

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI K.N. CHARY, JUDICIAL MEMBER

ITA No. 2341/DEL/2015
[Assessment Year: 2011-12]

Spice Mobility Limited
[Formerly S. Mobility Ltd]
19A & 19B, Floor No. 5
Global Knowledge Park
Sector 125, Noida

Vs.

The A.C.I.T.
Circle - 2
Meerut

PAN : AABCM 5619 D

[Appellant]

[Respondent]

Date of Hearing : 28.03.2019
Date of Pronouncement : 29.03.2019

Assessee by : Shri Ajay Vohra, Sr Adv.
Shri Aditya Vohra, Adv
Ms. Meenal Goyal, CA

Revenue by : Shri J.K. Mishra, CIT. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals], Meerut dated 26.03.2015 pertaining to assessment year 2011-12.

2. The substantive grievance raised by the assessee is that the CIT(A) erred in holding that the assessee was required to withhold tax u/s 194C of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] from the amount reimbursed towards advertisement expenditure incurred by the distributors and that the disallowance made u/s 40(a)(ia) of the Act was sustainable.

3. Other grievances have not been pressed before us.

4. Briefly stated, the facts of the case are that assessee company is engaged in trading of mobile hand-sets and manufacturing, trading, servicing and maintenance of computer hardware. The return of income was filed by the assessee on 29.09.2011 declaring total income of Rs. 71.28 crores. Thereafter, the return was revised on 27.09.2012 and revised income was 71.28 crores.

5. During the course of assessment proceedings, the Assessing Officer observed that the assessee has made payment of Rs. 15,93,23,093/- on which no tax was deducted at source. The payments were as under:

(i) Reimbursement to RDS	Rs. 10,01,90,492/-
(ii) Salesman incentive	Rs. 3,45,52,601/-
(iii) Man Power reimbursement	
RDS	<u>Rs. 2,45,80,000/-</u>
Total	<u>Rs. 15,93,23,093/-</u>

6. The assessee was asked to explain as to why this payment should not be disallowed u/s 40(a)(ia) of the Act. The assessee explained that these are nothing but reimbursements of expenditure incurred by the regional distributors for brand promotion of the company's products by advertisement in various forms.

7. The contention of the assessee did not find any favour with the Assessing Officer who was of the firm belief that the assessee was liable to deduct tax at source, failing which the

provisions of section 40(a)(ia) of the Act would clearly apply and, accordingly, made the addition of Rs. 15,93,23,093/-.

8. The assessee carried the matter before the CIT(A) and reiterated its contentions.

9. After considering the facts and detailed submissions, the ld. CIT(A) found that in A.Y 2009-10, his predecessor had the occasion to consider a similar grievance and has allowed the appeal of the assessee. The CIT(A) further found that the matter travelled upto the Tribunal and found that the Tribunal has directed for verification of reimbursement and whether the tax has been deducted by the distributor. Taking a leaf out of the decision of the Tribunal in A.Y 2009-10, the CIT(A) held as under:

"3.5 The appellant is directed to produce before the AO proof/evidence to the effect that the parties to whom reimbursement had been made had actually deducted TDS while making payments to the final recipients. To the extent such verification is positive, the liability of deducting TDS cannot be

fastened on the assessee. In this situation, there will be no disallowance under Section 40 (a)(ia). However, to the extent such verification is negative, it is held that appellant was liable for making TDS and therefore the provision of Section 40 (a)(ia) will be triggered and consequently such expenses will stand disallowed."

10. Before us, the ld. AR strongly submitted that once it has been accepted that the impugned payment was reimbursement of expenses, no further verification is required. The ld. AR strongly placed reliance on the decision of the Hon'ble Allahabad High Court in the case of Jagran Prakashan Ltd Vs. DCIT 345 ITR 288. It is the say of the ld. AR that it is a well settled proposition of law that no TDS is required on reimbursements as held by the Hon'ble Jurisdictional High Court of Delhi in the case of Fortis Healthcare Ltd 181 Taxmann 257 and DLF Commercial Project Corporation ITA No. 507 of 2013.

11. The ld. AR further drew our attention to the relevant clauses of the agreement with one of the distributors namely, Delta Prime Marketing Pvt Ltd. and pointed out that under the heading "Relation of Buyer and Seller", it has been

specifically mentioned that this agreement does not create any agency, joint venture or partnership between Spice and the distributor. The Id. AR reiterated that the payment of Rs. 15.93 crores is nothing but reimbursement to regional distributor and therefore, the provisions of section 194C do not apply and, accordingly, section 40(a)(ia) of the Act is not at all applicable.

12. Per contra, the Id. DR strongly supported the findings of the Assessing Officer and vehemently submitted that to prevent revenue leakage, provisions of TDS have been enacted so that at least one person should be liable to deduct and pay tax. If the payer claims that the payment is reimbursement, then it needs to be verified whether the payee has paid the tax or not.

13. We have given thoughtful consideration to the orders of the authorities below. We have also gone through the relevant documentary evidence brought on record u/r 18(6) of the ITAT Rules. Exhibit 1 is the invoice raised by Delta Prime marketing Pvt Ltd, one of the regional distributor of

the assessee which shows that it has raised certain claims in respect of advertisement and marketing. Exhibit 2 is the bill of Shubh Advertising and marketing Pvt Ltd which is raised in the name of Delta Prime marketing Pvt Ltd. Similarly, Exhibit 19 is the invoice of Tenet Agencies for Spice carry bag of Rs. 60,000/- and Exhibit 20 is the invoice raised by Colors Media and Advertising raised in the name of Tenet Agencies which is the regional distributor of Radiant Distributors for advertising and marketing and Exhibit 27 is the invoice raised by Street Smart in the name of Radiant Distributors which is the regional distributor.

14. After considering these sample invoices, we are of the considered opinion that the payments made by the appellants to its regional distributors are nothing but reimbursement of expenses. However, in the interest of justice and fair play, we deem it fit to restore this issue to the file of the Assessing Officer. The assessee is directed to furnish all the invoices raised by its regional distributor on the basis of which it has made payment of Rs. 15.93 crores as reimbursement. The Assessing Officer is directed to verify

the invoice and decide the issue whether the impugned payments are reimbursements or not. We would like to make it clear that after verification, the Assessing Officer is free to make any enquiry he deems it fit to be made in the hands of the regional distributor as per the provisions of law.

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

The order is pronounced in the open court on 29.03.2019.

Sd /-

**[K.N. CHARY]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 29th March, 2019.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
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