

आयकर अपीलिय 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./ I.T.A. No. 3050/Mds/2016

निर्धारण वर्ष/Assessment Year : 2012-13

M/s. Elgi Rubber Company Ltd.,
2000, Trichy Road,
Singanallur,
Coimbatore – 641 005.

Deputy Commissioner of Income Tax,
Vs. Corporate Circle -2,
Coimbatore.

[PAN: AABCE 9596M]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. Philip George, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Mrs. S. Vijayaprabha, JCIT

सुनवाई की तारीख/Date of Hearing

: 08.11.2017

घोषणा की तारीख/Date of Pronouncement

: 05.02.2018

आदेश / O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-1, Coimbatore in ITA No. 80/15-16 dated 29.07.2016 for assessment year 2012-13.

2. M/s. Elgi Rubber Company Ltd., the assessee is a manufacturer and seller of tread rubber, bonding gum and allied products, retreading machinery, reclaim rubber, patch, envelope, BVC, abrasive tools and accessories, income from windmill & trading in shares and securities.

3. In the assessment made for assessment year 2012-13, the AO, inter alia, found that the assessee has claimed overseas professional charges etc without deducting TDS as required u/s. 40(a)(i) towards which but for furnishing the breakup, the assessee did not offer any explanation. Hence, relying on the CBDT circular 7 dated 22.10.2009, in which the CBDT has withdrawn its earlier circulars no. 23, 163 & 786, read with explanation 4 to section 9(1)(vii) & section 40(a)(i) disallowed the claim. Further, the assessee claimed Rs. 7,22,825/- towards cost of construction its LTCG in respect of its Pune flat. Since, the assessee has not produced any proof towards the cost of construction, the AO reworked the LTCG without giving any credit towards to the cost of construction. Aggrieved, the assessee filed an appeal before the CIT(A). Before the CIT(A), the assessee pleaded relying on the Article 15 of the Indo-USA DTAA and Article XIV of the Indo-Australia DTAA pleaded to allow its claim on overseas professional charges. However, the CIT(A) held that the impugned payments fell within Article 12 of DTAA between Indo-USA & Indo-Australia DTAA and accordingly held that the assessee should have deducted tax on such payments, which it failed to do so and hence upheld the

action of the AO. In respect of the computation made under the LTCG, the CIT(A) upheld the action of the AO for the reason that the assessee did not provide any clear & convincing evidence for the bifurcation.

3. Aggrieved against the order of the CIT(A), the assessee filed this appeal, challenging the decisions of the CIT(A) on the above issues and also pleading that the CIT(A) did not consider its plea viz ., ground no 5 in respect of short credit of TDS by Rs. 23,70,329/-.

4. Before us, the assessee filed a paper book and sought our attention to the petition for clarification of name of overseas professionals and pleaded that by oversight the name of one of the overseas professional was inadvertently mentioned as "Narton Rose LLP", however, the payment was actually made to Mr. Chuck Stand field only and prayed that the payment made to overseas professionals may be read as per its petition filed before us. On merit, it pleaded that the CIT(A) did not consider properly about Article 15 of the impugned DTAA's and wrongly proceeded to decide on Article 12. In this regard, our attention was invited to this tribunal decision in the assessee's case for assessment year 2010-11 in ITA No. 1810/Mds/2012 dated 05.08.2015 wherein, similar issue was remitted back to the AO for a fresh consideration in the light of the prayer made by the AR. With regard to the computation of the LTCG, the AR invited our attention to the paperbook

wherein the P&L a/c for the assessment year 2003-04 along with schedules and relevant account statements etc., was placed and invited our attention to the relevant particulars. Alternatively, he sought our direction to the AO to re-work the depreciation claim.

5. Thereafter, the AR invited our attention to the ground no 5 taken before the CIT(A), seeking the CIT(A) to direct the AO to allow the TDS credit in entirety, on which the CIT(A) has not adjudicated the matter. Per contra, the DR submitted that the assessee has not placed relevant materials before the AO and the CIT(A) correctly decided the issues and supported the orders of the lower authorities.

6. We heard the rival submissions and gone through the relevant material. On the above facts and circumstances, we deem it fit to restore these issues to the AO for a fresh examination and due decision by a speaking order. The AO after affording adequate opportunity to the assessee would decide the above issues in accordance with law.

7. In the result, the assessee's appeal is treated as allowed for statistical purposes.

Order pronounced on Monday, the 05th day of February, 2018 at Chennai.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. GANESAN)

न्यायिक सदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 05th February, 2018

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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