

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ , ACCOUNTANT MEMBER

| |
|---------------------------|
| ITA No.833/Bang/2014 |
| Assessment year : 2008-09 |

| | | |
|---|-----|--|
| Sri Rajendra Tholpady, Prop. MEMS Technologies, No.526, HMT Layout, Ganganagar, Bangalore – 560 032. PAN: ACYPT 4759R | Vs. | The Assistant Commissioner of Income Tax, Circle 6(1), Bangalore. |
| APPELLANT | | RESPONDENT |

| | | |
|---------------|---|---------------------------------|
| Appellant by | : | Smt. Sheetal Borkar, Advocate |
| Respondent by | : | Dr. P.K. Srihari, Addl. CIT(DR) |

| | | |
|-----------------------|---|------------|
| Date of hearing | : | 27.05.2015 |
| Date of Pronouncement | : | 19.06.2015 |

ORDER

Per N.V. Vasudevan, Judicial Member

This appeal by the assessee is against the order dated 25.3.2014 of
CIT(Appeals)-II, Bangalore relating to assessment year 2008-09.

2. The only issue that arises for consideration in this appeal is as to whether the CIT(Appeals) was justified in confirming the order of the AO disallowing the claim of assessee for deduction of a sum of Rs.64,50,000 claimed to be professional fees paid to one Suresh Babu, while computing income from business.

3. The assessee is a proprietor of M/s. MEMS Technologies which is engaged in the business of supplying of electronic equipments to various \ defense organizations, like Research Centre Imarat, Advanced System Laboratory, DRDL etc. The equipments are purchased from abroad mostly from USA, Singapore & UK and supplied to the defense organizations.

4. While computing its income from business, the assessee claimed as deduction a sum of Rs.64,50,000 which was claimed to be Consultancy charges paid to one Mr.Suresh Babu . The AO called upon the assessee to furnish the details of the professional fees paid, the details of professional fees paid and to substantiate reasons for payment of professional fees.

5. The assessee submitted that the professional fee was paid to one Sri Suresh Babu, Hyderabad and that tax was deducted at source on the payment so made. The assessee gave a note wherein it was stated that Sri Suresh Babu looks after the technical aspects of the products supplied to the defense organizations. It was stated that Sri Suresh Babu will accompany the assessee before the technical Committee to explain the product and to clarify the doubts raised by the committee. Further it was

submitted that Sri Suresh Babu will attend the laboratory till such time the products are thoroughly tested and accepted. The assessee contended that because of the technical knowledge of the Suresh Babu, an amount of Rs.64,50,000 /- was paid as Consultant fee.

6. The AO found that as per the PAN furnished by the assessee, Sri Suresh Babu's address was shown as R/o Sri Suresh Babu, 5-51031/VIII, Vasavi Lake Colony, Chintalgunta, LB Nagar, Municipality, Hyderabad and Office address as Basu Infotech Ltd., 5-1-843, Koti , Hyderabad-95. During the course of hearing on 24/12/10, the assessee intimated the AO that Sri Suresh Babu resides at No.111, Vasavi Lake Colony, Chintalgunta, Hyderabad.

7. Commissions u/s. 131 of the I.T. Act were issued by the AO to the DDIT, (Inv),Unit-II(I), O/O the Addl .Director of Income tax (Inv) Aayakar Bhavan, Hyderabad , with a request to cause enquiry regarding the said payment of consultation fees to Sri Suresh Babu. The DDIT (Inv) was requested to verify whether Sri Suresh Babu was competent enough to render any services, and if so whether he had rendered any consultancy services to the assessee. The DDIT(Inv) was requested to verify the genuineness of the transaction. Meanwhile, during the course of hearing on 27/12/10 & 28/12/10, the AO requested the assessee to produce Sri Suresh Babu before me for verification. The assessee did not produce Sri Suresh Babu. On 29/12/10, the report was received from DDIT(Inv),

Hyderabad. As per the report, it was stated that Sri Suresh Babu was not residing at the above mentioned addresses. Enquiries revealed that the office address of Sri Suresh Babu, i.e., M/s. Basu Infotech Ltd., was vacated about 10 years back and since then the premises was in occupation by a cloth stores by name Neelakantha Banaras House. Regarding the residential address, it was submitted that after extensive enquiries, the house at the given address could not be located and that the address appeared to be a bogus address. The assessee was intimated the contents of the report of the DDIT(Inv), Hyderabad. On 30/12/10, the assessee has filed a copy of the return of income filed by Sri Suresh Babu. However, the assessee did not produce Sri Suresh Babu. The address mentioned in the return of income was same as mentioned above. The DDIT(Inv) in his report has also concluded that the address given by Sri Suresh Babu in the return of income filed for the asst.year 2008-09 appears to be a bogus address and therefore the genuineness of the transaction was doubtful.

8. On the basis of the above materials on record, the AO came to the conclusion that the assessee did not prove the genuineness of the consultation fees paid to Sri Suresh Babu. The AO was also of the view that the assessee procures the equipments from abroad and supplies the same to the defense organizations. The equipments purchased by the assessee are as per the orders of the Defense Organizations. Therefore, the assessee's involvement was to get the equipment as per the

requirement and supply the same and there was no requirement of engaging consultants. The AO also noticed that during the previous year, the assessee's turnover was Rs.2.11crores and the payment of consultancy fees was Rs.64.5 Lakhs which in his opinion was disproportionate. The AO therefore concluded that the assessee failed to substantiate as to why an amount of Rs. 64.5 lakhs on a turnover of Rs.2.11 crores was paid to Sri Suresh Babu. The AO also noticed that the assessee's spouse Smt. Asha Tholpady was also in the same line of business and in her case, on a turnover of Rs.1.88 crore, an amount of Rs. 19.94 lakhs was paid to Sri Suresh Babu as professional fee. Thus there is a vast variation in the rate of consultant fee said to have been paid by the assessee and his wife. The assessee did not produce Sri Suresh Babu for verification. The AO therefore came to the conclusion that the Assessee has failed to prove that Sri Suresh Babu was capable of giving professional advice and his academic qualification. The address given by the assessee in respect of Sri Suresh Babu was also bogus address. In view of the above, and after taking into account all the aspects of the case, the professional charges of Rs.64.5 lakhs debited in the P&L a/c. was treated by the AO as not genuine and added to the income of the assessee.

9. On appeal by the assessee, the CIT(Appeals) confirmed the order of Assessing Officer, observing that even before the appellate authority the assessee did not produce any material evidence in support of the claim made, nor was Shri Suresh Babu produced for examination. The

CIT(Appeals) also observed that no details regarding technical expertise and utility of expertise in the business of the assessee has been proved. The CIT(Appeals) also observed that assessee has not produced any documentary evidence to support his claim. Aggrieved by the order of CIT(Appeals), the assessee has preferred the present appeal before the Tribunal.

10. Even before us, the same contentions as were put forth before the revenue authorities were reiterated. A reference was also made to the decision of the Hon'ble High Court of Karnataka in *Mysore Kirloskar Ltd. v. CIT, 166 ITR 836 (Kar)* for the proposition that any expenditure incurred in promoting business is a permissible deduction u/s. 37(1) of the Act.

11. We have considered the submissions of the Id. counsel for the assessee and are unable to accept the same. The facts brought out by the AO in the order of assessment clearly show that Suresh Babu was not available for examination by the AO. There were several discrepancies in the claim of assessee with regard to professional qualification of Suresh Babu and also with regard to nature of services rendered for which commission was paid. It clearly transpires from the order of the AO and the CIT(Appeals) that the assessee made no attempts to produce Suresh Babu for examination by the AO. It is not possible for the AO to verify the claim of assessee in the absence of production of Suresh Babu for examination. The circumstances set out by the AO in the order of assessment clearly

show that assessee did not desire production of Suresh Babu before the AO for the reason best known to the assessee. The mere assertion of Mr. Suresh Babu having rendered services to the assessee, without any supporting documents, in our view, will not be sufficient to allow the claim of assessee. The turnover of assessee being only Rs.2.11 crores and commission paid to Suresh Babu being Rs.64.5 lakhs is also a circumstance which goes to support the conclusions arrived at by the revenue authorities. In our view, the decision referred to by the Id. counsel for the assessee will not be of any assistance to the plea put forth by the assessee before us. It has not been established in the present case that sale commission was paid for services rendered by the assessee. Nexus of the expenses claimed as deduction with the business of the assessee has not been established. In such circumstances, we are of the view that the CIT(Appeals) was fully justified in confirming the order of AO disallowing the claim of the assessee for deduction. We find no grounds to interfere with the order of CIT(Appeals). Accordingly, the appeal by the assessee is dismissed.

Pronounced in the open court on this 19th day of June, 2015.

Sd/-
(JASON P. BOAZ)
Accountant Member

Sd/-
(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 19th June, 2015.
/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar/
Senior Private Secretary
ITAT, Bangalore.