IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI

Before Sh. N. K. Saini, AM and Ms. Suchitra Kamble, JM

ITA No. 1891/Del/2015 : Asstt. Year : 2010-11

Deputy Commissioner of Income Tax, Circle-24(1), New Delhi	Vs	M/s SRL Ltd. (Earlier known as Super Religare Laboratories Ltd.) Plot No. D-3 óAô Wing, 2nd Floor, District Centre Saket, New Delhi
(APPELLANT)		**(RESPONDENT)**
PAN No. AAACS2809J		

Assessee by : Sh. Ajay Vohra, Sr. Adv. &
Ms. Deepika Agarwal, Adv.
Revenue by : Sh. S. S. Rana, CIT DR

Date of Hearing : 31.05.2018		**Date of Pronouncement : 31.05.2018**

ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 20.01.2015 of ld. CIT(A)-8, New Delhi.

2. Following grounds have been raised in this appeal:

1. The Id. CIT(A) has erred in law and on facts in deleting the addition made by the AO on account of disallowance of expenses u/s 40(a)(ia) amounting to Rs.36,73,45,242/-.

2. The Id. CIT(A) has erred in law and on facts in deleting the addition of Rs.2,45,53,998/- made by the AO being payment made to NRI without deduction of tax u/s 40(a)(ia) of the Income Tax Act.

3. The appellant craves to amend modify, alter, add or forego any ground of appeal at any time before or during the hearing of this appeal."

3. During the course of hearing, the ld. Counsel for the assessee submitted that both the issues raised by the department are covered in favour of the assessee by the various decisions of the ITAT for the assessment years 2006-07, 2007-08, 2008-09 and 2009-10 (copies of the said orders were furnished which are placed on record).

4. As regards to Ground No. 1 relating to the disallowances on account of discount made to various labs, medicine and corporate health check of domestic clients. The ld. Counsel for the assessee submitted that it is covered vide order dated 16.12.2011 in assesseeôs own case in ITA No. 434/Del/2011 for the assessment year 2006-07 which has been followed in ITA No. 3465/Del/2013 for the assessment year 2007-08 in assesseeôs own case vide order dated 13.04.2018 (copies of the said orders were furnished which are placed on record).

5. In his rival submissions, the ld. CIT DR although supported the order of the AO but could not controvert the aforesaid contention of the ld. Counsel for the assessee.

6. After considering the submissions of both the parties and the material on record, it is noticed that on an identical issue, the departmental appeal for the assessment year 2007-08 in ITA No. 3465/Del/2013 has been dismissed vide order dated 13.04.2018 wherein the relevant findings have been given in paras 6 & 7 which read as under:

"6. We have considered the submissions of both the parties and perused the material available on the record. It is noticed that an

identical issue having similar facts was a subject matter of the assessee's appeal for the assessment year 2006-07 in ITA No. 434/Del/2011 wherein the issue has been decided in favour of the assessee vide order dated 16.12.2011. The relevant findings have been given in paras 20 to 25 which read as under:

"20. The ld. CIT(A) has also observed that the assessee is bound to the Collection Centres in terms of the report issued in respect of samples referred by the Centres to the assessee and tested by the assessee. However, it has not been shown as to how this acts detrimentally to the assessee. No Principal – Agent relationship stands established by this sole fact. Obviously, since the assessee renders professional services, and that too, professional services by way of medical testing, there is a strict professional conduct which has to be abided by the assessee. The assessee is under a strict obligation. If there is any negligence or deficiency on the part of the assessee, it is the assessee who is answerable.

21. As seen from the above, it is evident that there is no Principal – Agent relationship existing between the assessee and the Collection Centres. The findings of the learned CIT(A) in this regard are, therefore, incorrect and we hold so.

22. Besides the above, it is patent on record that the assessee does not pay or credit any amount to the account of the Collection Centres, either directly or indirectly. That being so, the provisions of section 194 H of the Act do not get attracted on this score also. It is obvious that the obligation of deduction of tax at source u/s 194 H of the Act comes up only at the time of payment or credit of the amount in the books of account of the payer, whichever is earlier. Herein, the amount received by the assessee has been credited in its books of account. This is based on the invoices raised by the assessee on the Collection Centres. No debit in the books of account of the assessee for any discount and/or commission paid towards the Collection Centres has been shown to exist. On the contrary, the assessee has been taxed on the gross receipt of Rs.50.42 crores, which stands reflected in the books of account of the assessee.

23. Then, the disallowance in terms of section 40(a)(ia) read with section 194 H of the Act can be made only in respect of expenditure in the nature of commission paid/credited to the account of the recipient, or to any other account. In the present case, the assessee receives the amount of the invoice raised, net of discount, from the Collection Centres. This, discount, indisputably, cannot, in any manner, be said to be expenditure incurred by the assessee and so, section 40(a)(ia) of the Act is not attracted.

24. In "United Exports v. CIT", 330 ITR 549(Del), it was held, with reference to section 40 A(2) (b) of the Act, that since trade discount offered by the assessee could not be said to be expenditure incurred, there was no question of disallowance under the said section.

25. From this angle also, the Authorities below erred in disallowing the discount offered by the assessee, by invoking the provisions of section 40(a)(ia) of the Act."

7. So, respectfully following the aforesaid referred to order in assessee's own case, we do not see any merit in the departmental appeal on this issue."

7. As regards to Ground No. 2 relating to the addition on account of payment made to NRI without deduction of tax u/s 40(a)(ia) of the Income Tax Act, 1961. The ld. Counsel for the assessee submitted that it is covered by the earlier order dated 07.05.2015 in ITA No. 2276/Del/2012 for the assessment year 2008-09 in assesseeôs own case wherein the departmental appeal on the same issue was dismissed. (copy of the said order was furnished which is placed on record).

8. In his rival submissions, the ld. CIT DR supported the order of the AO.

9. After considering the submissions of both the parties and the material on record, it is noticed that on an identical issue, the

departmental appeal for the assessment year 2008-09 in ITA No. 2276/Del/2012 in assesseeôs own case has been dismissed. The relevant findings have been given in paras 12 & 12.1 of the order dated 07.05.2015 which read as under:

> *"12. As regards Ground No. 2 relating to deletion of addition of made by the AO u/s. 40(a)(i) amounting to Rs. 1,23,54,189/- is concerned, we find that the Ld. CIT(A) has observed that AO has made the disallowance u/s. 40(a)(i) of the Act amounting to Rs.1,23,54,189/- being discount allowed to international customers, by treating such amount as foreign payment made by the assessee and holding that the assessee should have deducted at source u/s. 195 of the Act on such amount in the absence of a NIL withholding tax certificate u/s. 195(2) of the Act. We find considerable cogency in the observations of the Ld. CIT(A) that his predecessor has given relief to the assessee for its own case for AY 2006-07 stating that:*
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> > *"for any amount on which tax has to be deducted u/s. 195, one of the basic conditions is that the said amount should be taxable in India. The parties who have rendered service to the assessee company outside India and are working as collection centres do not fall within the purview of section 195 because the amount of discount which is given to them are for rendering services outside hence, this amount is not taxable in India."*
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> *12.1 In view of the above, the addition of Rs.1,23,54,189/- made by the Assessing Officer u/s 40(a)(i) was rightly deleted by the Ld. CIT(A). Hence, we do not find any infirmity in the order of the Ld. CIT(A), therefore, we affirm the same and the Ground No. 2 raised by the Revenue stands rejected."*

10. In view of the above, we do not see any merit in this appeal of the department.

11. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 31/05/2018)

Sd/-	**Sd/-**
(Suchitra Kamble)	**(N. K. Saini)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 31/05/2018
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR