

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' 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.1250/Mds/2012

निर्धारण वर्ष / Assessment Year :2008-09

&

आयकर अपील सं./ITA No.45/Mds/2013

निर्धारण वर्ष / Assessment Year : 2009-10

M/s Servall Engineering Works
Pvt. Ltd.,
31, Bharathi Park Road VIII Cross,
Saibaba Colony,
Coimbatore – 641 011.

v. The Deputy Commissioner of
Income Tax,
Company Circle – I(3),
Coimbatore.

PAN : AA ECS 2949 H

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri A.V. Sreekanth, JCIT

सुनवाई की तारीख/Date of Hearing : 15.06.2016

घोषणा की तारीख/Date of Pronouncement : 12.09.2016

आदेश / O R D E R

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

Both the appeals filed by the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-I, Coimbatore, for the assessment years 2008-09 and

2009-10. Since common issue arises in both these appeals, we heard these appeals together and disposing of the same by this common order.

2. There was a delay of 33 days in filing the appeal by the assessee in I.T.A. No.45/Mds/2013. The assessee has filed a petition for condonation of delay. We have heard the Ld. representative and the Ld. D.R. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. The first ground of appeal is with regard to deduction of travelling expenditure to the extent of ₹4,14,826/-. This ground was raised only for assessment year 2008-09.

4. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee has paid a sum of ₹26,13,446/- to Michael Meycke Vetriebsburo, Germany towards commission. Out of this, a sum of ₹4,14,826/- was towards travelling expenditure. The Assessing Officer disallowed the claim of the assessee on the ground that the agreement does not permit the payment of travelling

expenses. The Ld.counsel further submitted that since the assessee incurred expenditure, it has to be allowed.

5. On the contrary, Shri A.V. Sreekanth, the Ld. Departmental Representative, submitted that the claim of travelling expenditure to the extent of ₹4,14,826/- was not substantiated by producing any material. The agreement entered into between the assessee and Michael Meycke Vetriebsburo operating in Germany does not provide for payment of travelling expenses. Since the lump sum payment of ₹26,13,466/- was paid, the assessee cannot claim the travelling expenditure in addition to payment of commission.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee appears to have claimed travelling expenditure under Section 37 of the Income-tax Act, 1961 (in short 'the Act'). The CIT(Appeals) found that unless and until the expenditure was incurred for the purpose of business, it cannot be allowed while computing the taxable income. The assessee claimed before the authorities below that the expenditure was incurred on a foreign agent's trip to India. The CIT(Appeals) found that foreign agent is not an employee of assessee-company but he works for commission. When the

assessee paid commission to an agent, the travelling expenditure of that agent cannot be claimed as deduction. This Tribunal is of the considered opinion that when the assessee has made comprehensive payment of commission, which included travelling expenditure, deduction towards travelling expenditure of foreign agent cannot be claimed. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

7. The next issue arises for consideration in both the appeals is with regard to disallowance of ₹2,89,70,704/- under Section 40(a)(ia) of the Act.

8. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee engaged the services of Walmsleys Ltd., UK for engineering drawings. According to the Ld. counsel, the UK company prepared engineering drawings in UK and no part of service was rendered in India. The engineering drawings were made in respect of new winder project. The Ld.counsel further submitted that the foreign company designs for new winder project. In fact, the project was implemented by the assessee for Bindal Project in India. According to the Ld. counsel, the drawings and

designs were made only in UK, therefore, the payment made by the assessee cannot be taxed. If there is a composite service rendered both in India and UK, then the service relatable to India alone is taxable in India. Since the designs and drawings were made exclusively in UK, according to the Ld. counsel, it is not subjected to taxation in India.

9. On the contrary, Shri A.V. Sreekanth, the Ld. Departmental Representative, submitted that the Assessing Officer specifically found that the agreement between the parties is a composite one. M/s Walmsleys Ltd., UK had to implement by way of erection in India. Unless and until the drawings and designs were prepared in India, according to the Ld. counsel, the agreement is not concluded, therefore, the assessee has to necessarily deduct tax under Section 195 of the Act since the Walmsleys Ltd. UK has rendered taxable service in India.

9. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee engaged the services of M/s Walmsleys Ltd. UK for design, manufacturing and start-up of paper machines. From the material available on record it appears even for the civil foundation for the

machinery, the basic engineering outputs were given by M/s Walmsleys Ltd., UK. The CIT(Appeals), after examining the agreement between the parties, has observed as follows:-

“.....During the period of this agreement, M/s Walmsleys agrees to refrain from supplying know-how or technical services to the competitors of Servall within India. The co-operation agreement will be initially valid for a period of three years and after the initial three years the validity of the agreement shall be automatically continues unless terminated in writing by either party. During the course of appellate proceedings Mr. Balakrishnan, Senior Manager (Designs) appeared and explained the details. It was explained by Mr. Balakrishnan that the basic engineering input for the 800 MTS Speed of the machine and the basic machinery drawing was given by Walmsleys and then for specific machine parts, the appellant company prepared the drawings and send it to Walmsleys UK for approval. Once the approval is given, then the appellant company manufactured the part. At every step of engineering the appellant company requires the help of Walmsleys Ltd. UK. It was stated by the Senior Manager (Designs) that even for civil foundation for the machinery the basic engineering inputs will be given by M/s Walmsleys regarding the amount of water required etc. During erection of the machine the engineers from Walmsleys will come to the site and supervise the erection. This clearly proves that the engineering services were rendered in India. The design and drawings were prepared by the UK company in UK and were sent to the appellant company and the execution and the drawings were completely supervised by M/s Walmsleys Ltd. UK. The UK company made available to the appellant company their technical knowledge as discussed from the facts stated above. It is clearly proved that the services rendered and the amount paid for this services falls within the definition of fee for technical services under Article 13(4) of DTAA with UK. The appellant

company did acquire technical knowledge from the drawings and designs supplied by the UK company. The fees paid by the appellant company clearly comes within the definition of fees for technical services. The engineers from UK were supervising the installation of the machinery made by the appellant company and also major section assembly check-outs were made in Servall's manufacturing facility with a Walmselys specialist in attendance. These acts clearly proves that the fees paid was only for technical services which are liable to tax in India in the hands of the UK company.”

10. From the above observation of the CIT(Appeals), it is obvious that erection of the machine was done by the engineers of M/s Walmsleys Ltd. UK in India. In fact, the engineers came down to India to the site of the assessee to supervise the erection personally. This clearly demonstrates that the engineering service was rendered in India by M/s Walmsleys Ltd. UK. Even though the design and drawings were said to be prepared in UK, mere preparing design and drawings would not complete the service rendered by M/s Walmsleys Ltd. UK. The Walmsleys Ltd. UK has to necessarily execute the project and supervise the same in India. Therefore, the UK company not only made available of design and drawings to the assessee-company but also erected the entire project in India under the personal supervision. Therefore, the services rendered by M/s Walmsleys Ltd. UK is very much taxable

in India. In other words, the profit on the payment made by the assessee to Walmsleys Ltd. UK is taxable in India. Hence, the assessee has to necessarily deduct tax under Section 195 of the Act. Since, admittedly, the tax was not deducted, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

11. The next ground arises for consideration for assessment year 2008-09 is with regard to disallowance of ₹28,10,527/-.

12. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that these amounts were received from three concerns, namely, M/s BILT Industrial Packaging, M/s Newquest Corporation and M/s Nava Bharat in the earlier assessment years. Since these amounts were received in the earlier assessment years, according to the Ld. counsel, the same is not taxable.

13. On the contrary, Shri A.V. Sreekanth, the Ld. Departmental Representative, submitted that though the assessee claims that the payment was received in the earlier assessment years, the

assessee could not file any details regarding the supplies made to these parties. The assessee could not file any details with regard to the bills that were raised. The assessee has not said anything about the advances said to be received and it is also not disclosed whether it was refunded during the year under consideration. The so-called reconciliation statement filed by the assessee does not reflect these amounts. Therefore, the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer.

14. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer made addition under Section 28(iv) of the Act. The assessee appears to have explained before the authorities below that these are advances received from various parties against the supplies made to them. The assessee could not furnish any details with regard to so-called advance said to be received and details of the supplies made to the above parties. Even though the assessee incurred an expenditure of ₹14,92,200/- in executing the orders, which was shown as work in progress, the assessee could not produce any material before the authorities below regarding work in progress. In the absence of details, this Tribunal is of the

considered opinion that the CIT(Appeals) has rightly confirmed the addition made by the Assessing Officer. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

15. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced on 12th September, 2016 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 12th September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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