

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"C" BENCH, CHENNAI**

श्री चंद्र पूजारी, लेखा सदस्य एवं  
श्री वी. दुर्गा राव, न्यायिक सदस्य के समक्ष  
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &  
SHRI V. DURGA RAO, JUDICIAL MEMBER  
आयकर अपील सं./ **I.T.A. No.464/Mds/2015**  
(निर्धारण वर्ष / Assessment Year : 2010-2011)

The Assistant Commissioner of Income Tax,  
Corporate Circle - 3(1)  
Chennai 600 034.

Vs M/s. True Value Homes (India)  
P. Ltd,  
No.21, TVH Triveni,  
C.V. Raman Road,  
Alwarpet,  
Chennai 600 018.

(अपीलार्थी/Appellant)

[PAN:AAACT 7955Q]  
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. N. Nischal, IRS, JCIT.  
प्रत्यर्थी की ओर से / Respondent by : Shri. G. Gopalan, Retired JCIT.

सुनवाई की तारीख/Date of hearing : 08.04.2015.  
घोषणा की तारीख /Date of Pronouncement : 08.04.2015.

**आदेश / ORDER**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER**

This appeal by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-III, Chennai, dated 23.10.2014. The Revenue has raised the following ground:-

*"2. The learned CIT(A) has erred in deleting the disallowance u/s.36(1) (ii) being commission of ₹2,66,41,878/- paid to the Managing Director of the assessee company."*

2. We have heard both the parties and perused the material on record. We are of the opinion that a similar issue has come up for consideration before the Tribunal in assessee's own case in ITA No.1093/Mds/2011 vide order dated 18.03.2013, wherein the Tribunal held as under:-

*"5. We heard both sides in detail on this point. The Commissioner of Income-tax(Appeals) has considered the legal implication of the relevant provision while dealing with the issue. In the present case, the assessee has paid a commission of ₹ 4,83,59,772/- to its managing director. The Commissioner of Income-tax(Appeals) observed that section 36 of the Income-tax Act, 1961 provides for other deductions in computing the business income of an assessee. Different items of such expenses are enumerated under different clauses provided in sub-section(1) of section 36. One of such expenditure entitled to be deducted in computing the business income of an assessee is any sum paid to an employee as bonus or commission for services rendered. But the deduction is not available in a case where such payment of bonus or commission would not have been payable to him as profits or dividend if such amount of bonus or commission was not paid. It means that if the employee is entitled for profits or dividend of the assessee, then the sums paid to such employee shall not be allowed as a deduction in the hands of the assessee.*

6. In the light of the above law, the Commissioner of Income-tax(Appeals) observed that there are three limbs to section 36(1)(ii). Those limbs are:

- (a) The sum is paid to an employee*
- (b) The sum paid is in the nature of bonus or commission*
- (c) The sum paid is otherwise payable as profit or*

*dividend to the recipient.*

7. *In the light of the exposition of law, the Commissioner of Income-tax(Appeals) examined whether Shri Ravichandran, the managing director of the assessee company, is an employee of the assessee or not. He found that Shri Ravichandran, who is the managing director of the assessee-company, is not an employee of the assessee. He is the managing director of the assessee-company vis-a-vis a permanent director. There is no employee-employer relationship between Shri Ravichandran and the assessee company. Shri Ravichandran holds 95% of the shares of the assessee-company. He is not an employee under any of the following Acts meant for the welfare of labour:*

- (a) Payment of Bonus Act*
- (b) Payment of Gratuity Act*
- (c) Workmen's Compensation Act*
- (d) Employees PF Act*
- (e) Employees State Insurance Act.*

8. *Therefore, the Commissioner of Income-tax(Appeals) concluded that section 36(1)(ii) is not applicable to the payment made by the assessee to its managing director. The Commissioner of Income-tax(Appeals) further, relying on the decision of the Hon'ble Supreme Court in the case of Gestener Duplicators(P) Ltd. vs. CIT, 117 ITR 1, held that the commission paid to Shri Ravichandran, the managing director of the assessee-company, is part of the salary. The only thing is that the commission has been paid on the basis of the turnover; but still the payment was in the nature of salary for services rendered by Shri Ravichandran. The Commissioner of Income-tax(Appeals) also held that there is no force in the argument of the Assessing Officer that no marketing efforts are necessary to sell the flats constructed by the assessee, as the assessee-company enjoys a very famous brand-name. The Commissioner of Income-tax(Appeals) concluded that this finding is without any basis. He observed that even famous companies having valuable brand-names have to incur huge expenditure for marketing and there is no reason to hold that the assessee would get business without any marketing efforts.*

9. *In the light of the above findings, he held that the disallowance made by the Assessing Officer was not justified and accordingly deleted the addition of ₹ 4,83,59,772/-."*

3. In view of the above order of the Tribunal, taking consistent view, we are inclined to dismiss the appeal of the Revenue.

4. In the result, appeal filed by the Revenue in ITA No.464/Mds/2015 is dismissed.

Order pronounced on Wednesday, the 8th of April, 2015, at Chennai.

Sd/-  
(वी. दुर्गा राव)  
**V. DURGA RAO**  
न्यायिक सदस्य / **JUDICIAL MEMBER**

Sd/-  
(चंद्र पूजारी )  
**(CHANDRA POOJARI)**  
लेखा सदस्य/ **ACCOUNTANT MEMBER**

चेन्नई/Chennai.

दिनांक/Dated:08 .04.2015.

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant 2.प्रत्यर्थी/ Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF.