<u>आयकर अपीलीय अधिकरण</u> "एक-सदस्य मामला" **<u>न्यायपीठ मुंबई में।</u>**
IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।
BEFORE SHRI SANJAY ARORA, AM

आयकर अपील सं./I.T.A. No. 4847/Mum/2015
(**निर्धारण वर्ष /** Assessment Year: 2011-12)

Fin Mechanics India P. Ltd. A-406, The Capital, Bandra Kurla Complex, Bandra (E), Mumbai-400 051	**<u>बनाम</u>**/ Vs.	ITO-8(1)(4), Aaykar Bhawan, M. K. Road, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABCF 3599 D		
(अपीलार्थी /**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओर से / **Appellant by**	:	Shri Rajesh Kothari
प्रत्यर्थी की ओर से/**Respondent by**	:	Shri B. S. Bist

सुनवाई की तारीख / **Date of Hearing**	:	01.12.2015
Date of Order	:	04.12.2015

<u>आदेश / O R D E R</u>

<u>Per Sanjay Arora, A. M.:</u>

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-16, Mumbai ('CIT(A)' for short) dated 07.1.2015, dismissing the Assessee's appeal contesting its assessment u/s.143(3) of the Income Tax Act, 1961 ('the Act' hereinafter) for the assessment year (A.Y.) 2011-12 vide order dated 26.12.2013.

2. The appeal raises two grounds, which we shall take up in seriatim. The brief facts in relation to the first ground are that the Assessing Officer (A.O.) observed the

assessee, a company in the business of information technology services, to have not deducted tax at source (TDS) on professional fees properly (i.e., to the extent of Rs.4,136/-), even as reflected in the Tax Audit Report (TAR) itself. While the tax deduction for Rs.3,861/- was in the following year, i.e., the previous year relevant to A.Y. 2012-13, that for Rs.275/- was not deducted at all. The same being deductible u/s.194J, prescribing the rate of deduction of tax at source at 10%, he accordingly effected disallowance u/s. 40(a)(ia) at Rs.41,360/-. The same came to be confirmed for the same reasons, so that, aggrieved, the assessee is in second appeal.

3. During hearing, it was explained by the ld. Authorized Representative (AR), even as it was before the ld. CIT(A), that tax in the sum of Rs.3,861/- had been properly deducted (on 22.3.2011) as well as deposited in time (on 06.5.2011), much before the due date of filing of the return for the relevant year. In the challan for the said payment, however, the assessment year was wrongly mentioned as '2012-13', i.e., instead of '2011-12' (Challan sr. no. 14780 dated 06.5.2011). There is, in fact, no payment of TDS in the said amount for the previous year (f.y. 2011-12) relevant to the mentioned year (A.Y. 2012-13), toward which the payment of Rs.3,861/- could be said to have been made. Toward this, he would take the Bench to the copy of the ledger account of TDS on Professional Fees (for the current and the following year); the relevant challan; and Form 26AS (of the deductee) for A.Y. 2012-13 (PB pgs.8, 9, 12). Further, on enquiry, if the corresponding claim (u/s. 40(a)(ia)) had been made in the following year, he would take the Bench through the computation of the income; the acknowledgement of the return, as well as the Profit & Loss Account (at PB pgs. 14-17), to show that no claim for deduction by way of reversal of the impugned disallowance u/s. 40(a)(ia) had been preferred for that year.

4. The parties have been heard, and the material on record perused.

I find no merit in the Revenue's case. A mere wrong mention of the year to which the TDS relates, which is apparent, would not lead to the disallowance of an expenditure incurred and claimed for the current year, when the condition/s of relevant provision (section 40(a)(ia)) stand substantially, if not, fully met. In fact, even so, the assessee ought to have been allowed deduction in its' assessment for the following year (A.Y. 2012-13). The ld. CIT(A), whose order bears the assessee's pleading in this regard, has not addressed himself to the facts in issue at all. The A.O. is, accordingly, directed to delete the disallowance on the short deduction of tax at source (for Rs.3,861/-), of-course after verifying that no such relief has already been allowed to the assessee in the assessment for the succeeding year (A.Y. 2012-13). The assessee has not impugned the disallowance relatable to the short deduction of tax at source of Rs.275/-. The assessee succeeds on the said ground.

5. The second ground relates to the year of allowance of credit of TDS of Rs.2,75,753/-. The assessee, as explained, raised invoices for Rs.36.50 lacs (Rs.40,25,950/-, at gross of service tax) for the previous year relevant to A.Y. 2010-11, returning the same as income for that year. The customers, namely Kotak Mahindra Bank and ICICI Bank, however, recorded the corresponding expenditure on account of professional fees *qua* these invoices in different years, deducting tax at source in the corresponding years, as under (refer PB pg. 18):

(Amt. in Rs.)

F.Y.	A.Y.	Amt.	TDS (as per F/26AS)
2009-10	2010-11	6,06,650	62,485
2010-11	2011-12	27,57,500	2,75,750
2011-12	2012-13	6,61,800	(not specified)
		40,25,950	

The assessee having not returned the income (in relation to the said invoices) for the current year, was not allowed deduction of tax at source thereon, restricting it to the income assessed for the year.

6. The parties were heard and the material on record perused.

During hearing, the ld. AR made lengthy submissions, while the ld. Departmental Representative (DR) relied on the orders by the Revenue authorities. The issue in substance is simple. The law in the matter, i.e., section 199 r/w s. 37BA(3), which were read during hearing, explicitly provides for allowance of credit for TDS for the years for which the corresponding income is assessable. That is, the law itself contemplates a mismatch in terms of time, i.e., between the year/s for which the income is assessable and the year/s for which the corresponding deduction of tax may take place. It is, in fact, to resolve such like issues and difficulties in the claim of TDS that the provisions stand made, since delegated by way of Rule (rule 37BA). Rule 37BA(3), which prescribes grant of credit for tax deducted at source and paid to the Central Government for the year for which the income is assessable, spreading it across different years on a proportionate basis, where so assessable, is no conformity with the basic postulate that TDS is toward charge of tax on income (section 4), and being in fact only a mode of recovery of tax. The matter stands explained at length by the Tribunal in *ITO vs. Shri Anupallavi Finance & Investment* [2011] 131 ITD 205 (Chennai). Referring to the relevant provisions, being sections 190, 191, 198 and 199 - which stands amended by Finance Act, 2008 w.e.f. 01.4.2008, so that it has now to be read along with rule (37BA), it explains the same to represent a justifiable, commonsense and purposive view, relying on the decision by the Hon'ble Apex Court in *CIT vs. J. H. Gotla* [1985] 156 ITR 323 (SC), wherein it stands held that a tax laws should be applied, as far as the circumstances may admit, in an equitable manner. This was of-course subject to the provisions of law, if any. The tribunal had, in fact, in many cases, so decided even *de hors* section 199. Similar view stands also expressed by the tribunal in *ITO vs. Amee Hosang Mistry* [2014] 29 ITR (Trib) 397 (Mum). The ld. AR, placing a compilation on record, however, sought to rely on certain case law, ostensibly taking a different view in the matter, so that the matter may perhaps have to

be referred to a larger Bench. He, however, was agreeable to the assessee being allowed credit for TDS for the corresponding year, i.e., A.Y. 2010-11.

The next issue, therefore, that arises is if this tribunal could given such a direction. This is as it may be argued that a direction pertaining to a different year could not be issued in an appeal for another year. The said direction, however, arises only in consequence to the resolution of the issue that arises for consideration and adjudication before the tribunal, i.e., the year/s for which the assessee is to be, in law and the facts and circumstances of the case, be allowed credit for TDS deducted and paid (to the credit of the Central Government). The entire tax stands, as claimed, since deducted and deposited to the Government. Accordingly, subject to the verification, the A.O. is directed to allow the credit for the TDS on the relevant income for A.Y. 2010-11, i.e., in terms of section 199 r/w s. 37BA(3). Such a course, in my view, would, besides being in conformity with the relevant provisions as well as the principles of tax deduction at source, is also admissible u/s. 237 of the Act. Credit for Rs.62,485/- (refer table at para 4), as it appears, stands already allowed (for A.Y. 2010-11), while that for TDS on Rs.6,61,800/- has not been pressed, which the assessee is at liberty to claim before the A.O. in-as-much as the same is admissible u/s. 237. I decide accordingly, and the assessee's ground is disposed of accordingly.

7. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on December 01, 2015

Sd/-
(Sanjay Arora)
लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 04.12.2015
व.नि.स./Roshani, Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**