

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ई' मुंबई  
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के  
समक्ष  
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.733/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2010-11)

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| Deputy Commissioner of<br>Income Tax 23(3)<br>Matru Mandir, Tardeo Road,<br>Grant Road,<br>Mumbai - 400007 | <b>बनाम/</b><br>Vs. | M/s. S.R.Brothers<br>204-205, Balarama,<br>Bandra-Kurla Complex,<br>Bandra (E),<br>Mumbai - 400051 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAASF9880L  |                     |  |
| (अपीलार्थी /Appellant)   | ..                  | (प्रत्यर्थी / Respondent)  |

|              |                           |
|--------------|---------------------------|
| Revenue by:  | Shri G. Nantha Kumar      |
| Assessee by: | Shri Vishwas V. Mehendale |

सुनवाई की तारीख / Date of Hearing: 15.09.2016  
घोषणा की तारीख /Date of Pronouncement: 28.10.2016  
आदेश / ORDER

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 28.11.2014 passed by the Commissioner of Income Tax (Appeals) 34, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2011-12.

2. The revenue has raised the following ground:-

- “1. *On the facts and in the circumstances of the case and in law, the CIT(A) has erred in deleting the addition made u/s.40(a)(i) of the Act amounting to Rs.70,09,316/-.*
2. *The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the AO be restored.”*

3. The brief facts of the case are that the assessee filed the return of income on 28.09.2011 declaring total income to the tune of Rs.1,66,12,319/-. The assessee has filed revised return on 13.10.2011 by declaring total income to the tune of Rs.1,67,05,230/-. The return of income was processed u/s.143(1) of the Income Tax Act, 1961 ( in short “the Act”). The case was selected for scrutiny under manual selection. Notice u/s.143(2) of the Act dated 24.09.2012 was issued and duly served upon the assessee. Thereafter, notice u/s.142(1) of the Act were also issued on 26.07.2013 and 24.10.2013. The assessee is a partnership firm and is engaged in business of exporting gift articles and promotional items. During the assessment, the assessee observed that the assessee claimed the commission on exports of Rs.70,09,316/- and did not deduct TDS on the said payment. The notice was given to the assessee and reply was considered. The services of the persons against whom the commission was claimed, was treated as technical in nature to which section 9(1)(vii) of the Act applied, therefore, the said income was disallowed u/s.40(a)(i) of the Act and added to the income of the assessee. Feeling aggrieved the assessee filed an appeal before the CIT(A) who allowed the claim of

the assessee, therefore, the revenue has filed the present appeal before us.

**ISSUE NO.1 & 2:-**

4. Issue no.1 and 2 are interconnected, therefore are being taken up together for adjudication. Under these issues the revenue has raised the question of deletion of the addition made u/s.40(a)(i) of the Act amounting to Rs.70,09,316/-. On appraisal of the details furnished by the assessee, the Assessing Officer was of the view that the person who received the commission for rendering their services like booking of orders, getting samples approved, release of shipment through documents and handling outstanding payments are technical services which falls u/s.9(1)(vii) of the Act. Hence, the claim of the assessee was declined and the said commission was added to the income of the assessee. The CIT(A) allowed the claim of the assessee. Before going further it is necessary to advert the finding of the CIT(A) on record:-

**“2.4 Decision in the ground of appeal no.1:-**

3.4.1 I have duly considered the submissions of the appellant and find that this issue was also involved in the appeals of the appellant in A.Y.2009-10 and 2010-11, wherein vide appellate order dated 08.11.2012 and 28.08.2013 respectively, the addition made on the above

account has been deleted. I also find that the payment of commission made to the non residents in this year are to the same parties, as in the earlier assessment year and the terms of the contract regarding commission payment also remains same, as in A.Y.2010-11. I, therefore, hold that the issue involved in this year is covered by my order dated 28.08.2013 in the appellant's case in A.Y.2010-11. Accordingly, I delete the above addition and allow the ground of appeal.”

5. On appraisal of the order of the CIT(A), it came into the notice that the CIT(A) has allowed the claim on the basis of his own decision for the years of 2009-10 and 2010-11. Anyhow in this regard the Hon'ble Mumbai Bench of ITAT in the assessee's own case has also decided the case of the assessee on this point in case ITA No.7772/Mum/2012 for A.Y.2009-10, ITA No.799/Mum/2013 for A.Y.2009-10 and ITA No.6148/Mum/2013 for A.Y.2010-11 and endorsed the version of the CIT(A). In view of the finding of the CIT(A) on record and in view of the order passed by the co-ordinate bench of Mumbai in the ITA No.7772/Mum/2012 for A.Y.2009-10, ITA No.799/Mum/2013 for A.Y.2009-10 and ITA No.6148/Mum/2013 for A.Y.2010-11. We are of the view that the CIT(A) has passed the order judiciously and correctly which is not required to be interfere with at this appellate stage.

6. In the result, the appeal filed by the revenue is hereby **Dismissed.**

Order pronounced in the open court on 28<sup>th</sup> October, 2016.

Sd/-

(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 28<sup>th</sup> October, 2016

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

*MP*

**आदेश की प्रतिलिपि अग्रेषित / 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार / BY ORDER,**

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt.**

Registrar)

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**