

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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. 566/Mds/2011

निर्धारण वर्ष / Assessment Year : 2006-07

The Deputy Commissioner of  
Income Tax,  
Company Circle IV(1),  
Chennai - 600 034.

v. M/s Managed Information Services  
Pvt. Ltd.,  
"Pottipati" Plaza, 5<sup>th</sup> floor,  
No.77, Nungambakkam High Road,  
Chennai - 600 034.

(अपीलार्थी/Appellant)

PAN : AACCM 7680 H

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri M. Murugaboopathy, Addl. CIT  
प्रत्यर्थी की ओर से/Respondent by : Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 14.06.2016

घोषणा की तारीख/Date of Pronouncement : 11.08.2016

### **आदेश / O R D E R**

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) – V, Chennai, dated 23.12.2010 and pertains to assessment year 2006-07.

2. Shri M. Murugaboopathy, the Ld. Departmental Representative, submitted that the first issue arises for consideration is with regard to disallowance of ₹1,93,90,502/- being the fee paid to legal firm at London. According to the Ld. D.R., the assessee engaged in the business of providing outsourcing accountancy services. During the year under consideration, the assessee claimed that a suit was filed against Charter House in United Kingdom. Ultimately, the dispute was mutually settled in September, 2005. The legal proceeding initiated by assessee-company was assisted by M/s Hammonds UK for which the assessee has paid a sum of ₹1,93,90,502/-. Referring to the assessment order, the Ld. D.R. submitted that the assessee claimed that it engaged the services of M/s Hammonds, UK for 643 hours. However, the assessee could not furnish the details of engagement and discussion made for 643 hours. The legal fee to M/s Hammonds, UK was paid by Shri Brijnath. In fact, the payment was made from personal account of Shri Brijnath. No payment was made from the assessee-company's bank account. Since the payment was not made from the company's account, the Assessing Officer found that the payment claimed by the assessee-company was not genuine. Moreover, the assessee has received only a sum

of ₹80,16,570/- from the Charter House. Therefore, the expenditure of ₹1,93,90,502/- is excessive and no prudent businessman would incur such expenditure for receiving a compensation of ₹80,16,570/- Therefore, the Assessing Officer has rightly disallowed the claim of ₹1,93,90,502/-. The Ld. D.R. placed his reliance on the judgment of Madras High Court in Chelpark Company Limited v. CIT (1991) 191 ITR 249.

3. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee-company formed a joint venture with Shri Vinoo Patel. As per the arrangement, Shri Vinoo Patel had 36% of stake in the assessee-company. Shri Vinoo Patel was also a joint venture partner on behalf of M/s Charter House Accountants LLP. The software developed by the assessee-company was unlawfully used by some of the competing business houses in UK, more particularly, M/s Hanover Outsourcing based at Pakistan. M/s Hanover Outsourcing was set up by partners of Charter House after selling their interest in the assessee-company in October, 2004. Since the misuse of software by competing business houses in London affected the business of the assessee, the assessee was forced to initiate legal proceeding against M/s

Charter House Accountants LLP. The litigation was mutually settled in September, 2005 and the assessee paid a sum of ₹1,93,90,502/- being the legal fee to M/s Hammonds UK. According to the Ld. counsel, the assessee produced all the invoices raised by M/s Hammonds UK and payment details to substantiate the claim of deduction under Section 37(1) of the Income-tax Act, 1961 (in short 'the Act'). The Ld.counsel placed his reliance on the judgments of Madras High Court in CIT v. O.P.N. Arunachala Nadar (1983) 141 ITR 620, CIT v. Raman & Raman Ltd. (1951) 19 ITR 558, State of Tamil Nadu v. C.H. Simpson (1992) 197 ITR 237 and G. Veerappa Pillai v. CIT (1955) 28 ITR 636.

4. We have considered the rival submissions on either side and perused the relevant material available on record. From the material available on record it appears that the registered software of the assessee-company was used by other competing business concerns in United Kingdom. Therefore, the assessee was forced to initiate legal proceeding. The assessee incurred expenditure for initiating and prosecuting the legal proceeding. Ultimately, the litigation was settled mutually in September, 2005. The question arises for consideration is whether the payment made by the

assessee for legal opinion is allowable under Section 37(1) of the Act? The assessee, being a business concern, has to protect its capital base from misuse by other competing business houses. The expenditure incurred by the assessee is not for creating any enduring asset in the course of business activity. It is an expenditure incurred for protecting the registered software developed by the assessee. The business of the assessee appears to be providing outsourcing accountancy services. Therefore, when the Pakistan based company attempted to misuse the software in the United Kingdom, the assessee had to actually initiate legal proceeding for protecting its interest so that the assessee can carry on the business effectively and profitably. This Tribunal is of the considered opinion that the expenditure incurred by the assessee is not on the capital field since it was not to create any capital asset. It was incurred by the assessee for protecting the registered software in the course of its business activity. Therefore, this Tribunal is of the considered opinion that the judgment of Madras High Court in Chelpark Company Limited (supra) may not be applicable to facts of the case.

5. The next contention of the Ld. D.R. is that the assessee has paid to M/s Hammonds UK for 643 hours and the payment was made on hourly basis. It is not in dispute that even in this country, some of the legal practitioners charging from the respective clients on hourly basis. Some of them are charging on day basis. Therefore, it depends upon the professionals who are being engaged by the assessee. So long as charging of fee on hourly basis is prevalent in the legal profession, this Tribunal is of the considered opinion that merely because the assessee has paid on hourly basis to engage the service of M/s Hammonds UK for 643 hours that cannot be a reason to disallow the claim of the assessee. It is for the assessee to determine how long hours it has to retain or engage the service of M/s Hammonds UK. When the assessee has established fact of initiation of legal proceeding and payment of fee, this Tribunal is of the considered opinion that there is no reason to disallow the claim of the assessee.

6. Now coming to the payment made by Shri Brijnath from his HSBC bank account, the fact remains that Shri Brijnath is one of the Directors of the assessee-company. The compensation said to be received from M/s Charter House Accountants LLP was credited in

the accounts of the assessee-company and it was also reflected in the Profit & Loss account for year ending 31.03.2006. In those circumstances, merely because the funds to the legal firm was paid from the individual account of one of the Directors Shri Brijnath, this Tribunal is of the considered opinion that there cannot be any reason to disallow the claim of the assessee. In view of the above, 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 ground of appeal is with regard to disallowance of ₹1,87,327/- being the premium paid for professional indemnity insurance.

8. Shri M. Murugaboopathy, the Ld. Departmental Representative, submitted that the assessee claimed payment of premium to M/s Windsor PL UK towards professional indemnity insurance payable every year as per UK laws. The assessee has not produced copies of bill for payment of insurance premium. Moreover, it is for the legal firm to pay the professional indemnity insurance premium and not for the assessee. In the absence of any documentary evidence to substantiate the claim of expenses, the Assessing Officer has rightly disallowed the claim of the assessee.

9. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee-company paid a sum of ₹1,87,327/- towards professional indemnity insurance to M/s Windsor PL UK. As per the UK law, every legal firm has to pay premium towards professional indemnity insurance. On the basis of mail received from Shri Sharan requesting for payment of professional indemnity insurance premium, the assessee has paid the premium. The payment of premium is not in dispute. The only objection of the Ld. D.R. is that the assessee is not expected to pay premium and it is for the legal firm to pay the premium for professional indemnity insurance.

10. We have considered the rival submissions on either side and perused the relevant material available on record. Admittedly, the assessee claims ₹1,87,327/- being the professional indemnity insurance premium paid to M/s Windsor PL UK. The Assessing Officer disallowed the claim of the assessee on the ground that the payment was not substantiated and the assessee has not proved that the expenditure was for business purpose. The fact remains that the assessee has received a mail from Shri Sharan requesting for payment of professional indemnity premium. The payment

made by the assessee is not in dispute. The Ld. D.R. now contends before this Tribunal that it is the obligation of the UK legal firm to pay the insurance premium and not that of the assessee. When the assessee-company agreed to pay the premium for professional indemnity insurance as part of the fee paid to the legal firm, even though there was an obligation under the UK law that only the legal firm has to pay the professional indemnity premium, in view of the assurance given by the assessee to meet the expenditure for insurance premium, this Tribunal is of the considered opinion that such premium would form part of the payment made by the assessee towards fees. Therefore, it has to be naturally treated as expenditure for meeting the legal litigation initiated in the UK for preventing the misuse of registered software. In those circumstances, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly allowed the claim of the assessee. This Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 11<sup>th</sup> August, 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 11<sup>th</sup> August, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-V, Chennai-34
4. आयकर आयुक्त/CIT, Chennai-III, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.