

आयकर अपीलीय अधिकरण, ' सी ' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI**

श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य एवं श्री, एस जयरामन लेखा सदस्य सम्मक्
**BEFORE SHRI DUVVURU RL REDDY, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ I.T.A. No. 1886/Mds/2017

निर्धारण वर्ष/Assessment Year : 2004-05

Deputy Commissioner of Income Tax,
Corporate Circle -6(2),
Aayakar Bhavan, Wanaparthy Block,
7th Floor, 121 M.G. Road,
Chennai – 600 034.

M/s. Srinar Communications Pvt. Ltd.
Vs. No. 16, Sector VII, Sidco Industrial
Area, Maraimalai Nagar,
Kancheepuram Dist.,
Tamilnadu 603 209

[PAN: AAFCS 5215H]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. N. Madhavan Addl. CIT

प्रत्यर्थी की ओर से/Respondent by

: Shri. G. Baskar, Advocate

सुनवाई की तारीख/Date of Hearing

: 25.10.2017

घोषणा की तारीख/Date of Pronouncement

: 28.12.2017

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The Revenue filed this appeal against the order of Commissioner of Income Tax (Appeals)-15, Chennai in ITA No. 341/2013-14/CIT(A)-15/AY 2004-05 dated 19.06.2017.

2. M/s. Srinar Communications Pvt. Ltd., the assessee, is manufacturer of RF coaxial connectors and microwave components – antennas & real estates. While making the assessment u/s. 143(3) r.w.s. 147, the AO noticed that the assessee has claimed Rs. 27,50,065/- as deduction u/s. 43B towards royalty payable in the P&L account. When the AO sought clarifications, the assessee submitted that they are a leading antenna manufacturer. M/s. Midas Communication Technologies Private Limited, Chennai, is both a suppliers and customer being provider of technology/technical know-how/design for production of some of the communication accessories. Assessee has to pay royalty by using their technology/technical know-how/design in our products. Being a “design” fee payable to a company registered under the Companies Act, 1956, the payment is not covered by the provision of section 43B which is about taxes/levies/duties payable to any Government or Government authorities. Hence, the assessee submitted that the provisions of section 43B is not attracted. The AO did not accept the assessee’s explanation, relying on the Supreme Court decision in the case of Gorela Dubey vs CIT 248 ITR 3 (2001), he held that royalty by whatever name, and for all purposes is a tax and it comes under the provisions of section 43B and added Rs. 27,50,065/- to the total income. Aggrieved, the assessee filed an appeal before the CIT(A).

3. The relevant portion of the order of the CIT(A) is extracted as under:

"I have perused the relevant judgment of the Apex Court which has further referred to its own decision in the case of India Cement v. State of Tamil Nadu 1990 (1) SCC 12 wherein it has been held that royalty to be a tax,

and for that reason has further held in Gorelal Dubey v. CIT (2001) 248 ITR 3 (SC) that to claim for deduction of royalty, section 43B is attracted.

7. However, in these referred cases, the payment of royalty was made to state Government and its authorities for exploitation of natural resources or for carrying some government contractual obligations. Hence, it was held that royalty payment was in the nature of cess or tax which would attract the provisions of section 43B of the Act. However, in the present case of the appellant, it is an undisputed fact that the royalty payment was made to a private limited company. Therefore, as rightly contended by the appellant, the provisions of section 43B would not be attracted to such outstanding amounts payable to private parties. Accordingly, the expenditure claimed by the appellant is an allowable one. Hence, in view of the above, the AO is directed to delete the addition."

4. Aggrieved, the Revenue filed this appeal with the following grounds:

"1. The order of the Commissioner of Income Tax (Appeals) is contrary to the law and facts of the case.

2. The learned CIT(A) erred in directing the AO to delete the addition u/s 436 in the royalty payable in P&L account.

2.1 The Ld CIT(A) failed to appreciate that the provisions of section 436, notwithstanding anything contained in any other provisions of the Act, the payments covered by the section are allowable only on actual payment basis but not on a provisional basis.

2.2. The Ld CIT(A) failed to appreciate that the provisions of section u/s 43B of the IT Act 1961, were not applicable to the unpaid liability towards royalty payment of Rs. 27,50,065/- since royalty was neither tax nor duty.

2.3 The Ld CIT(A) failed to appreciate the rationale in the decision of Honourable Supreme Court in the case of Gorela Dubey Vs CIT 248 ITR 3 (SC) wherein provisions of section 436 were not applicable to unpaid liability towards royalty payment since royalty was neither tax nor duty.

2.4 The Ld CIT (A) failed to appreciate that the above issues arises vide RAP objection. As per Circular No.21/2015 which states as under

"The above issues should be contested on merits notwithstanding that the tax effect entailed is less than the monetary limit specified in para 3 circular no 21/2015 or there is no tax effect.

para 8(c) Where RAP in the case has been accepted by the department."

3) For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored."

5. The DR canvassed the case supporting the assessment order and on the lines of grounds of appeal. Per Contra, the AR supported the order of the CIT(A) and relied on the decision of the DCIT vs. C.J. International Hotels Ltd, ITA No. 1700/Del/1995, assessment year 1989-90 dated 15.05.2001, (2002) 75 TTJ 0285, wherein it has held as under:

"Sum payable to the NDMC has been held to be arising out of a contractual obligation and the High Court in CWP No. 7163 of 1999 and in ITA No. 2597/90 filed by the assessee before the Delhi High Court in Suit No. 1193/90 under section 20 of the Indian Arbitration Act, 1940, for appointment of arbitrator have held it to be so. Even if it is held for the sake of an argument that the licence fee charged by the NDMC from the assessee is of the nature of land revenue and as such a tax would still be out of the purview of section 43B as it is clearly arising out of a contractual obligation and is not levied by any Act of Central or State legislature. The sum payable is not governed by any statute but has been arrived at by way of an across the table negotiations between the two contracting parties. Regarding the fact that the mode of recovery is governed by the Punjab Land Revenue Act, it is a recovery procedure prescribing the mode of recovery in the event the amount agreed upon is not paid and is not a levying clause. Accordingly, in the aforementioned facts and circumstances and position of law, the conclusion arrived by the CIT(A) in the impugned order is upheld CIT(A) vs Gorelal Dubey (1997) 143 CTR (MP) 130: (1998) 232 ITR 246 (MP) distinguished." (Para 5.8, 5.11 & 5.12)

6. We heard the rival submissions, gone through the relevant material including the ratio relied on by the AR, supra. We find merit in the submissions made by the AR. It is an undisputed fact that the royalty payment was made to a private party. As rightly contended by the assessee, the provisions of section 43B would not be attracted as the sum payable is not governed by any statute but has been arising out of contractual obligation between private parties. Hence, the expenditure claimed by the assessee is an allowable one. We do not find any error in the order of the CIT(A) and hence, his order does not require any interference. The Revenue's appeal is dismissed

7. In the result, the Revenue's appeal is dismissed.

Order pronounced on Thursday, the 28th day of December, 2017 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 28th December, 2017

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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