act and disallowed the amount of ₹6,15,45,661/-. On appeal, the Ld. CIT (A) deleted the addition made by the Ld. Assessing Officer by observing as under:-

"6.2 I have considered the facts of the case and the submissions of the ld.A.R. With regard to Webhosting charges, the appellant sought the services of MIs. Infonauts, USA, a subsidiary of the appellant, whose business is management of hosting, to provide hosting facilities in their computers which can be used by the appellant for development of website. Payments made for hosting web sites is not FTS or Royalty. It is only reimbursement of the amount which has been paid by,' Infonauts, USA. Therefore, it will, not attract any TDS provisions. With regard to marketing expenses also, it is observed that these expenses were reimbursed to the subsidiary company of the, appellant outside India and it will not attract TDS provisions. The parties do not have any permanent establishment in India. The payment is not in the nature of royalty or for any technology transfer.

The service charges so earned by the non-resident entities are business profits. As per the Double Taxation Avoidance Agreement between India and USA, the payments made represents only business profits as per relevant articles of the DTAA which can be taxed in the contracting state only. The Hon'ble Supreme Court in the case of GE India Technology Centre Private Limited vs. CIT has held that in the case where remittance is not chargeable in India then there is no question of tax at source being deducted. Since the tax at source is not required to be deducted, Section 40(a)(i) will not be applicable Reliance is also placed on the Jurisdictional Tribunals' decisions in the following cases:-

1. ITO vs. MIs. Faizan Shoes Private Ltd — ITA No.2095/Md/2Q12 — ITAT 'D" Bench, Chennai.

2. ACIT vs. Faridha Shoes Private Limited — ITA. No. 359/Mds/2013 — ITAT 'A' Bench, Chennai.

3. M/s.Prakash Impex Vs. ACIT — ITA No.08/Mds/2012 — ITAT Chennai 'A' Bench.

4. M/s. Rena (Madras) Ltd vs. ITO -ITA No.106/Mds/2011 —ITAT Chennai 'A' Bench.

5. M/s.Brakes India Limited vs. DCIT (LTU) — ITA No.266/Mds./2012 — ITAT Channel 'C' Bench.

6. ACIT Vs. Tamilnadu Newsprints and papers Limited — ITA No.555/Mds/2011 - ITAT Chennai 'A' Bench.

6.2.1 In view of above discussion,' the question of making TDS does not arise and disallowance u/s.40(a)(i) is not called for. Accordingly, the addition is deleted. The ground raised by the appellant is allowed."

5. The Ld. D.R vehemently argued in support of the order of the Ld. Assessing Officer whereas the Ld. A.R. relied on the order of the Ld. CIT (A).

6. We have heard both the parties and carefully perused the materials available on record. It is evident from the facts of the case that the assessee had made payments for webhosting charges and marketing expenses outside India and for services rendered outside India. These expenses were earlier made by the assessee subsidiary and later it was reimbursed by the assessee. The Hon'ble jurisdictional High Court in the case of M/s.Faizan shoes Pvt Ltd., reported in 367 ITR 155 (Mad.), has held that any payment made outside India for services rendered outside India will not be taxable in India. From the facts of the case, it is also evident that the assessee has not made any payment towards royalty or technical services rendered outside India. Therefore the case of the assessee falls outside the scope of DTAA. The parties, who have rendered services to the assessee outside India, do not have any Permanent Establishment (PE) in India. In these circumstances, taking into

consideration of the Hon'ble jurisdictional High Court in the case ITO Vs. Faizan Shoes Pvt. Ltd., (supra), we hereby confirm the order of the Ld. CIT (A). Accordingly, addition made by Ld. Assessing Officer stands deleted.

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

Order pronounced on 20th November, 2015 at Chennai.

Sd/-	Sd/-
(धुव्वुरु आर.एल रेड्डी)	**(ए. मोहन अलंकामणी)**
(**DUVVURU RL REDDY**)	(A.MOHAN ALANKAMONY)
Judicial Member	Accountant Member

Chennai,
Dated the 20th November, 2015.

K s sundaram.

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