

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./I.T.A.Nos.642 & 643/Chny/2015
(निर्धारण वर्ष / Assessment Years: 2010-11 & 2011-12)

M/s. Fenner Conveyor Belting P Ltd., 54/1, Madurai Dindigul Road, Nagari, Vadipatti Taluk, Madurai – 625 221.	Vs	The Addl. Commissioner of Income Tax, Circle III, Madurai
PAN: AABCJ3010D		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Dr. D. Kumudha, JCIT

सुनवाई की तारीख/Date of hearing	:	31.12.2018
घोषणा की तारीख /Date of Pronouncement	:	31.12.2018

आदेश / ORDER

Per A. Mohan Alankamony, AM:-

These appeals by the assessee are directed against the common order passed by the learned Commissioner of Income Tax(Appeals)-I, Madurai, dated 27.02.2015 in ITA No.8/2013-14 & 0058/2014-15 for the assessment years 2010-11 & 2011-12 passed U/s. 250(6) r.w.s. 143(3) of the Act.

2. The assessee has raised several grounds in its appeal however the cruxes of the issues are that

(i) The Ld.CIT(A) has erred in sustaining the addition made by the Ld.AO amounting to Rs.1,35,85,308/- & 1,52,62,889/- towards disallowance of royalty paid to M/s. J.H. Fenner & Co. Ltd., UK for the assessment years 2010-11 & 2011-12 respectively.

(ii) The Ld.CIT(A) has erred in sustaining the addition made by the Ld.AO amounting to Rs.1,14,32,666/- & 1,19,89,596/- towards disallowance of expenditure towards management and service charges paid to M/s. J.H. Fenner & Co. Ltd., UK for the assessment years 2010-11 & 2011-12 respectively.

3. The brief facts of the case are that the assessee is a private limited company engaged in the business of manufacturing conveyor belts, etc., e-filed its return of income for the assessment years 2010-11 and 2011-12 on 26.09.2010 & 26.09.2011 admitting total income of Rs.3,73,30,430/- & Rs.88,14,450/- respectively. Initially the return was processed U/s.143(1) of the Act and subsequently the case was selected for scrutiny under CASS and

notice U/s.143(2) of the Act was issued for both the assessment years. Finally assessment order was passed U/s.143(3) of the Act on 18.03.2013 & 24.03.2014 for the assessment years 2010-11 & 2011-12 respectively, wherein the Ld.AO made addition towards disallowance of royalty payment and management & service charges.

Assessment years 2010-11 & 2011-12

4. Ground No.2(i) : Disallowance of royalty paid to M/s. J.H. Fenner & Co. Ltd., UK:-

During the course of assessment proceedings, it was observed by the Ld.AO that the assessee had paid royalty amounting to Rs.1,35,85,308/- & 1,52,62,889/- for the assessment years 2010-11 & 2011-12 respectively to M/s.J.H.Fenner & Co. Ltd., UK. The Ld.AO was of the view that it relates to payment towards acquiring patent rights of enduring nature falling under 'capital field' and therefore cannot be treated as revenue expenditure. Accordingly the Ld.AO added the same to the income of the assessee for both the assessment years. However the Ld.AO allowed the benefit of depreciation @ 25% as per the rate prescribed under the Rules for

technical know-how / patents / license / copy rights/ franchise. On appeal the Ld.CIT(A) also confirmed the order of the Ld.AO by agreeing with his view.

4.1 At the outset we find that the royalty payment is directly linked to the turnover on certain percentage basis. The relevant portion of the royalty agreement is extracted by the Ld.CIT(A) in his order in Para 5. Therefore it is apparent that the expenditure incurred towards royalty is revenue in nature and cannot be treated as capital expenditure of enduring benefit. Moreover the Ld.Revenue Authorities have also not brought out as to how the royalty payments made during the relevant assessment years brings benefit to the assessee year after year. For the above stated reasons, we hereby direct the Ld.AO to delete the addition made towards royalty in the case of the assessee for both the assessment years.

5. Ground No.2(ii) : Disallowance of Management & Service Charges:-

During the course of scrutiny assessment, it was observed by the Ld.AO that the assessee had made payment to M/s. J.H.

Fenner & Co. Ltd., towards management & service charges amounting to Rs.1,14,32,666/- & 1,19,89,596/- for the assessment years 2010-11 & 2011-12 respectively, it was explained by the assessee that the payment towards managerial & service charges was on account of the services rendered by M/s. J.H. Fenner & Co. Ltd., to the assessee such as accountancy service & support, personnel services, marketing service & support, management information system & support and general business advice. The Ld.AO was of the view that such expense falls under the capital field and therefore disallowed the claim as revenue expenditure. However the Ld.AO allowed the benefit of depreciation @ 25% as per the rates prescribed under the Rules for technical know-how / patents / license / copy rights/ franchise. On appeal, the Ld.CIT(A) confirmed the order of the Ld.AO by agreeing with his view.

5.1 At the outset we find that the order of the Ld.AO as well as that of the Ld.CIT(A) is not a speaking order on the issue. The assessee has claimed that it was receiving services from M/s. J.H. Fenner & Co. Ltd., with respect to accountancy service & support, personnel services, marketing service & support, management

information system & support and general business advice. However from the Order of the Ld.Revenue Authorities it is evident that they have not examined as to what kind of services was received by the assessee and in what manner. Further the Ld.Revenue Authorities have also not examined whether the assessee had really received such services from M/s. J.H. Fenner & Co. Ltd. Unless these aspects are examined it would not be possible to determine the nature of expenditure viz., Revenue/ Capital expenditure. When the same was queried in the open court both the Ld.AR and the Ld.DR requested for the matter to be remitted back to the file of Ld.AO for de-nova consideration. Therefore in the interest of justice, we hereby remit the matter back to the file of Ld.AO in order to examine the genuineness and nature of services obtained by the assessee from M/s. J.H. Fenner & Co. Ltd., and thereafter decide the matter in accordance with law and merit.

6. As we have addressed herein above both the relevant grounds raised in the appeal, the other grounds raised by the assessee in the appeals have become infructuous.

7. In the result, the appeals of the assessee are partly allowed for statistical purposes.

Order pronounced on the 31st December, 2018 at Chennai.

Sd/-

(धुव्वुरु आर.एल रेड्डी)

(Duvvuru RL Reddy)

न्यायिक सदस्य /Judicial Member

Sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 31st December, 2018

RSR

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 |