

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' 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.1821/Mds/2017

निर्धारण वर्ष / Assessment Year : 2014-15

M/s Damro Exports Pvt. Ltd.,
C/o CNGSN & Associates LLP,
Swathi Court, Flat C & D,
No.22, Vijayaraghava Road,
T. Nagar, Chennai - 600 017.

v. The Deputy Commissioner of
Income Tax,
International Taxation – 1(1),
Chennai - 600 034.

PAN : AABCD 8514 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. B. Ramakrishnan, FCA

प्रत्यर्थी की ओर से/Respondent by : Smt. T.H. Vijayalakshmi, CIT

सुनवाई की तारीख/Date of Hearing : 19.09.2017

घोषणा की तारीख/Date of Pronouncement : 13.10.2017

आदेश /O R D E R

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

This appeal of the assessee is directed against the assessment order dated 29.06.2017, consequent to the direction of Dispute Resolution Panel under Section 144C(5) of the Income-tax Act, 1961 (in short 'the Act').

2. Sh. B. Ramakrishnan, the Ld. representative for the assessee, submitted that during the year under consideration, the assessee has made provision to the extent of ₹67,19,149/- in respect of incentive to dealers/franchisees. The assessee explained before the Assessing Officer and the TPO that these expenditures are ascertainable liability for the year under consideration for promotion of business. However, the actual amount was spent in the following year. According to the Ld. representative, the expenditure was incurred for promoting the business. Since the liability was incurred during the year under consideration, according to the Ld. representative, even though the payments were made in the subsequent year, the provision made by the assessee has to be allowed during the year under consideration.

3. Referring to the direction of the DRP, the Ld. representative for the assessee submitted that the DRP has committed an error in observing that the assessee is agent of the franchisor. Referring to the Franchise Agreement, more particularly at clause 2.2 and 14.2, the Ld. representative submitted that the assessee is doing business as principal to principal and not as principal to agent,

therefore, the incentive given to the dealers for promoting the business is not liable for TDS.

4. The Ld. representative for the assessee further submitted that the assessee filed some additional material before the DRP to substantiate the claim. However, the DRP refused to admit the additional material filed before them. According to the Ld. representative, this Tribunal being the final fact finding authority, the issue has to be settled whether the assessee is acting as principal to principal and principal to agent. It is also to be decided whether the liability incurred by the assessee during the year under consideration is expenditure for carrying out business or not.

5. On the contrary, Smt. T.H. Vijayalakshmi, the Ld. Departmental Representative, submitted that the assessee is acting as agent of franchisor. Therefore, what was paid by the assessee in the guise of foreign tour is nothing but commission, hence, according to the Ld. D.R., the DRP has rightly found that the assessee is liable to make TDS. Furthermore, the details of so-called payment made are not available either before the Assessing Officer or before the Dispute Resolution Panel. Therefore,

according to the Ld. D.R., the DRP has rightly refused to admit the additional evidence, hence, no interference is called for.

6. We have considered the rival submissions on either side and perused the relevant material available on record. A perusal of agreement, more particularly clause 2.2 and 14.2, clearly shows that the assessee is not an agent of Franchisees. For the purpose of convenience, we are reproducing both the clause 2.2 and 14.2, which read as follows:-

“2.2 The Franchisee may describe himself as the Franchisor's 'authorised Franchisee' for the Products, but must not hold himself out as the Franchisor's agent for sales of the Products or as being entitled to bind the Franchisor in any way.”

“14.2 In the event, the Products are returned by the Franchisee on account of absence of demand for them to the Franchisor within 3 (three) months from the date they were delivered to the Franchisee, the Franchisor shall repay the price where this has been paid by the Franchisee. Provided that the Franchisor will not be required to accept the Products returned by the Franchisee if the same are found to be in a damaged condition, which in the Franchisor's sole discretion is due to mishandling by the Franchisee.”

7. In view of the above, it is obvious that the products/goods were sold by the assessee in its individual capacity and not as agent of Franchisor. Therefore, the assessee is not an agent of

Franchisor. Hence, the observation made by the DRP that the assessee is acting as agent of Franchisor is not correct.

8. Now coming to the expenditure incurred by the assessee on foreign tour, the details of such expenditure were not available either before the TPO or before the DRP. The assessee admittedly filed additional materials, which were not admitted by the DRP. Therefore, this Tribunal is of the considered opinion that the facts need to be first ascertained whether any expenditure was incurred or not. It also needs to be examined whether any liability was incurred during the year under consideration.

9. This Tribunal being a final fact finding authority, even though there was some delay in filing the material before the lower authority, the same cannot be rejected so lightly since the tax has to be levied only on the income earned by the assessee. In other words, the liability to pay tax by the assessee would be only on the basis of law. A mere delay in filing some documents before lower authorities cannot be a reason to tax the assessee if it is not otherwise taxable as per law. Therefore, this Tribunal is of the considered opinion that the additional material filed by the assessee needs to be examined. Accordingly, the orders of the lower

authorities are set aside and the issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall refer the matter once again to the TPO for reconsideration on the basis of additional material filed by the assessee. The TPO shall examine the matter on the basis of additional material filed by the assessee and decide the issue afresh in accordance with law, after giving a reasonable opportunity to the assessee.

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

Order pronounced on 13th October, 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 13th October, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. CIT(TP-2), Bangalore
4. Principal CIT-1, Bangalore.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.