

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2811/Mds/2014

निर्धारण वर्ष / Assessment Year : 2005-06

The Deputy Commissioner of
Income Tax,
Circle I, D.P. Thottam, Muthialpet,
Puducherry – 605 003.

v. M/s Cooper Bussman India
Pvt. Ltd.,
No.34, EVR Street, Sedarapet,
Pondicherry – 605 001.

(अपीलार्थी/Appellant)

PAN : AABCS 0431 R

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by :

Ms. S. Vijayaprabha, JCIT

प्रत्यर्थी की ओर से/Respondent by :

Shri Percy Pardiwalla, Advocate

Shri Vishal Kalra, Advocate

सुनवाई की तारीख/Date of Hearing : 02.11.2017

घोषणा की तारीख/Date of Pronouncement : 16.11.2017

आदेश / O R D E R

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

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals) –VI, Chennai, dated 30.07.2014 and pertains to assessment year 2005-06.

2. There was a delay of 25 days in filing this appeal by the Revenue. The Revenue has filed a petition for condonation of

delay. We have heard the Ld. Departmental Representative and the Ld. counsel for the assessee. We find that there was sufficient cause for not filing the appeal before the stipulated time. Therefore, we condone the delay and admit the appeal.

3. The only issue arises for consideration is disallowance made by the Assessing Officer under Section 40(a)(ia) of the Income-tax Act, 1961 (in short 'the Act').

4. Ms. S. Vijayaprabha, the Ld. Departmental Representative, submitted that the CIT(Appeals) allowed the claim of the assessee on the ground that disallowance under Section 40(a)(ia) of the Act can be made only in respect of the amounts which remain payable. Placing her reliance on the order of this Tribunal in ITO v. Shri D. Umapathy in I.T.A. No.2435/Mds/2014, the Ld. D.R. submitted that this Tribunal after referring to the judgment of Gujarat High Court in CIT v. Sikandarkhan N. Tunvar and Kerala High Court in Thomas George Muthoot v. CIT in ITA No.278 of 2014 dated 03.07.2015, found that the entire amount paid or payable after crediting to books of account needs to be disallowed. The Ld. D.R. also pointed out that the Supreme Court has recently in M/s Palam Gas Service v. CIT in Civil Appeal No.5512 of 2017 dated 3rd May, 2017 found that

the disallowance cannot be restricted to the amounts payable alone. In view of the above, the CIT(Appeals) is not justified in allowing the claim of the assessee.

5. We heard Shri Percy Pardiwalla, the Ld.counsel for the assessee also. As rightly submitted by the Ld. Departmental Representative, the Apex Court in M/s Palam Gas Service (supra) found that disallowance under Section 40(a)(ia) of the Act has to be made not only on the amounts payable after giving credit into books of account but also the amounts paid to the recipient. Therefore, the CIT(Appeals) is not justified in allowing the claim of the assessee. Accordingly, the order of the lower authority is set aside and that of the Assessing Officer is restored.

6. In the result, the appeal filed by the Revenue is allowed.

Order pronounced on 16th November, 2017 at Chennai.

sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 16th November, 2017.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-VI, Chennai-34
4. आयकर आयुक्त / CIT, Pondicherry
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.