

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

श्री अब्राहम पी. जॉर्ज, लेखासदस्य एवं श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष
BEFORE SHRI ABRAHAM P.GEORGE, ACCOUNTANT MEMBER AND
SHRI GEORGE MATHAN, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos.3194, 3197, 3193 & 3198/Mds/2016
निर्धारण वर्ष /Assessment years : 2007-08, 2008-09 & 2010-2011.

The Assistant Commissioner
of Income Tax,
Central Circle 2(2)
Chennai.

Vs.

M/s. Mother Mira Industries Ltd,
Rayala Towers, 2nd floor,
158, Anna Salai,
Chennai 600 002.

(अपीलार्थी/Appellant)

[PAN AACCM 2392L]

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri. M. Palanichamy, JCIT.

प्रत्यर्थी की ओर से /Respondent by

: Shri. R. Vijayaraghavan, Adv

सुनवाई की तारीख/Date of Hearing

: 12-10-2017

घोषणा की तारीख /Date of Pronouncement

: 13-10-2017

आदेश / ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

Appeals in ITA 3194/2016, 3197/2016 and 3193/2016 are
against an order dated 28.08.2016 of Id. Commissioner of Income Tax
(Appeals)-18, Chennai for assessment years 2007-08, 2008-09 and
2010-2011. Appeal in ITA No.3198/2016 is against an order dated

even of very same Id. Commissioner of Income Tax (Appeals) for assessment year 2010-2011, quashing a rectification order passed by the Id. Assessing Officer u/s. 154 of the Income Tax Act, 1961 (in short "the Act").

2. Appeals in ITA 3194/2016, 3197/2016 and 3193/2016 are taken up first for disposal. Grounds taken by the Revenue for assessment year 2007-08 in ITA 3194/2016 are reproduced hereunder:-

"1. The order of the learned Commissioner of Income Tax (Appeals) is erroneous on facts of the case and in law.

2. The learned CIT (A) erred in holding that the action of the AO in re-opening the assessment for the A .. Y 2007-08 is legally not correct..

2 .. 1 The Ld. CIT(A) is not justified in holding that the action of the AO in re-opening the assessment for the A .. Y 2007-08 is legally not correct.

2.2. The Ld. CIT(A) erred in holding that the A.O has not proved that there was a failure on the part of the assessee to disclose truly and fully all material facts to enable him to complete the assessment ..

2 3. The learned CIT (A) ought to have appreciated that such a precondition for invoking the proviso to Sec.. 147 and establishing that there was a failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment is required to be satisfied by the AO, only when an assessment is reopened beyond 4 years from the end of the relevant Assessment Year.

2..4 The learned CIT (A) ought to have considered that the assessment for the AY 2007-08 was reopened by the A.O by issuing notice u/s 148 of the IT Act on 23.03.2012, which is well within the period of 4 years, from the end of

the AY 2007-08 .

2.5. The Id. Cit(A) ought to have appreciated that the re-opening of assessment made by the AO u/s .. 147 of the Act for the A Y 200708 is justified on the facts and reasons recorded by him ..

2.6 The Ld. CIT (A) ought to have appreciated that the reopening of the assessment was not made on a change of opinion by the Assessing Officer ..

2.7 The Ld. CIT (A) ought to have appreciated that primary facts necessary for assessment were not fully disclosed by the assessee as regards the non- deduction of TDS on lease payments which was one of the reasons for reopening of the assessment ..

3. The Ld CIT(A) erred in deleting the disallowance of Rs .. 2,98,53,716/- made by the AO u/s..40(a)(ia) in the Assessment.

3.1 The Id. CIT(A) is not justified in deleting the disallowance of Rs.2,98,53,716/- made by the A.O on the ground of Non-deduction of tax by the assessee on the lease rent paid u/s.40(a)(ia)of the Act.

3 2. The Id .. CIT(A), on the facts and circumstances of the case, ought to have confirmed the disallowance of ₹2,98,53,716/- made by the AO u/s..40(a)(ia) in the assessment .

4. The Id . CIT(A) erred in deleting the addition of RS..47,764/- made on account of the disallowance of expenditure under the head running and operation of vehicles in the assessment

4.1. For the reasons stated by the A .. O in para 6 of the Asst .. order, the Id CIT(A) ought to have confirmed the said addition of RS..47,764/- made in the assessment

5. For this grounds and for any other grounds including amendment that may be raised during the course of the appeal proceedings, the order of learned CIT (Appeals) may be set aside and that of the Assessing Officer be restored

3. Grounds 1 & 5 are general in nature needing no specific adjudication.

4. In support of its ground 2, Id. Counsel for the Revenue submitted that Id. Commissioner of Income Tax (Appeals) fell in error in holding the reopening as invalid. As per Id. Departmental Representative reopening was done within a period of four years from the end of the impugned assessment year and the reasons recorded by the Id. Assessing Officer justified such reopening.

5. Id. Authorised Representative fairly admitted that reopening done for assessment years 2007-08 and 2008-09 were valid and conceded the ground by the Revenue. Accordingly, ground No.2 of the Revenue stands allowed.

6. Vide its ground No.3, grievance raised by the Revenue is that the Id. Commissioner of Income Tax (Appeals) deleted a disallowance of Rs.2,98,53,716/- made by the Id. Assessing Officer relying on Section 40(a)(ia) of the Income Tax Act, 1961 (in short "the Act").

7. Id. Counsel for the Revenue submitted that assessee had paid lease rental to M/s.Mohan Breweries and Distilleries Limited, (in

short "the MBDL") on which no tax was deducted at source. Id. Departmental Representative submitted that Id. Commissioner of Income Tax (Appeals) had allowed the claim on assessee's appeal, relying on the Special Bench decision in the case of *Merilyn Shipping & Transports vs. ACIT, (2012) 136 ITD 23*. As per the Id. Departmental Representative, Id. Commissioner of Income Tax (Appeals) held that disallowance u/s. 40(a)(ia) of the Act could be done only on amounts shown as payable and not as paid. As per the Id. Departmental Representative by virtue of judgment of Hon'ble Apex Court in the case of *Palam Gas Service vs CIT, 394 ITR 300* the view taken by the Id. Commissioner of Income Tax (Appeals) was not correct. According to him Sec.40(a)(ia) of the Act applied both to payable as well as paid amounts if tax was not deducted at source.

8. Per contra, Id. Authorised Representative submitted that Id. Commissioner of Income Tax (Appeals) had decided the issue relying on the decision of the Tribunal in the case of *Eden Exports Co. vs. ACIT (ITA No.2121/Mds/2015, dated 30.12.2015)* which had followed the decision of Special Bench of the Tribunal in the case of *Merilyn Shipping & Transports (supra)*. According to him, assessee had raised one other ground before the Id. Commissioner of Income Tax (Appeals) that M/s. MBDL had taken into account the lease rental

paid by the assessee to them while computing their income for the impugned assessment year and had also filed a return of income after paying due taxes. According to him, by virtue of judgment of Hon'ble Apex Court in the case *Hindustan Coco Cola Beverage (P) Ltd vs. CIT, 293 ITR 226*, once the payee had shown receipts as a part of its income and paid taxes, assessee could not be considered as one in default. Ld. Counsel also placed reliance on a Co-ordinate Bench decision in assessee's own case for assessment year 2009-2010 in ITA No.2135/Mds/2013, dated 28.10.2016. According to him, very same issue regarding disallowance u/s. 40(a)(ia) of the Act on payments made to M/s. MBDL, had come up before the Co-ordinate Bench. As per the Id. Authorised Representative, the Co-ordinate Bench had, after considering the judgment of Hon'ble Delhi High Court in the case of *CIT vs. Ansal Land Mark Township (P) Ltd (2015) 377 ITR 635* remitted the matter back to the Id. Assessing Officer for finding out whether the lease rentals were considered by M/s. MBDL, while computing their income for the impugned assessment year and whether taxes were actually paid by the concerned party. According to him, if assessee was able to show that M/s. MBDL had paid taxes on lease rentals and taken it into account for computing their income, then disallowance u/s. 40(a)(ia) of the Act could not be made in the hands of the assessee.

9. We have considered the rival contentions and perused the orders of the authorities below. Ld. Commissioner of Income Tax (Appeals) had deleted the disallowance made by the Id. Assessing Officer u/s. 40(a)(ia) of the Act for lease rentals paid by the assessee to M/s. MBDL on a finding that they were paid amount and not payable amount. By virtue of judgment of Hon'ble Apex Court in the case of *Palam Gas Service (supra)* Section 40(a)(ia) of the Act will be attracted whether the amounts are paid or shown as payable. Other decisions to the contrary are therefore no more good law. Nevertheless, Co-ordinate in assessee's own case had held that if M/s. MBDL had considered the lease rentals while computing their income and had paid tax thereon, then assessee could not be burdened with the rigours of Section 40(a)(ia) of the Act. Observation of the Tribunal as appearing in paragraphs 3 & 4 in ITA No.2135/Mds/2013, dated 28.10.2016 are reproduced hereunder:

"3. Sh. R. Vijayaraghavan, the Ld. counsel for the assessee, submitted that the assessee has paid a sum of `3,40,68,670/- towards lease rent to M/s Mohan Breweries and Distilleries Limited. In fact, the assessee took vehicles on lease and paid the lease rental. However, no tax was deducted. Referring to the certificate issued by M/s Mohan Breweries and Distilleries Limited on 03.02.2015, the Ld. counsel submitted that M/s Mohan Breweries and Distilleries Limited has accounted the lease rental to the extent of `2,40,67,200/-, therefore, in respect of lease rental accounted by M/s Mohan Breweries and Distilleries Limited cannot be assessed in the hands of the assessee. The Ld. counsel placed his reliance on the judgement of Delhi High Court in CIT v. Ansal Land Mark Township (P) Ltd. (2015) 93 CCH 214 and submitted that second proviso to Section 40(a)(ia) of the Act was retrospective

in operation, therefore, when the recipient has paid the taxes, there cannot be any disallowance in the hands of the assessee.

4. We have heard ShriDurai Pandian, the Ld. Departmental Representative, also. Admittedly, the assessee has paid a sum of `3,01,08,357/- towards lease rental to M/s Mohan Breweries and Distilleries Limited. Admittedly, no tax was deducted. Now the assessee filed a copy of certificate said to be issued by M/s Mohan Breweries and Distilleries Limited on the ground that they have accounted the lease rental to the extent of `2,40,67,200/- in their accounts for the purpose of computation of tax liability. In view of the judgement of Delhi High Court in Ansal Land Mark Township (P) Ltd. (supra), this Tribunal is of the considered opinion that when the recipient has paid the taxes on the amount received from the assessee, there may not be any disallowance in the hands of the assessee. However, when the assessee claims that a sum of `3,01,08,357/- was paid towards lease rental, what was certified by M/s Mohan Breweries and Distilleries Limited is only to the extent of `2,40,67,200/-. Therefore, it has to be examined what happened to the balance amount. Moreover, it needs to be verified whether tax was actually paid by M/s Mohan Breweries and Distilleries Limited as claimed by them. Since both the authorities below have not examined this issue, this Tribunal is of the considered opinion that the matter needs to be reconsidered. Accordingly, the orders of both the authorities below are set aside and the disallowance of `3,01,08,357/- is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter and find out whether any tax was paid by M/s Mohan Breweries and Distilleries Limited in respect of the amount received from the assessee towards lease rental and thereafter decide the issue in accordance with law, after giving a reasonable opportunity to the assessee”.

Accordingly, for the impugned assessment year also, we remit the issue back to the file of the Id. Assessing Officer for examining whether the lease rentals were taken into account by M/s. MBDL for computing their income and whether due taxes were paid. Thereafter Id.

Assessing Officer has to decide the issue in accordance with law. Ground 3 of the Revenue is allowed for statistical purpose.

10. Vide its ground 4, grievance of the Revenue is that Id. Commissioner of Income Tax (Appeals) deleted an addition of ₹47,764/- made by the Id. Assessing Officer on expenditure claimed under the head "Running and Operation of Vehicles".

11. What we find is that this ground is ill-conceived since Id. Commissioner of Income Tax (Appeals) had at para 7.2 order dismissed the relevant ground raised by the assessee. Ground No.4 of the Revenue therefore stands dismissed.

12. Now, we take up appeal of the Revenue for assessment year 2008-09 in ITA No.3197/Mds/2016.

13. Grounds 1 & 5 are general in nature needing no specific adjudication.

14. Ground number 2 raised by the Revenue is similar to its ground No.2 for assessment year 2007-2008 in ITA No.3194/Mds/2016. We had already held at para 5 above that reopening done was valid, since Id. Authorised Representative of the

assessee conceded the related ground raised by the Revenue. Accordingly, ground No.2 of the Revenue stands allowed.

15. Vide its ground 3, grievance of the Revenue is that Id. Commissioner of Income Tax (Appeals) deleted an addition of ₹.18,86,634/- made by the Id. Assessing Officer.

16. What we find is that Id. Commissioner of Income Tax (Appeals) had dismissed the ground raised by the assessee assailing the disallowance under the head "Running and Operation of Vehicles". This is specifically mentioned by Id. Commissioner of Income Tax (Appeals) at para 7.2 of his order. Accordingly, ground No.3 of the Revenue seems to be ill-conceived. Said ground is dismissed.

17. Vide its ground No.4, grievance raised by the Revenue is on the deletion of an addition of ₹12,92,020/- made by the Id. Assessing Officer, for excess depreciation on commercial vehicles.

18. What we find from the order of the Id. Commissioner of Income Tax (Appeals) is that Id. Commissioner of Income Tax (Appeals) had not deleted the disallowance made for excess depreciation on commercial vehicles. At para 7.2 of its order, Id.

Commissioner of Income Tax (Appeals) had dismissed all the grounds on merits, raised by the assessee having held that reassessments was invalid. In our opinion, Id. Commissioner of Income Tax (Appeals) having not deleted the disallowance of excess depreciation, the ground in this regard raised by the Revenue is ill-conceived. Such ground does not arise from the order in appeal. Ground No. 4 of the Revenue is dismissed.

19. Now, we take up appeal of the Revenue for assessment year 2010-2011 in ITA No.3193/Mds/2016.

20. Only effective ground raised by the Revenue in this appeal is ground 2 and it assails the deletion of a disallowance made by the Id. Assessing Officer u/s. 40(a)(ia) of the Act.

21. Fact situation with regard to the above disallowance is very similar to the disallowance made for assessment years 2007-08 under the very same Section. Disallowance was on lease rentals paid by the assessee to M/s. MBDL. We have already held at para 9 above, that the issue requires a fresh look by the Id. Assessing Officer, for verifying whether payee had accounted for the lease rental and paid taxes. Similar directions are given here also. Ground number 2 is allowed for statistical purpose.

22. Now, we take up the appeal of the Revenue in ITA No.3198/Mds/2016, for assessment year 2010-2011.

23. In this appeal, the Revenue is aggrieved on Id. Commissioner of Income Tax (Appeals) holding an order passed by Id. Assessing Officer u/s. 154 of the Act as not valid.

24. Ld. Assessing Officer had invoked Section 154 of the Act for correcting the WDV adopted for the impugned assessment year, while working out the depreciation. As per the Id. Assessing Officer reworking of the depreciation on commercial vehicles for assessment years 2008-09 and 2009-2010 rendered the WDV different from what was considered in the assessment.

25. Ld. Commissioner of Income Tax (Appeals) on assessee's appeal held that disallowance made by the Id. Assessing Officer u/s. 154 of the Act was a highly debatable one and quashed the rectification order.

26. We are of the considered opinion that this issue requires a fresh look by the Id. Assessing Officer, since he has to consider the effect of Appellate decisions if any, for assessment years 2008-09 and 2009-2010 with respect to assessee's claim of depreciation on commercial vehicles. Since we have already remitted the issue

regarding disallowance under Sec. 40(a)(ia) of the Act for the impugned assessment year back to the file of the Id. Assessing Officer, we are of the opinion that the issue regarding opening WDV on commercial vehicles can also be verified afresh alongwith that. Accordingly, we remit the issue back to the file of the Id. Assessing Officer for consideration afresh in accordance with law.

27. To summarize the results, the appeals of the Revenue in ITA Nos.3194/2016 and 3197/2016 for assessment years 2007-08 and 2008-09 are partly allowed for statistical purposes. The appeals of the Revenue in ITA Nos. 3193/2016 and 3198/2016 for assessment year 2010-2011 are allowed for statistical purposes.

Order pronounced on Friday, the 13th day of October, 2017, at Chennai.

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai

दिनांक/Dated:13th October, 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 |

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/**ACCOUNTANT MEMBER**