

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL 'B' (SMC) BENCH : CHENNAI

श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।

[BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.1112/Mds/2017

निर्धारण वर्ष /Assessment year : 2013-2014.

The Income Tax Officer,
Corporate Ward 5(1)
Chennai 600 034.

Vs. M/s.Peirce Leslie Insurance
Surveyors & Loss Assessors Ltd,
No.37, P.V.Cherien Crescent,
Egmore, Chennai 600 008.

[PAN AACCP 9765E]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. B. Sagadevan, IRS, JCIT.

प्रत्यर्थी की ओर से /Respondent by

: Shri. G. Baskar, Advocate

सुनवाई की तारीख/Date of Hearing

: 14-09-2017

घोषणा की तारीख /Date of Pronouncement

: 18-09-2017

आदेश / ORDER

In this appeal filed by the Revenue, which is directed against an order dated 31.01.2017 of Id. Commissioner of Income Tax (Appeals)-3, Chennai, it has raised altogether four grounds of which grounds 1 & 4 are general in nature needing no specific adjudication.

2. Ground No.2 is reproduced hereunder:-

"2.1 The Id CIT(A) erred in deleting the Disallowance of corporate and secretarial charges to the tune of Rs.33, 70,800 j - paid by the assessee company to its

Head Office, holding that this expenditure squarely falls u/s 37, being incurred for the purpose of business and revenue in nature.

2.2 The Id CIT(A) ought, to have noted that this expenditure is a one-time expenditure and not a recurring one and is not a revenue expenditure u/s.37 of the Act.

2.3 The Id CIT(A) failed to note that payment is in the nature of administrative services rendered by M/s Pierce Leslie (India) Limited (assessee's Head office) arid for purchase of payroll software and hence, this cannot be allowed as a revenue expenditure”.

3. Facts apropos are that assessee had filed its return for the impugned assessment year on 26.09.2013 declaring “Nil” income. Business of the assessee comprised of providing marine survey and insurance auxillary services for insurance companies in India and abroad. It was doing surveys for marine, motor, miscellaneous, fire & engineering departments as per IRDAI licence. During the course of assessment proceedings, it was noted by the Id. Assessing Officer that there was an debit of ₹59,93,280/- in its profit and loss account as corporate and secretarial charges. When queried on this, reply of the assessee was that the above sum comprised of ₹26,22,480/- being rent paid for its Kochi office and ₹33,70,800/- a one time fee paid to Peirce Leslie India Ltd, its holding company for providing strategic business development advices and development of pay roll & e-TDS software. Contention of the assessee was that because of the services provided by M/s. Peirce Leslie India Ltd, its income had grown by 28%

in financial year 2013-14 and 17% in financial year 2014-15, apart from 65% increase in foreign currency earnings in financial year 2013-14 and 35% increase in foreign currency earnings in financial year 2014-15. Assessee also submitted a list of new clients which were added in financial years 2013-14 and 2014-15, which according to it was due to the services of its M/s. Peirce Leslie India Ltd.

4. However, Id. Assessing Officer was not impressed by the above arguments. According to him, the explanation given by the assessee did not justify the payments made to M/s. Peirce Leslie India Ltd. He made a disallowance of ₹33,70,800/-.

5. In its appeal before the Id. Commissioner of Income Tax (Appeals) argument of the assessee was that tax was deducted at source as required u/s. 194J of the Income Tax Act, 1961 (in short "the Act") while effecting the above payments to the holding company. As per the assessee, it did not have secretarial staff nor qualified personnel for business development and therefore had used the services of its holding company. According to it, there was no justification for making a disallowance of such claim. Id. Commissioner of Income Tax (Appeals) was appreciative of the above contentions. According to him, disallowance was made by the Id. Assessing Officer in a whimsical manner. As per Id. Commissioner of Income Tax (Appeals) payments were made through account payee

cheques after deducting TDS and the recipient had admitted the receipts. Further, according to Id. Commissioner of Income Tax (Appeals), the nature of services rendered by the holding company and the benefits which accrued to assessee was not doubted by the Id. Assessing Officer. According to him, it was expenditure which was wholly and exclusively incurred for the business of the assessee. He deleted the disallowance made by the Id. Assessing Officer

6. Now before me, Id. Departmental Representative strongly assailing the order of the Id. Commissioner of Income Tax (Appeals) submitted that business purpose of the payment was never shown by the assessee. According to him, no agreement which could show the type of services rendered by the holding company was placed on record by the assessee. Thus, according to him, the business purpose of the payment was not demonstrated.

7. Per contra, Id. Authorised Representative strongly supporting the orders of the authorities below submitted that the payment were effected to the principal company based on an invoice dated 31st December, 2012 raised by them. According to him, once the payments were found to be genuine it could not have disallowed.

8. We have perused the orders and heard the rival contentions. To a question from the Bench with regard to annexure I & II

mentioned in the invoice placed before me, Id. Counsel submitted that assessee was unable to trace this record Id. Authorised Representative also admitted that there was no agreement between assessee and its holding company with regard to the services rendered by the latter to the former. Contention of the assessee is that payment of ₹33,70,800/- was made to its holding company M/s. Peirce Leslie India Ltd for strategic business development advices and development of pay roll & E-TDS software. Narration in the invoice dated 31.12.2012 raised by M/s. Peirce Leslie India Ltd placed before me, is reproduced hereunder:-

*M/s. PEIRCE LESLIE SURVEYORS & ASSESSORS Ltd.
Willingdon Island,
Kochi 682 003.*

<i>Sl.No.</i>	<i>Particulars</i>	<i>Amount</i> ₹
<i>1</i>	<i>Being charges for providing strategic business development advices and development of payroll & E-TDS softwares – exclusively to Peirce Leslie Surveyors & * Assessors Ltd (as per annexure I & II attached)</i>	<i>30,00,000/-</i>
	<i>Add: Service Tax @ 12.36%</i>	<i>3,70,800</i> -----
	<i>Total</i>	<i>33,70,800</i> -----

(Rupees Thirty Three Lakhs Seventy Thousand Eight Hundred Only)

It is an admitted position that there was no agreement whatsoever entered between the assessee and the M/s. Peirce Leslie India Ltd, which could have thrown light on the nature of the services expected

from Peirce Leslie India Ltd. Invoice mentions two annexures, but these annexures were not produced before me or lower authorities. For the making a payment of ₹30,00,000/-, assessee was unable to show what were the services rendered by M/s. Peirce Leslie India Ltd. Assessee has stated that there was increase in its income and foreign exchange earnings because of the services rendered by M/s. Peirce Leslie India Ltd. It also say that new clients were added due to their services. However, there is nothing on record to show the services rendered by M/s. Peirce Leslie India Ltd had any nexus with the increase in business income and increase in number of clients. No doubt as per Sec. 37(1) of the Act, expenditure laid out or expended wholly and exclusively for the purposes of the business is allowable for computing the income under the head 'Profits and gains of business. But assessee has not discharged the onus for showing what the services rendered by it, helped its business in a rational manner. Assessee in my opinion was unable to show how the services rendered by M/s. Peirce Leslie India Ltd benefited it. In such circumstances, I am of the opinion that Id. Assessing Officer was justified in disallowing the claim. I set aside the order of the Id. Commissioner of Income Tax (Appeals) and reinstate the disallowance made by the Id. Assessing Officer. Ground 2 of the Revenue stands allowed.

9. Vide ground No.3, grievance of the Revenue is on the directions of the Id. Commissioner of Income Tax (Appeals) to allow employees contribution to ESI /PF remitted late. It is not disputed by the Revenue that amount of ₹6,317/- disallowed by the Id. Assessing Officer was remitted by the assessee before the due date of filing the return, though after the dates prescribed under the respective enactments of PF/ESI. In my opinion, Id. Commissioner of Income Tax (Appeals) was justified in following the judgment of Hon'ble Apex Court in the case of CIT vs. Alom Extrusions Ltd, 319 ITR 306 and allowing the claim of the assessee. I do not find any reason to interfere with the order of the Id. Commissioner of Income Tax (Appeals). Ground No.3 of the Revenue stands dismissed.

10. In the result, appeal of the assessee is partly allowed.

Order pronounced on Monday, the 18th day of September, 2017, at Chennai.

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai

दिनांक/Dated: 18th September, 2017

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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 |