

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री चंद्र पूजारी, लेखा सदस्य के समक्ष।  
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.1359/Mds/2016  
निर्धारण वर्ष /Assessment year : 2012-2013.

RECAP Associates,  
No.3A, III floor, 41/17.  
I Avenue, Indira Nagar,  
Adyar, Chennai 600 020.

**Vs.** The Assistant Commissioner  
of Income Tax,  
Non Corporate Circle 15(1)  
Chennai.

[PAN AAKFR 2965H]

**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Shri. T. Banusekar, C.A.  
: Shri. P. Suresh Rao, JCIT.

सुनवाई की तारीख/Date of Hearing

: 12-06-2017

घोषणा की तारीख /Date of Pronouncement

: 14-06-2017

**आदेश / ORDER**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER**

This appeal of the assessee is directed against the order of the Commissioner of Income-tax (Appeals)-15, Chennai dated 12.02.2016 and pertains to assessment year 2012-2013.

2. The first ground raised by the assessee is with regard to disallowance u/s. 40(a)(ia) of the Income Tax Act, 1961 (in short "the Act") in respect of project expenses. Ld. Assessing Officer in the assessment order held that assessee had deducted TDS only on ₹9,00,000/- paid and thus, the Ld. Assessing Officer disallowed a sum of ₹31,68,860/- and added to the total income u/s. 40(a)(ia) of the Act and Ld. Assessing Officer also noted that assessee had not deducted TDS on payments made to Fana Enterprises and N. Govind Rajan of ₹10,00,000/- and ₹50,000/- respectively. Accordingly, he added the same u/s. 40(a)(ia) of the Act. Aggrieved, assessee filed an appeal before the Ld. Commissioner of Income Tax (Appeals).

3. Ld. Commissioner of Income Tax (Appeals) placed reliance on the judgment of *Hon'ble Punjab and Haryana High Court in the case of P.M.S. Diesels vs. CIT (ITA No716 of 2009) (O & M) dated 29.04.2015* and dismissed the ground taken by the assessee. Aggrieved, assessee filed an appeal before the Tribunal.

4. Before us, Ld. Authorised Representative submitted that the said payments was made in Arunachal Pradesh, the receiptant of the said payment was exempted from tax u/s. 10(26) of the Act. Therefore no tax was required to be deducted on this payments. Even though the assessee placed necessary evidence before Ld. Commissioner of

Income Tax (Appeals) as an additional evidence, it was not considered by the Id. Commissioner of Income Tax (Appeals) and prayed that the issue may be remitted to the Id. Assessing Officer for fresh consideration.

**5.** On the other hand, Id. Departmental Representative relied on the orders of the lower authorities.

**6.** We have heard both the parties and perused the material on record. We accede to the request of the Id. Authorised Representative. Accordingly in the interest of justice, we remit the issue back to the file of the Id. Assessing Officer to examine the applicability of Sec. 10(26) of the Act in this case and decide accordingly. The ground of the assessee is allowed for statistical purpose.

**7.** Next ground raised by the assessee is with regard to disallowance of ₹10,50,000/- paid to consultancy charges u/s. 40(a)(ia) of the Act. This payment was disallowed on account of non deduction of TDS by invoking the provisions of Sec. 40(a)(ia) of the Act.

**8.** After hearing both the parties, we are of the opinion that this issue came for consideration before the Hon'ble Supreme Court in

Civil Appeal No.5512 of 2017 in *the case of M/s. Palam Gas Services vs. CIT, dated 03.05.2017* wherein it was held as under:-

“15. Ms. Dhugga invited our attention to a judgment of the Division Bench of Madras High Court in *Tube Investments of India Ltd. v. Assistant Commissioner of Income-Tax (TDS)*, [2010] 325 ITR 610 (Mad). The Division Bench referred to the statistics placed before it by the Department which disclosed that TDS collection had augmented the revenue. The gross collection of advance tax, surcharge, etc. was Rs. 2,75,857.70 crores in the financial year 2008-09 of which the TDS component alone constituted Rs.1,30,470.80 crores. The Division Bench observed that introduction of Section 40(a)(ia) had achieved the objective of augmenting the TDS to a substantial extent. The Division Bench also observed that when the provisions and procedures relating to TDS are scrupulously applied, it also ensured the identification of the payees thereby confirming the network of assesseees and that once the assesseees are identified it would enable the tax collection machinery to bring within its fold all such persons who are liable to come within the network of tax payers. These objects also indicate the legislative intent that the requirement of deducting tax at source is mandatory”.

Accordingly, this issue is decided against the assessee.

**9.** Next ground raised by the assessee is with regard to disallowance of business promotion expenses at ₹5,66,441/-.

**10.** Brief facts of the case are that Id. Assessing Officer in the assessment order held the assessee to produce bills and invoices for business promotion expenses. However, assessee has not produced bills and vouchers to the tune of ₹5,66,441/-. Thus, Id. Assessing Officer disallowed the same and added ₹5,66,441/- to the total income

of the assessee. Aggrieved, assessee filed an appeal before Id. Commissioner of Income Tax (Appeals).

**11.** Ld. Commissioner of Income Tax (Appeals) observed the Id. Assessing Officer had disallowed business promotion expenses of ₹5,66,441/- as the bills were not produced before Id. Assessing Officer. Since the assessee has not produced the bills, the Commissioner of Income Tax (Appeals) confirmed the action of the Id. Assessing Officer and dismissed the ground of the assessee.

**12.** We have heard both the parties and perused the material on record. This expenses are not properly vouched. In our opinion, when assessee claimed any expenditure, it is the duty of the assessee to place necessary bills and vouchers proving the expenditure. Since the assessee failed to establish incurring of expenditure, lower authorities are justified in disallowing the expenditure. The ground of the assessee is rejected.

**13.** The last ground raised by the assessee is with regard to disallowance of ₹10,00,000/- u/s. 68 of the Act.

**14.** Brief facts of the case are that the Id. Assessing Officer in the assessment proceedings directed the assessee to produce

confirmation from M/s.Backend Bangalore Pvt Ltd. However, assessee failed to produce the confirmation. Hence, Id. Assessing Officer added ₹10,00,000/- outstanding in the name of M/s.Backend Bangalore Pvt. Ltd to the total income of the assessee. Aggrieved, assessee preferred an appeal before Id. Commissioner of Income Tax (Appeals).

**15.** Before Id. Commissioner of Income Tax (Appeals), Id. Authorised Representative submitted that the sum of ₹10,00,000/- was a loan taken from M/s.Backend Bangalore Pvt. Ltd during the year ended 31.03.2012. The said amount was repaid by cheque in the subsequent year on 20.06.2012 as evidenced by the bank statement and the ledger account. Therefore the fact of repayment of ₹10,00,000/- to M/s.Backend Bangalore Pvt. Ltd in the subsequent year, by itself confirms the existence and genuineness of the outstanding liability of ₹10,00,000/- on account of the said creditor in the earlier year ended 31.03.2012. Id. Commissioner of Income Tax (Appeals) observed that Id. Assessing Officer has added sundry creditors of ₹10,00,000/- as the assessee did not produce confirmation. The assessee has submitted that it has repaid loan on 20.06.2012. However, since no confirmation was filed, Id.

Commissioner of Income Tax (Appeals) confirmed the addition of ₹10,00,000/-

**16.** We have heard both the parties and perused the material on record. In this case assessee placed PAN of the creditor. So, it is to appropriate to verify the identity of the parties and genuineness of the transactions alongwith capacity of the lender to advance the money to the assessee. Accordingly, the issue is remitted back to the file of the Id. Assessing Officer for consideration. Ld. Assessing Officer has to make necessary enquiry and decide thereupon. The ground of the assessee is partly allowed for statistical purpose.

**17.** In the result, appeal of the assessee is partly allowed for statistical purpose.

Order pronounced on Wednesday, the 14th day of June, 2017, at Chennai.

Sd/-

(एन.आर.एस. गणेशन)  
(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(चंद्र पूजारी)  
(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated:14.06.2017

KV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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