

आयकर अपीलीय अधिकरण, मुंबई "ए" खंडपीठ
Income-tax Appellate Tribunal "A" Bench Mumbai
सर्वश्री जोगिन्दर सिंह, न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य
Before S/Shri Joginder Singh, Judicial Member & Rajendra, Accountant Member
आयकर अपील सं./I.T.A./5959/Mum/2011 निर्धारण वर्ष /Assessment Year: 2008-09

ATE Private Limited 43, Dr. V.B. Gandhi Marg Fort, Mumbai-400 023. PAN:AAACA 4481 G	Vs.	DCIT-Range-2(1) Aayakar Bhavan, M.K. Marg Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Rajesh Kumar Yadav

Assessee by: Shri Nitesh Joshi

सुनवाई की तारीख / **Date of Hearing:** 12.04.2017

घोषणा की तारीख / **Date of Pronouncement:** 12.04.2017

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य राजेन्द्र के अनुसार /PER RAJENDRA, AM-

Challenging the order, dated 01/07/2011, of the CIT (A) – 4, Mumbai, the assessee has filed present appeal. Assessee- company, engaged in the business of monitoring growth of its portfolio investments in subsidiaries and joint ventures companies, filed its return of income on 22/09/2008, declaring total income of Rs. 2.59 crores. The Assessing Officer (AO) completed the assessment u/s. 143 (3) of the Act, on 20/12/2010, determining its income at Rs. 5.43 crores.

2. First ground of appeal is about confirming the addition of Rs. 1.15 lakhs, being difference between royalty income as per the books and as per tax deducted at source certificates. During the assessment proceedings, the AO found that there was difference in the amount of tax deducted at source. He directed the assessee to reconcile the difference. After considering the submission of the assessee, the AO held that assessee could reconcile the difference to the extent of Rs. 14.85 lakhs out of the total difference of Rs. 15.02 lakhs, that it had not disclosed income of Rs. 1.5 lakhs on account of royalty whereas it had claimed the tax deducted at source on the same, the assessee had not forward with any explanation in that regard.

2.1. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). Before him, it was argued that there was no difference in the books of accounts and the tax deducted at source certificates. After considering the submission of the assessee, he held that the assessee had not filed any confirmation/reconciliation from the sister concern/payer company about the actual amount of the royalty.

2.2. Before us, the Authorised Representative (AR) referred to page number 7 of the paper book and stated that the sister concern head initially accounted Rs.1.32 crores inclusive of taxes as royalty payable to the assessee and had accordingly issued the tax deducted at source certificate, that on finalisation of audited accounts it was found that there was excess provision of royalty payable to the assessee to the extent of Rs.1.5 lakhs, that accordingly the sister concern reversed such excessive provision. The Departmental Representative (DR) supported the order of the FAA.

2.3. We find that the assessee in its submissions, filed before the FAA, had furnished a table and had tried to reconcile the difference. It appears that the submissions made by the assessee have not been considered properly. Therefore, we are of the opinion, that in the interest of Justice, the matter should be restored back to the file of the AO for fresh adjudication. He is directed to afford a reasonable opportunity of hearing to the assessee, who would submit all the necessary papers before the AO with regard to royalty received. Accordingly, first ground is decided in favour of the assessee, in part.

3. Next ground is about disallowance of Rs.23 155 lakhs made u/s. 36(1)(ii) of the Act, being commission paid to one of the directors. The AO found that the assessee had paid an amount of Rs.47,10,386/- to its Director as commission, that both the directors were paid Rs.23.55 lakhs each, that one of the directors was a major stake holder in the company. He asked the assessee as to why commission paid to Sh. Atul Bhagwati (AB) should not be disallowed as per the provisions of section 36(1)(ii) of the Act. In its reply, the assessee stated that amount was paid as per the Board Resolution and as per provisions of the Companies Act. The AO held that commission paid to AB amounting to Rs.23.55 lakhs was to be disallowed and had to be added to the total income of the assessee.

3.1. During the appellate proceedings, the assessee argued that AB had sufficient experience and qualification to be paid commission. After considering the available material the FAA held that the assessee had not filed/produced any documents showing services rendered by AB, that it was not proved that commission had not been paid for services rendered, that in the earlier years, similar commission payments were allowed. He further observed that the AO had made enquiries in the year under consideration, that same might not be the case in the earlier year, that there was no justification to disturb the order of the AO.

3.2. Before us, the AR argued that commission was paid in earlier years and was allowed by AO. Commission was paid for business purposes, that it was paid as per Board Resolution passed on 21/09/2007, that AB had paid taxes on commission received by him, he referred to Form No.16 issued to AB and the return filed by him. The DR supported the order of FAA and stated that no services were rendered by the said director.

3.3. We find that the FAA had upheld the disallowance on the Ground that the directors had not rendered services to the company. It is pertinent to note that the commission was paid as per the Board Resolution, that in the earlier year similar expenditure was allowed by the AO, that the director had paid taxes on the commission received, that the higher slab of tax rate was applicable in both the cases. Considering these facts, we are of the opinion that the order of the FAA cannot be endorsed. Ground No.2, is decided, in favour of the assessee.

4. Last effective Ground of appeal (GOA3 -4) deals with disallowance on account of depreciation and repair and maintenance of Rs.4.45 lakhs and Rs.1.15 lakhs respectively. During the assessment proceedings, the AO found that, the assessee had credited an amount of Rs.50.31 lakhs as rental income for the year ended on 31/03/2008, that it had treated Rs.46.34 lakhs out of the entire rental income under the head income from house property, that it had claimed deduction u/s. 24 of the Act, that it had claimed expenses u/s. 37 also in respect of rental income. Accordingly, he issued a show cause notice to the assessee stating as to why same should not be disallowed as business expenses. As per the AO, the assessee did not file any explanation in that regard. Finally, he held only standard deduction would be allowed in case of rental income, that expenses claimed by it u/s.37 were to be disallowed.

4.1. Before the FAA, the assessee made submissions and stated that one of the property in Fort, Mumbai was its Corporate office, that it had claimed depreciation on it, that it had incurred repairs and maintenance expense of Rs.1.51 lakhs for the same building, that AO had wrongly taken figure of Rs.3.45 lakhs for disallowance as rates and taxes, that only Rs.75,287/- were claimed as administrative and other expenses. He directed the AO to verify the claim of the assessee and restrict it to Rs.75,287/-, if the claim was found to be correct and if the expenses pertained to carrying on of business.

4.2. Before us, the AR argued that assets were purchased in the earlier years, that same were part of work-in-progress for that year and depreciation was regularly allowed to the assessee, that it

was corporate office of the assessee and was a business asset, that expenditure under the head repair work was also incurred for the same building, that both the expenses claimed by assessee were deductible.He referred to pages-36(1)(ii) and 45 of the PB. The DR supported the order of the FAA.

4.3.We find that the FAA had specifically mentioned that the assessee had not filed the full audit report during the appellate proceedings, that the assessee was using its Mumbai property as commercial asset,in absence of correct and full details the AO and FAA had made and upheld the disallowance.Considering the peculiar facts and circumstances of the case,we are of the opinion that matter should be restored back to the file of AO for fresh adjudication. He is directed to afford a reasonable opportunity of hearing to the assessee and decide the case accordingly.Both the grounds are decided in favour of the assessee,in part.

As a result, appeal filed by assessee stands partly allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतःमंजूर की जाती है.

Order pronounced in the open court on 12th April,2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 12 अप्रैल, 2017 को की गई।

Sd/-

Sd/-

(**जोगिन्दर सिंह /Joginder Singh**)

(**राजेन्द्र / RAJENDRA**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई /Mumbai; दिनांक/Dated : 12.04.2017.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "G " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अधि.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.