

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" Bench, Mumbai**

**Before Shri G.S. Pannu, Accountant Member  
and Shri Ravish Sood, Judicial Member**

**ITA No. 159/Mum/2014**  
(Assessment Year: 2010-11)

Mrs. Armin Percy Captain ITO- 5(2)(2)  
4/5, Rustom Baug, Mumbai  
Byculla, Vs.  
Mumbai-400 027

PAN – AADPC2950Q  
**Appellant Respondent**

**ITA No. 4540/Mum/2015**  
(Assessment Year: 2011-12)

Mrs. Armin Percy Captain ITO- 5(2)(2)  
4/5, Rustom Baug, Mumbai  
Byculla, Vs.  
Mumbai-400 027

PAN – AADPC2950Q  
**Appellant Respondent**

Appellant by: Ms. Zarna P. Chandwani  
Respondent by: Shri Rajesh Kumar Yadav

Date of Hearing: 14.06.2018  
Date of Pronouncement: 07.09.2018

**ORDER**

**PER RAVISH SOOD, JM**

The present appeals filed by the assessee for A.Y 2010-11 and 2011-12 are directed against the respective orders passed by the CIT(A)-9, Mumbai, dated 22.10.2013 and CIT(A)-10, Mumbai, dated 16.05.2015. We shall first advert to the appeal filed by the assessee for A.Y 2010-11. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal:

“1.1 On the facts and in the circumstances and in law, the learned Assessing Officer erred in making an addition of Rs. 31,25,787/- on account of difference of the aggregate of amounts including reimbursement (Rs.6,65,83,548/-) credited to the profit & loss account and the aggregate of amounts as per the ledger account of M/s Merck Ltd. as calculated by ld. A.O in the assessment order (Rs. 7,07,98,863/-).

1.2 On the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in holding that the appellant has not been able to reconcile the differences in the amounts credited to profit and loss account and the amounts appearing in TDS credit statement Form 26AS and the reasons assigned for doing so are wrong and contrary to the facts of the case, the provisions of the Income-tax Act , 1961 and the rules made thereunder.

1.3 On the facts and in the circumstances of the case and in law, the learned Assessing Officer failed to understand that the grossing up of the reimbursement expenses was done by the Principal, viz. M/s Merck Limited, on which appellant has no control over the unilateral action of M/s Merck Limited and the same is not in consistence with th e service agreement executed by the appellant and M/s Merck Limited. The ld. A.O failed to appreciate that the excess advances including TDS have been shown as payable under the head current liabilities in the books of appellant and as when the same is repaid back to M/s Merck Ltd. is accounted by them as income.

1.4 The appellant craves leave to add, alter, amend and/or modify any or all the above grounds of appeal on or before the date of hearing”

2. Briefly stated, the assessee who is engaged in the business of providing marketing and selling services to its principal viz. M/s Merck Ltd. had filed her return of income for A.Y 2010-11 on 28.09.2010, declaring total income of Rs. 7,83,200/-. The case of the assessee was thereafter selected for scrutiny assessment under Sec. 143(2) of the Income-tax Act, 1962 (for short 'Act').

3. During the course of the assessment proceedings it was observed by the A.O that the assessee in lieu of the services provided to M/s Merck Ltd., was in receipt of amounts from the latter viz. (i). managerial fees for the services rendered; and (ii). reimbursement of expense incurred towards salary, including provident fund, ESIC, professional tax, ML WF, insurance charges, service tax and other related expenses. On a perusal of the Profit & loss account of the assessee it was observed by the A.O that an amount aggregating to Rs. 6,76,73,076/- therein stood credited in respect of the amounts received from M/s Merck Ltd. However, it was noticed by the A.O

that the 26AS information revealed the receipt of an amount of Rs. 6,81,29,882/- in the account of the assessee. In order to verify the veracity and correctness of the receipts shown by the assessee, the A.O called for the requisite information under Sec. 133(6) from M/s Merck Ltd. In compliance to the directions of the A.O M/s Merck Ltd provided a copy of the ledger account of the assessee as was appearing in its books of account for the year under consideration. On a perusal of the said ledger account (as reconciled by the assessee) it was noticed by the A.O that as against the amount of Rs. 7,07,98,863/- shown by M/s Merck Limited, the assessee had only credited an amount of Rs. 6,76,73,076/- in her Profit & loss account for the year under consideration. In the backdrop of the aforesaid facts the A.O treated the unreconciled amount of Rs. 31,25,787/- [Rs. 7,07,98,863/- (-) Rs. 6,76,73,076/-] as the income of the assessee and added the same to her returned income.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the facts of the case was not impressed with the contentions advanced by the assessee and upholding the order of the A.O dismissed the appeal.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Authorised representative (for short 'A.R') for the assessee submitted that the assessee was providing marketing and selling arrangement services to its principal M/s Merck Ltd. in terms of an agreement dated 01.07.2007 which was amended on 30.06.2009. In lieu of the services rendered the assessee was in receipt of managerial fees as well as was reimbursed expenses which were incurred by her towards salary, provident fund, ESIC, professional tax, ML WF, insurance charges, service tax and other such related expenses. It was submitted by the ld. A.R that the assessee would prepare separate invoices for the above two services viz. (i). managerial fees; and (ii). reimbursement of salary and other related expenses. That as substantial amount was involved in respect of reimbursement and related expenses, hence the assessee was paid advance (on account) by M/s Merck Ltd in order to facilitate incurring of the said

expenses. It was further submitted by the ld. A.R that the actual expenses incurred by the assessee and the reimbursement received was duly reflected by the assessee in her books of account.

6. The ld. A.R submitted that as its principal M/s Merck Ltd. had adopted a system of grossing up the invoice amount in respect of reimbursement of expenses actually incurred by the assessee, hence the difference of Rs. 31,25,787/- between the aggregate of the amounts credited by the assessee in her Profit & loss account in respect of managerial fees and reimbursements received from M/s Merck Ltd. and the ledger account of the assessee in the books of account of M/s Merck Ltd. had emerged. It was submitted by the ld. A.R that the grossed up advance amount and TDS deducted on the advances was reflected by the assessee as advances actually received under the head "Current Liabilities" in her balance sheet. The ld. A.R further averred that as the assessee in terms of the service agreement was only entitled to receive actual expenses incurred by her, hence there was no revenue impact in the books of account of the assessee as regards the grossing up done by M/s Merck Ltd. In the backdrop of the aforesaid facts it was the contention of the ld. A.R that the amount shown by M/s Merck ltd. represented the grossed up amount and not actual receipts by the assessee. It was submitted by the ld. A.R that as the assessee in terms of the service agreement was not entitled towards the grossed amount but was only entitled to receive the actual expenses which were incurred by her, hence the grossed up amount was not required to be accounted as income on her part. The ld. A.R in order to fortify her aforesaid contention took us through a reconciliation chart for the year under consideration. Further, our attention was drawn to the "Service agreement" dated 01.07.2007, which revealed that *inter alia* the assessee was entitled as regards reimbursement of expense incurred on the salary, TES, Sundry allowances & incentives of the Trade Sales Representatives/officers. The ld. A.R in order to buttress her contention that the advance amount and TDS deducted on the advances are reflected as advances actually received under the head "Current liabilities" took us through the balance sheet of the

assessee for the year under consideration. The ld. A.R further submitted that a similar issue in the assesses own case for A.Y 2009-10 had came up before the Tribunal, which had vide its order passed in Mrs. Armin Percy Captain Vs. The ITO-5(20(2), Mumbai (ITA No. 6262/Mum/2012, dated 23.06.2015), finding force in the contentions of the assessee had restored the matter to the file of the A.O for fresh adjudication after examining the reconciliation filed by the assessee.

7. Per contra, the ld. Departmental representative (for short 'D.R') relied on the orders of the lower authorities. It was submitted by the ld. D.R that as admittedly the assessee had not credited the gross amount in her Profit & loss account, therefore, the A.O had rightly raised the receipt by the amount in deficit. The ld. D.R submitted that as the appeal of the assessee was devoid of any merit, hence the same may be dismissed.

8. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We have deliberated at length on the explanation of the assessee as regards the difference of Rs. 31,25,787/- which had emerged between the aggregate of the amounts credited by the assessee in her Profit & loss account in respect of managerial fees and reimbursements received from M/s Merck Ltd. and the ledger account of the assessee in the books of account of M/s Merck Ltd and find substantial force in the same. It is submitted by the assessee before us that its principal viz. M/s Merck Ltd. had adopted a system of grossing up the invoice amount in respect of reimbursement of expenses actually incurred by the assessee. In the backdrop of the aforesaid fact, it is the case of the assessee before us that as per the terms of the service agreement she was only entitled to receive actual expenses incurred by her, hence the grossed up amount was not accounted as income on her part, which resultantly had led to a revenue neutral difference of Rs. 31,25,787/-. We find that in order to fortify the aforesaid fact, it has been submitted on behalf of the assessee before us that the grossed up advance amount and TDS deducted on the advances was reflected by the assessee as advances actually received under the head

“Current Liabilities” in her balance sheet. The ld. A.R in order to further buttress her contention that there was no revenue impact resulting from the aforesaid difference of Rs. 31,25,787/- had also placed on our record a reconciliation chart. We have also perused the “Service agreement” dated 01.07.2007, which reveals that the assessee was entitled to reimbursement of expense incurred on the Salary, TES, Sundry allowances & incentives of the Trade Sales Representatives/officers. In the backdrop of our aforesaid facts we find substantial force in the contention of the assessee that as its principal viz. M/s Merck Ltd. had reported the grossed up amount in respect of reimbursed expenses, while for the assessee who as per the terms of the service agreement was only entitled to receive actual expenses incurred had thus credited the said actual receipts in her Profit & loss account for the year under consideration, hence for the said reason the difference of Rs. 31,25,787/- having no revenue impact in the case of the assessee had emerged. We are however of the considered view that the explanation of the assessee cannot be summarily accepted on the very face of it, specifically when it was not raised before the lower authorities and would also require verification of the records. Thus, finding ourselves as being in agreement with the view taken by the Tribunal in the assessee's own case for A.Y 2009-10, the matter in all fairness on the same terms is restored to the file of the A.O for fresh adjudication. The A.O is directed to readjudicate the issue after considering the reconciliation placed on record by the assessee before us. Needless to say, the assessee shall be afforded a reasonable opportunity of being heard during the course of the set aside proceedings. The Grounds of appeal No. 1 to 3 are allowed for statistical purposes.

9. The Ground of appeal No. 4 being general is dismissed as not pressed.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

## **ITA No. 4540/Mum/2015**

### **A.Y 2011-12**

11. We shall now advert to the appeal filed by the assessee for A.Y 2011-12. The assessee assailing the order of the CIT(A) has raised before us the following grounds of appeal:

*“1.1 On the facts and in the circumstances and in law, the learned Assessing Officer erred in making an addition of Rs. 3,60,646/- on account of difference of the aggregate of amounts including reimbursement (Rs.5,21,98,284/-) credited to the profit & loss account and the aggregate of amounts as per the ledger account of M/s Merck Ltd. as calculated by ld. A.O in the assessment order (Rs. 5,25,58,930/-).*

*1.2 On the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in holding that the appellant has not been able to reconcile the differences in the amounts credited to profit and loss account and the amounts appearing in TDS credit statement Form 26AS and the reasons assigned for doing so are wrong and contrary to the facts of the case, the provisions of the Income-tax Act, 1961 and the rules made thereunder.*

*1.3 On the facts and in the circumstances of the case and in law, the learned Assessing Officer failed to understand that the grossing up of the reimbursement expenses was done by the Principal, viz. M/s Merck Limited, on which appellant has no control over the unilateral action of M/s Merck Limited and the same is not in consistence with the service agreement executed by the appellant and M/s Merck Limited. The ld. A.O failed to appreciate that the excess advances including TDS have been shown as payable under the head current liabilities in the books of appellant and as when the same is repaid back to M/s Merck Ltd. is accounted by them as income.*

*1.4 The appellant craves leave to add, alter, amend and/or modify any or all the above grounds of appeal on or before the date of hearing”*

12. Briefly stated, the assessee had e-filed her return of income for A.Y 2011-12 on 25.09.2011, declaring total income of Rs. 7,27,000/-. The case of the assessee was thereafter selected for scrutiny assessment under Sec. 143(2) of the Income-tax Act, 1962 (for short 'Act').

13. During the course of the assessment proceedings it was observed by the A.O that the assessee in lieu of the services provided to M/s Merck Ltd., was in receipt of amounts from the latter viz. (i). managerial fees for the services rendered; and (ii). reimbursement of expense incurred towards

salary, including provident fund, ESIC, professional tax, ML WF, insurance charges, service tax and other related expenses. On a perusal of the Profit & loss account of the assessee it was observed by the A.O that an amount aggregating to Rs. 5,21,98,284/- stood credited in respect of the amounts received from M/s Merck Ltd. However, it was noticed by the A.O that the 26AS information revealed receipts of Rs. 5,24,20,721/- in the account of the assessee. In order to verify the veracity and correctness of the receipts shown by the assessee, the A.O called for the requisite information under Sec. 133(6) from M/s Merck Ltd. In compliance to the directions of the A.O M/s Merck Ltd provided a copy of the ledger account of the assessee as was appearing in its books of account for the year under consideration. On a perusal of the said ledger account (as reconciled by the assessee) it was noticed by the A.O that as against the amount of Rs. 5,25,58,930/- shown by M/s Merck Limited, the assessee had only credited an amount of Rs. 5,21,98,284/- in her Profit & loss account for the year under consideration. In the backdrop of the aforesaid facts the A.O treated the unreconciled amount of Rs. 3,60,646/- [Rs. 5,25,58,930/- (-) Rs. 5,21,98,284/-] as the income of the assessee and added the said amount to her returned income.

14. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the facts of the case, not being impressed with the contentions advanced by the assessee, thus upheld the order of the A.O and dismissed the appeal.

15. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. We find that as the issue involved in the present appeal of the assessee for A.Y 2011-12 in ITA No. 4540/Mum/2015 remains the same as was there before us in her appeal for A.Y 2010-11 in ITA No. 159/Mum/2014, which has been adjudicated by us hereinabove, thus our order passed in the appeal of the assessee for A.Y 2010-11 in ITA No, 159/Mum/2014 shall apply *mutatis mutandis* in the present appeal of the assessee for A.Y 2011-12 in A.Y 4540/Mum/2015. The Grounds of appeal No. 1 to 3 are in

the same terms allowed for statistical purposes. The Ground of appeal No. 4 being general is dismissed.

16. In the result, the appeal filed by the assessee is allowed for statistical purposes.

17. That both the appeals of the assessee i.e ITA No. 159/Mum/2014 for A.Y 2010-11 and ITA No. 4540/Mum/2015 for A.Y 2011-12 are allowed for statistical purposes.

Order pronounced in the open court on 7<sup>th</sup> September, 2018.

Sd/-  
**(G.S. Pannu)**  
**Accountant Member**

Sd/-  
**(Ravish Sood)**  
**Judicial Member**

Mumbai, Dated: 7<sup>th</sup> September, 2018

Copy to:

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) -9 & CIT(A)-10, Mumbai*
4. *The CIT, Mumbai*
5. *The DR, "A" Bench, ITAT, Mumbai*

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Mumbai Benches, Mumbai*

