

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND
SHRI. T. S. KAPOOR, ACCOUNTANT MEMBER**

I.T.A .No.-1935/Del/2017 (A.Y 2011-12)

Minda Valeo Security Systems (P) Ltd. C/o. M/s. RRA Tax India, D-28, South Extension Part-1 New Delhi AAECM0061R (APPELLANT)	vs	DCIT Circle-16(2) New Delhi (RESPONDENT)
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Appellant by	Sh. Dr. Rakesh Gupta, Adv & Sh. Deepash Garg, Adv
Respondent by	Ms. Banita Devi Naorey, SR. DR

Date of Hearing	18.12.2017
Date of Pronouncement	21.12.2017

ORDER

PER T. S. KAPOOR, AM

This appeal has been filed by the assessee against the Ld.CIT (A) dated 27/01/2017 for Assessment Year 2011-12.

2. The grounds of appeal taken by the assessee are reproduced in below:-

1. *“That having regard to the fact and circumstances of the case Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making a disallowance of Rs.40,66,781/- u/s 40(a)(ia) allegedly on account of non-deduction of TDS on royalty payment.*

2. *That in any case and in any view of the matter, the action of Ld. CIT(A) in the confirming the action of Ld. AO for making disallowance of Rs.40,66,781/- u/s 40(a)(ia) is bad in law and against the facts and circumstances of the case.*
3. *That having regard to the fact and circumstances of the case Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in making disallowance of Rs.76,10,530/- u/s 40(a)(ia) allegedly on account of non-deduction of TDS on management fee.*
4. *That in any case and in any view of the matter, the action of Ld. CIT(A) in the confirming the action of Ld. AO for making disallowance of Rs.76,10,530/- u/s 40(a)(ia) is bad in law and against the facts and circumstances of the case.*
5. *That having regard to the fact and circumstances of the case Ld. CIT(A) has erred in law and on facts in not deleting the double disallowance of Rs.3,15,593/- on account of profit on sale of fixed assets, more so when the assessee has paid taxes on such amount and therefore the said amount should have been reduced from net profit.*
6. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not reversing the action of Ld. AO in charging interest u/s 234A, 234B, 234C and 234D of Income Tax Act, 1961.*
7. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

3. At the outset the Ld. AR submitted that Ground NO. 1 to 4 relates to the disallowances u/s 40 a (ia) of the Act which the Assessing Officer had made on account of non deduction of tax on royalty payment and on management fee. The Ld. AR submitted that the Royalty & Management fee was payable to persons situated outside the country. The assessee had made provision for payments but the payments were not remitted abroad and, therefore, the assessee was not liable to deduct tax thereon because as per the Tax treaty with France the tax was to be deducted only at the time of remittance. It was submitted that detailed submissions were made to the Ld.CIT(A) regarding this and in this respect our attention was invited to paper book Page No. 180 to 189 where a copy of submissions made to Ld.CIT(A) was placed. Our specific attention was invited to paper book Page No. 181 where the specific arguments were made and reliance was placed on a number of case laws. It was submitted that the Ld.CIT(A) has through noted that the payments were not made during the year but he has held that the amounts were expended during the year and, therefore, were liable to tax deduction at source.

4. Regarding Ground NO.5, the Ld. AR submitted that the assessee had sold some fixed assets and had credited the profit on sale of fixed assets to profit and loss account which otherwise should have been reduced from the WDV of fixed Assets. It was submitted that the Ld.CIT (A) has dismissed this ground of appeal by holding that no such disallowance was made by the Assessing Officer. It was submitted that by inadvertent mistake assessee did not reduce such profits from taxable income in the computation of income which the assessee was entitled to. Therefore, rectification application was also filed which has not yet been decided. It was prayed that this issue may also be sent back to the Assessing Officer for re-adjudication.

5. The Ld. DR relied on the orders of authorities below.

6. We have heard both the rival parties and perused the material available on record. We find that in respect of Ground No.1 to 4, the assessee had contended that since that no payments were remitted during the year, and therefore, the assessee was not liable to tax deduction at source. The Ld. AR also submitted that as per double taxation agreement with France, the assessee was liable to tax deduct at source at the time of remittance of the payments. We find that the authorities below has not considered the case laws relied on by the assessee and has also not considered the arguments of the assessee that the tax was required to be deducted only at the time of remittance in view of the treaty with France. Therefore, we deem it appropriate to remit these issues back to the office of the Assessing Officer who should re-adjudicate on the issues after affording a reasonable opportunity to the assessee of being heard. Therefore, Ground No. 1 to 4 are allowed for statistical purposes.

7. As regards, Ground No.5, we find that the assessee had sold a part of fixed assets and had earned gain on sale of fixed assets which had to be reduced from the WDV of fixed assets but which the assessee credited to the profit and loss account. We further find that the assessee had filed application for rectification to rectify this mistake. A copy of application for rectification is placed on paper book Page No. 176 to 178. It was argued during the proceedings that the Assessing Officer had not passed any order on this rectification order also. Therefore, we deem it appropriate to remit this issue also to the office of Assessing Officer who should re-decide the issue as per

facts and circumstances and in accordance with law. In view of the above, Ground NO.5 is also allowed for statistical purposes.

8. In nut shell, the appeal filed by the assessee is allowed for the statistical purposes.

Order pronounced in the Open Court on 21st December, 2017.

Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

Sd/-
(T. S. KAPOOR)
ACCOUNTANT MEMBER

Dated: 21/12/2017

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	18/12/2017	PS
2.	Draft placed before author	18/12/2017	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	21.12.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	21.12.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		

