

आयकर अपीलीय अधिकरण पुणे न्यायपीठ "सी" पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं, श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI D. KARUNAKARA RAO, AM

आयकर अपील सं. / ITA No.807/PUN/2017
निर्धारण वर्ष / Assessment Year : 2011-12

M/s. T-3 Enegrgy Services India Pvt. Ltd.,
D-II/65-1, MIDC, Telco Road,
Chichwad, Pune – 411019

PAN : AACCT9805F

.... अपीलार्थी/Appellant

Vs.

The Assistant Commissioner of Income Tax
Circle – 10, Pune

.... प्रत्यर्थी / Respondent

Assessee by : Shri Abhishek Tilak
Revenue by : Shri Sanjay Deshmukh

सुनवाई की तारीख / Date of Hearing : 01.05.2019	घोषणा की तारीख / Date of Pronouncement: 07.05.2019
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

The appeal filed by assessee is against the order of Commissioner of Income Tax(A)-6, Pune, dated 01.12.2016 relating to assessment year 2011-12 passed under section 143(3) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

- "1. The learned CIT erred in law and on facts in confirming the disallowance u/s 40(a)(i) of Rs 11,11,406/- of payment to its associate enterprise towards lease line charges on the ground that the payment was made without deduction of tax.*

2. *The learned CIT(A) erred in law and on facts in not accepting the payments of lease line charges were reimbursement of expenses and further failed to appreciate that there was no contract between the appellant and the service provider Quest Communication Inc.*
3. *The learned CIT(A) erred in law and on facts in confirming the action of learned AO in treating the payments as royalties or fees for included services ignoring the provisions of DT AA with USA. The said payments cannot be held to be Royalties or fees for included services in view of the DT AA with USA.*
4. *Without prejudice to ground no. 1 to 3, the amendments relied upon by AO to Section 9(1)(vi) though retrospective, Section 40(a)(i) would not apply for non-deduction as the deductor could not anticipate such amendments and therefore there could be no default as per the law existing on the date of deduction.*
5. *The appellant craves to add, alter, modify or substitute any ground of appeal at the time of hearing.”*

3. The issue raised in the present appeal is against disallowance made in respect of lease line charges paid to its associated enterprises on the ground that the payments were made without deduction of tax at source. The authorities below had treated the said payments as royalty or fees for included services resulting in addition of Rs.11,11,406/-.

4. The learned Authorized Representative for the assessee pointed out that grounds of appeal No.1 to 4 raised by assessee are squarely covered by the order of Tribunal in assessee's own case in assessment year 2010-11. The learned Authorized Representative for the assessee pointed out that the payments of lease line charges was in fact reimbursement and not royalty and hence there was no requirement to deduct tax at source. He then referred to the order of Commissioner of Income Tax (Appeals) in para 5.3 wherein the Commissioner of Income Tax (Appeals) has acknowledged that the facts for the earlier year i.e. assessment year 2010-11 were similar to the facts of the instant assessment year and following the order of Commissioner of Income Tax (Appeals) in assessment year 2010-11 the addition made by the Assessing Officer was sustained.

5. The learned Departmental Representative for the Revenue fairly admitted that the issue stands covered by the order of Tribunal in assessee's own case.

6. We have heard the rival contentions and perused the record. The assessee had paid lease line charges to Quest Communication Inc. USA through its associated enterprises T-3 Energy Services Creekmount totaling Rs.11,11,406/-. The case of the assessee was that the aforesaid transaction was reimbursement of the expenses and hence not liable for any tax deduction at source. The case of the Revenue authorities on the other hand was that the said payment made by the assessee was either royalty or FTS and in the absence of any tax deduction at source by the assessee out of such payments, the amount was to be disallowed in the hands of assessee.

7. Similar issue of payment on account of lease line charges to the associated enterprises arose before the Tribunal in ITA No. 826/PUN/2015 relating to assessment year 2010-11, order dated 02.02.2018. The Tribunal first noted the facts of the case, findings of the authorities below and arguments of both the authorized representatives and vide paras 14 to 27 decided the issue. The Tribunal held that where the assessee had declared the transaction in its TP study report to be reimbursement of expenses on account of lease line charges, which have been verified by the TPO as an international transactions and accepted as such, then the Assessing Officer could not sit in judgment of the TPO's order and it was held that there was no merit in the case of the Assessing Officer in this regard. Further, the Tribunal vide para 23 and 24 of the decision held that the said payment was not royalty under the provisions of DTAA since, the definition of royalty had not undergone any amendment and hence the assessee was not liable to be held in default for not

deducting tax on the lease line charges paid by it. The relevant findings of the Tribunal are in paras 14 to 27 of the Act, which are being referred, but not being reproduced for the sake of convenience.

8. The Commissioner of Income Tax (Appeals) also vide para 5.3 has acknowledged that the facts of assessment year 2011-12 are identical to the facts in assessment year 2010-11. So applying the same parity of reasoning as in assessment year 2010-11, we reverse the order of authorities below in making the aforesaid disallowance u/s. 40(a)(i) of the Act. The grounds of appeal raised by the assessee are thus, allowed.

9. In the result, the appeal of assessee is allowed.

Order pronounced on this 7th day of May, 2019.

Sd/-
(D.KARUNAKARA RAO)
लेखा सदस्य / **ACCOUNTANT MEMBER**

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 7th May, 2019.

RK/GCVSR

आदेश की प्रतिलिपि अग्रहित/Copy of the Order is forwarded to :

1. The Appellant;
2. The Respondent;
3. The CIT(A)-6, Pune;
4. The Pr. CIT-5, Pune;
5. The DR 'C', ITAT, Pune;
6. Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

निजी सचिव / Private Secretary
आयकर अपीलिय अधिकरण ,पुणे / ITAT, Pune