

आयकर अपीलीय अधिकरण “J” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “J” BENCH, MUMBAI

श्री राजेंद्र, लेखा सदस्य एवं श्री पवन सिंह न्यायिक सदस्य के समक्ष ।

BEFORE SRI RAJENDRA, AM AND SRI PAWAN SINGH, JM

आयकर अपील सं./ ITA No.6524/Mum/2016

(निर्धारण वर्ष / Assessment Year 2012-13)

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| Jess Ideas Pvt. Ltd. 416, Shivji Krupa 544, Adenwala Road Matunga Mumbai | Vs. | DCIT, Circle-6(3)(2) Mumbai |
| (अपीलार्थी / Appellant) | .. | (प्रत्यर्थी / Respondent) |
| स्थायी लेखा सं./PAN No.AACCJ0216A | | |

अपीलार्थी की ओर से / **Appellant by** : Shri Paresh Saparia, AR
प्रत्यर्थी की ओर से / **Respondent by** : Shri Aaraj Garodia, DR

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| सुनवाई की तारीख / Date of hearing: | 25-06-2018 |
| घोषणा की तारीख / Date of pronouncement : | 25-06-2018 |

आदेश / ORDER

PER PAWAN SINGH, JM:

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-12, Mumbai, [in short CIT(A)] in appeal No. CIT(A)-12/IT 01/DCIT 6(3)(2)/15-16 dated 8.8.2016 under section 253 of the Income Tax Act, 1961(hereinafter ‘the Act’). The



Assessment was framed by the Deputy Commissioner of Income Tax, 6(3)(2), Mumbai (in short DCIT) for the assessment year 2012-13 order dated 23.2.2015. The sole ground of appeal raised by the assessee relates to disallowance under section 43B on account of service tax, which was not due.

2. At the outset of hearing, the Ld. A.R. of the assessee submits that the ground of appeal raised by assessee are covered by the decision of Hon'ble jurisdictional High Court in the case of CIT Vs. Ovira Logistics (P) Ltd. (2015) 377 ITR 129 (Bombay). On the other the Ld. D.R. for the assessee after going through the contents of the grounds of appeal and the order of High Court In Ovira Logistics(P) Ltd, fairly considered that the grounds raised by assessee are covered in favour of the assessee.

3. we have considered the contentions of both the Id representatives of the parties and have gone through the orders of the lower authorities. The sole Ground of appeal relates to disallowance disallowance under section 43B of the Act of ₹9,75,079/- on account of service tax payable, which was not due. We have seen that the Hon'ble jurisdictional High Court in the case of CIT Vs. Ovira Logistics Pvt. Ltd. (supra) while considering the identical question of law held that section 43B of the Act does not contemplate liability to pay service tax before actual receipt of funds in the account of the assessee. The liability to pay service tax to the Government will arise only upon receiving the funds and not otherwise. Accordingly, when services are rendered, the liability to pay service tax in respect of consideration payable arise only upon receipt of such consideration and not otherwise. Considering the decision of Hon'ble jurisdictional High Court, we find that ground of appeal raised by assessee is covered in favour of the assessee.



4. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 25-06-2018.

Sd/-

(राजेंद्र/RAJENDRA)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(पवन सिंह /PAWAN SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 25 -06-2018

Venu Gopal/Sr.PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai