

**आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI**  
**श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष**  
**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND**  
**SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.168/Chny/2015  
(निर्धारण वर्ष / Assessment Year: 2005-06)

M/s. Rane Brake Lining Ltd., [Formerly Rane Brake Linings Limited], "Maithri", No.132, Cathedral Road, Chennai – 600 086.	Vs	The Income Tax Officer (OSD), Company Circle V(3), (presently Corporate Circle 5(1)), Chennai – 34.
PAN: AAACR1703L		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri S. Bharath, CIT

सुनवाई की तारीख/Date of hearing	:	27.06.2019
घोषणा की तारीख /Date of Pronouncement	:	18.07.2019

**आदेश / O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) –V, Chennai dated 21.10.2014 and pertains to the assessment year 2005-06.

2. Shri R. Vijayaraghavan, the Ld. Counsel for the assessee submitted that the first issue arises for consideration is disallowance

of Rs.26,74,8411/- being the royalty payable and adjusted against excess payment of royalty made in the earlier years for which tax was already deducted and remitted in the earlier years. According to the Ld. AR, the royalty payable for the first and second quarter for the year under consideration was debited in the P&L account. Further the said amount was paid in the earlier years and tax was already deducted in the earlier years. We heard Shri S. Bharath, the Ld. Departmental Representative also.

2.1 The assessee claims that the royalty payable for the first and second quarter was paid in advance and the excess payment of royalty was adjusted during the year under consideration. The assessee also claims that the tax was deducted at the time of payment. Further there was no material evidence to support the claim of the assessee. Hence this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing Officer. Accordingly both the orders of the lower authorities are set aside and disallowance of the royalty to the extent of Rs.26,74,811/- is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh and bring on record when actually the royalty was paid and thereafter decide the issue afresh in

accordance with law after giving reasonable opportunity to the assessee.

3. The next issue arises for consideration is disallowance of payment of Rs.5,09,656/- to one Mr.James Drutchas, USA.

3.1 Shri R. Vijayaraghavan, the Ld. Counsel for the assessee submitted that it is only a reimbursement of marketing services rendered by the non-resident Mr. James Drutchas in USA. Therefore the fee would not fall within the meaning of fee for technical services under Article – 12 of India-USA Double Taxation Avoidance Agreement. On query from the Bench, whether there was an agreement between the assessee and Mr. James Drutchas for marketing services in USA, the assessee submitted that there was an agreement and it was not available immediately to produce before the Tribunal.

3.2 We heard Shri S. Bharath, the Ld. Departmental Representative also. According to the Ld.DR, the agreement has to be examined with regard to the nature of the services rendered by

Mr. Jamesh Drutchas. In the absence of so called agreement the nature of payment cannot be decided.

3.3 We have considered the rival submissions on either side and perused the material available on record. The assessee claims that it is reimbursement of marketing expenses outside the country. Therefore it is not fee for technical services. Even though the assessee claims that there was an agreement between the assessee and Mr. James Drutchas, USA, it was not produced before this Tribunal and there is no reference about this agreement in the orders of both the authorities below. Therefore this Tribunal is of the considered opinion that the matter needs to be re-examined. Accordingly the orders of both the authorities below are set aside and the disallowance of payment of Rs.5,09,656/- to Mr. James Drutchas, USA is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh in the light of the agreement said to be entered into between the assessee and Mr. James Drutchas, USA and thereafter decide the issue in accordance with law after giving reasonable opportunity to the assessee.

4. The next issue arises for consideration is disallowance of Rs.14,58,647/- to Dietrich Sikler, Germany. The assessee claims that it is also expenditure for marketing services rendered outside India.

4.1 Shri R. Vijayaraghavan, the Ld. Counsel for the assessee submitted that the payment of Rs.14,58,647/- was in the nature of business receipt for the non-resident and there is no permanent establishment in India and hence it is not chargeable to tax.

4.2 On the contrary, Shri S. Bharath, the Ld. Departmental Representative submitted that the agreement between the assessee and Dietrich Sikler, Germany is not available on record. Unless the agreement is examined, the nature of payment cannot be determined. Having heard the Ld.AR and the Ld.DR, this Tribunal is of the considered opinion that to decide the nature of payment, the agreement between the assessee and Dietrich Sikler or atleast the communication between the assessee and Dietrich Sikler has to be examined. No material is available on record with regard to nature of payment. In view of the above, this Tribunal is of the considered opinion that the matter needs to be re-examined by the Assessing

Officer. Accordingly the orders of both the authorities below are set aside and the addition of Rs.14,58,647/- is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh in the light of the agreement that may be filed by the assessee and thereafter decide the issue in accordance with law after giving reasonable opportunity to the assessee.

5. The next issue arises for consideration is disallowance of Rs.4,07,371/- paid to non-residents in connection with the exhibitions said to be held outside India.

5.1 Shri R. Vijayaraghavan, the Ld. Counsel for the assessee submitted that the assessee has paid Rs.4,07,371/- to non-residents in connection with the exhibitions held outside India. On query from the Bench to whom the money was paid and the purpose for which it was paid, the Ld. AR said that such details are not available. For the purpose of claiming the expenditure, the assessee has to necessarily produce the details of the recipient and the purpose for which it was paid. Mere vague statement that the payment was made to non-resident in connection with the exhibition held outside India cannot be a reason for allowing the claim of the assessee. If it is for

exhibition, the assessee has to clarify whether it is a rent or license fee for an ear-marked place in the exhibition or it is a travelling expenditure. In the absence of such details, this Tribunal is of the considered opinion, the same cannot be allowed. Therefore the disallowance of Rs.4,07,371/- is confirmed.

6. The next issue arises for consideration is disallowance of Rs.8,32,645/- said to be paid to Rane Engine Valve Limited in relation to expenses incurred for China business. On a query from the Bench, the Ld.AR fairly submitted that no details with regard to payment are available. What is the business in China also could not be clarified. In the absence of any details, with regard to expenses said to be incurred for China business, this Tribunal is of the considered opinion such a claim cannot be allowed. The assessee has taken one more ground alternatively fee for technical services rendered outside India is taxable only by virtue of amendment to Section 9 by Finance Act 2010, therefore there cannot be any disallowance U/s.40(a)(i) of the Income Tax Act, 1961 (in short 'the Act'). The assessee could not clarify the nature of the expenditure. A mere statement that the expense was incurred for China business without furnishing any other details cannot be a reason to allow the

ground of appeal. Whether it is a fee for technical services or not is irrelevant since the assessee has not submitted any details. Since the assessee has not filed any material, the nature of payment could not be determined, therefore, this Tribunal is of the considered opinion that there cannot be any claim as business expenditure. Hence disallowance of Rs.8,32,645/- is confirmed.

7. The next issue arises for consideration is disallowance of Rs.1,58,274/- said to be paid to railway consultants.

7.1 Shri R. Vijayaraghavan, the Ld. Counsel for the assessee submitted that the fee paid to railway consultant to the extent of Rs.1,58,274/- was already subjected to deduction of tax. The tax was also remitted to the Government account. On a query from the Bench, what is the nature of service offered by the railway consultant, the Ld.AR clarified that the assessee is supplying material to the Indian Railways, for getting the payment somebody has to follow up the matter. According to the Ld.AR, the railway consultant assisted the assessee company for collecting the money from the Railways. We heard Shri S. Bharath, the Ld. Departmental Representative also.

7.2 The assessee claims that a sum of Rs.1,58,274/- was paid to railway consultant and tax was also deducted. Since the assessee claims that tax was already deducted and paid to government account, the Assessing Officer may verify whether tax was deducted and deposited by the assessee as claimed and the nature of services rendered by the railway consultant and thereafter decide the issue afresh in accordance with law. Accordingly the orders of both the authorities below are set aside and the disallowance of payment made to the railway consultant of Rs.1,58,274/- is remitted back to the file of the Assessing Officer for reconsideration.

8. The next issue arises for consideration is disallowance of advertisement and sales promotion expenses to the extent of Rs.2,09,62,270/-.

8.1 Shri R. Vijayaraghavan, the Ld.Counsel for the assessee submitted that the assessee paid Rs.92,45,049/- towards incentive scheme to garage mechanics. According to the Ld.AR, mechanics who are buying the products are not covered by the provisions of Chapter XVIIIB of the Act. Therefore the assessee is not liable to

deduct tax when the incentive was paid to the mechanics who buys the products. The Assessing Officer also disallowed a sum of Rs.17,74,916/- without considering the nature of the payment. According to the Ld.AR, these payments are in the nature of coupons given to ultimate purchasers, therefore the assessee is not liable to deduct tax. Similarly a sum of Rs.10,97,391/- paid in relation to Jullundur Motor Auto is only a discount for promoting the product of the assessee through Jullundur Motor Auto. Therefore this is also not liable for deduction of tax at source.

9.1 The assessee has also claimed payment of Rs.10,61,938/- which is nothing but reimbursement of salary and travel expenses of the sales representatives. Similarly the payment of reimbursement of expenditure incurred by wholesale dealers, exhibition expenses and conference expenditure, customer promotion expenses and damages paid to railways etc., are not liable for deduction of tax at source. Warranty expenses to the extent of Rs.10,39,405/- also does not require any deduction of tax at source.

9.2 On the contrary, Shri S. Bharath, the Ld. Departmental Representative submitted that the assessee did not file any details

either before the Assessing Officer or CIT(A). Therefore the CIT(A) rejected the claim of the assessee.

9.3 Having heard the Ld.AR and the Ld.DR, this Tribunal find that no material is available on record with regard to payment of Rs.2,09,62,270/- towards incentive scheme for mechanics, coupons for the purchasers, payment to Jullundur Motor Auto, reimbursement of salary and travel expenses of sales representatives, travel expenditure, exhibition and conference expenditure, customer promotion expense, gift and compliments, damages to railway, reimbursement said to be made to Rane Group employees and warranty expenses. Unless the assessee files the details of the expenditure, it may be difficult to decide whether such payment needs deduction of tax at source or not? Therefore the assessee has to file necessary details before the Assessing Officer with regard to the nature of the payment. Accordingly the orders of both the authorities below are set aside and the entire issue is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter based on the materials that may be filed by the assessee and thereafter decide the issues in accordance with law after giving reasonable opportunity to the assessee.

10. The next issue arises for consideration is deduction U/s.80IB of the Act.

10.1 Shri R. Vijayaraghavan, the Ld.Counsel for the assessee submitted that the Ld.CIT(A) confirmed the order of the Assessing Officer rejecting the claim of deduction U/s.80IB by allowing the entire expenditure to eligible unit on turnover basis without appreciating that the assessee has filed the P&L account of the eligible unit along with the audit report. The Assessing Officer as well as the CIT(A) without considering the auditor certificate disallowed the claim of the assessee. According to the Ld.AR, the auditor's certificate has to be examined before taking any decision.

10.2 We heard Shri S. Bharath, the Ld. Departmental Representative also. In respect of allocation of expenditure, the auditor's certificate is also one of the factor to be considered for the purpose of deduction U/s.80IB. Admittedly the auditor certificate was not examined either by the Assessing Officer or the CIT(A). This Tribunal is of the considered opinion that the Assessing Officer shall re-examine the matter afresh. Accordingly the orders of both the

authorities below are set aside and the entire addition is remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the matter afresh after considering the auditor's certificate and thereafter decide the issue in accordance with law after giving reasonable opportunity to the assessee.

11. The next issue arises for consideration is disallowance made U/s.14A of the Act.

11.1 Shri R. Vijayaraghavan, the Ld.Counsel for the assessee submitted that the Assessing Officer disallowed 5% of the dividend income as expenditure u/s 14A of the Act. The assessment year under consideration is 2005-06. Rule 8D is applicable only from the assessment year 2008-09. Therefore according to Ld.Counsel, the disallowance may be restricted at 2%.

11.2 We heard Shri S. Bharath, the Ld. Departmental Representative also. As rightly submitted by the Ld.AR, during the year under consideration Rule 8D is not applicable at all. In all such cases, this Tribunal disallowed 2% of the dividend income as expenditure U/s.14A for earning exempt income. Accordingly, the

orders of both the authorities below are modified. The Assessing Officer is directed to disallow 2% of the exempted income instead of 5%.

12. In the result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the court on 18<sup>th</sup> July, 2019 at Chennai.

Sd/-  
(इंटूरी रामा राव)  
(Inturi Rama Rao)  
लेखा सदस्य /Accountant Member

Sd/-  
(एन.आर.एस. गणेशन)  
(N.R.S. Ganesan)  
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 18<sup>th</sup> July, 2019.

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |