

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'A' 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.274/Chny/2017

&

C.O. No.64/Chny/2017

(in I.T.A. No.274/Chny/2017)

निर्धारण वर्ष / Assessment Year : 2012-13

The Assistant Commissioner of
Income Tax,
Non-Corporate Circle – 7(1),
Chennai - 600 034.

v. Shri Gopakumaran Nair,
No.5, Golden Amity,
No.F-86, Anna Nagar East,
Chennai - 600 102.

(अपीलार्थी/Appellant)

PAN : AAKPG 0451 D
(Respondent & Cross-objector)

अपीलार्थी की ओर से/Appellant by : Shri AR.V. Sreenivasan, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri V. Elangovan, CA

सुनवाई की तारीख/Date of Hearing : 05.02.2018

घोषणा की तारीख/Date of Pronouncement : 16.02.2018

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) – 7, Chennai, dated 07.12.2016
and pertains to assessment year 2012-13. The assessee has filed

cross-objection in respect of the same order of the CIT(Appeals). Therefore, we heard both the appeal and the cross-objection together and disposing of the same by this common order.

2. There was a delay of 29 days in filing the cross-objection by the assessee. The assessee has filed a petition for condonation of delay. We have heard the Ld. representative and the Ld. D.R. We find that there was sufficient cause for not filing the cross-objection before the stipulated time. Therefore, we condone the delay and admit the cross-objection.

3. Shri AR.V. Sreenivasan, the Ld. Departmental Representative, submitted that the assessee paid a sum of ₹1,64,55,173/- to Shri Guiral Philippe, an agent outside the country in France, towards commission. The assessee has to deduct tax as required under Section 195 of the Income-tax Act, 1961 (in short 'the Act'). Since tax was not deducted as required under Section 195 of the Act, according to the Ld. D.R., the Assessing Officer disallowed the claim of the assessee under Section 40(a)(ia) of the Act. According to the Ld. D.R., even though the assessee claimed that the commission was paid for selling of goods at foreign country, on examination of email correspondences between the parties, the Assessing Officer found that the payment was made by the assessee for managerial and technical services. Therefore, according to the Ld.

D.R., the CIT(Appeals) is not justified in deleting the disallowance made by the Assessing Officer.

4. On the contrary, Shri V. Elangovan, the Ld. representative for the assessee, submitted that what was paid by the assessee was sales commission, as per agreement, at the rate of 10%. According to the Ld. representative, no managerial or technical services were rendered by the foreign agent. The foreign agent procured orders on behalf of the assessee. Therefore, according to the Ld. representative, the CIT(Appeals) by placing reliance on the judgment of Madras High Court in CIT v. Faizon Shoes Pvt. Ltd. (2014) 367 ITR 155 and the order of this Tribunal in India Shoes Export India Ltd. in I.T.A. No.1963/Mds/2014 dated 04.02.2015, deleted the disallowance made by the Assessing Officer.

5. We have considered the rival submissions on either side and perused the relevant material available on record. A perusal of the material available on record indicates that the foreign agent procured orders on behalf of the assessee for selling of goods. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) allowed the claim of the assessee by rightly placing reliance on the judgment of Madras High Court in Faizon Shoes Pvt. Ltd. (supra). In view of the

above, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

6. The cross-objection filed by the assessee is only to support the order of the CIT(Appeals). Therefore, the same is dismissed as infructuous.

7. In the result, both the appeal of the Revenue and the cross-objection of the assessee stand dismissed.

Order pronounced on 16th February, 2018 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 16th February, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-7, Chennai
4. Principal CIT-2, Chennai.
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.