

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' 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.3461/Mds/2016

निर्धारण वर्ष / Assessment Year : 2012-13

M/s Korea Fuel Tech India Pvt. Ltd.,
Plot No.L11 & L12,
SIPCOT Industrial Park,
Mambakkam, Sriperumbudur,
Kancheepuram District-602 105.

v. The Assistant Commissioner of
Income Tax,
Corporate Circle – 4(2),
Chennai - 600 034.

PAN : AACCK 8613 J

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri M. Govindaraja, CA

प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख/Date of Hearing : 26.07.2017

घोषणा की तारीख/Date of Pronouncement : 10.08.2017

आदेश /O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) -8, Chennai, dated 25.10.2016 and pertains to assessment year 2012-13.

2. Shri M. Govindaraja, the Ld. representative for the assessee, submitted that even though the assessee has raised several grounds of appeal, what needs to be adjudicated is only two grounds, i.e. disallowance of ₹29,56,077/- towards royalty payment and ₹5,20,177/- towards training fee.

3. Shri M. Govindaraja, the Ld. representative for the assessee, submitted that the assessee has paid royalty to the extent of ₹29,56,077/- for the period from January to March, 2011, which falls in the assessment year 2011-12. Therefore, according to the Ld. representative, there cannot be any disallowance for the assessment year under consideration. The assessee has filed all the details before the Assessing Officer, including the reconciliation statement. However, according to the Ld. representative, both the authorities below disallowed the claim of the assessee on the ground that the assessee could not reconcile the payment of royalty for earlier assessment years. Ultimately, the disallowance was made under Section 69C of the Income-tax Act, 1961 (in short 'the Act').

4. Referring to Section 69C of the Act, the Ld. representative for the assessee submitted that addition under Section 69C of the

Act can be made only in the case where the assessee incurred the expenditure and could not explain the source for incurring such expenditure. In this case, according to the Ld. representative, the assessee deposited the sale proceeds in the bank account and the payments were made through banking channel, therefore, the Assessing Officer cannot say that the assessee could not explain the source for expenditure. Hence, the Assessing Officer could not say that the assessee could not explain the source for making expenditure, therefore, according to the Ld. representative, there cannot be any addition under Section 69C of the Act, hence, the CIT(Appeals) is not justified in confirming the addition made by the Assessing Officer.

5. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the royalty was paid at 4% for the financial years 2009-10 and 2010-11. For the period from July, 2010 to December, 2010, the royalty was paid to the extent of ₹64,76,115/-. According to the Ld. D.R., the taxes and royalty are said to be paid by the assessee from financial years 2009-10 to 2011-12 could not be reconciled. In the absence of any reconciliation with respect to payment of royalty and taxes thereon,

according to the Ld. D.R., the Assessing Officer found that an amount of ₹29,56,077/- was unexplained expenditure under Section 69C of the Act. Since the assessee could not explain the payments of royalty and taxes thereon for the financial year relevant to assessment year under consideration, according to the Ld. D.R., the CIT(Appeals) has rightly confirmed the order of the Assessing Officer.

6. We have considered the rival submissions on either side and perused the relevant material available on record. The addition is made under Section 69C of the Act. As rightly submitted by the Ld. representative for the assessee, the addition under Section 69C of the Act can be made only in case the assessee could not explain the source for meeting the expenditure said to be incurred. In this case, the assessee claims that the sale proceeds of the assessee were deposited in the bank account and from that account the expenditure was met. Moreover, the Assessing Officer claims that the assessee could not reconcile the payment of royalty and taxes thereon for earlier assessment year also. In such a situation, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer. Accordingly, the orders of

the authorities below are set aside and the addition made by the Assessing Officer to the extent of ₹29,56,077/- was remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh and thereafter decide in accordance with law, after giving a reasonable opportunity to the assessee.

7. The next ground of appeal is with regard to disallowance of training fee to the extent of ₹5,20,177/-.

8. Shri M. Govindaraja, the Ld. representative for the assessee, submitted that the assessee obtained service of trainers from M/s Korea Automotive Manufacture Education Centre Co. Ltd. during financial year 2010-11. Even though the training fee was accounted for the financial year 2010-11, the remittance was actually made during the financial year 2011-12. Therefore, according to the Ld. representative, the assessee claims the same while computing the total income. However, the Assessing Officer disallowed the claim of the assessee on the ground that the assessee could not produce the details of expenditure. According to the Ld. representative, the assessee has produced all the details, therefore, the addition made by the Assessing Officer under Section 69C of the Act is not sustained by law.

9. On the contrary, Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessee claims the payment of ₹5,20,177/- in foreign currency towards training fee. However, the assessee could not produce any details for the said expenditure. Therefore, according to the Ld. D.R., the Assessing Officer found that the source for expenditure was not explained satisfactorily and made addition under Section 69C of the Act.

10. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer claims that the details of source for expenditure were not furnished. However, the assessee submits that the same was furnished. In those circumstances, giving one more opportunity to the Assessing Officer to examine the material would not prejudice to the interests of Revenue. The very object of the Income-tax Act is to quantify the taxable income and levy tax thereon. Therefore, the Revenue would not have any objection in re-examining the matter once again. Accordingly, the orders of the both the authorities below are set aside and the disallowance of ₹5,20,177/- is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh on the basis of the material that

may be filed by the assessee and decide the issue in accordance with law, after giving a reasonable opportunity to the assessee.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on 10th August, 2017 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 10th August, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-8, Chennai
4. Principal CIT, Chennai-4, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.