IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' : NEW DELHI)

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.5723 /Del./2016
(ASSESSMENT YEAR : 2011-12)

M/s. Corbus (India) Pvt. Ltd., (Now Corbus (India) LLP), 164, Kailash Hills, New Delhi.	vs.	DCIT, Circle 6 (2), New Delhi.
(PAN : AAACM2026B)		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri M.K. Juneja, Advocate
REVENUE BY : Ms. Ashima Neb, Senior DR

Date of Hearing : 11.07.2019
Date of Order : 17.07.2019

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Corbus (India) LLP (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 30.09.2016 passed by the Commissioner of Income-tax (Appeals)-35, New Delhi qua the assessment year 2012-13 on the grounds inter alia that :-

"1. The Order of the Commissioner of Income Tax is wrong and erroneous both in fact and in law.

2. The Commissioner of Income Tax (Appeals) has grossly erred both in fact and in law in confirming the addition of Rs.20,857/- under section 14A of the Income Tax Act, 1961 read with Rule 80 of Income Tax Rules 1962 as against nil disallowance by the Appellant.

3. Without prejudice to above grounds, Commissioner of Income Tax (Appeals) has grossly erred both in fact and in law in confirming the addition of Rs.5,78,078 u/s 40(a)(ia) of Income Tax Act, 1961.

4. The Commissioner of Income Tax (Appeals) has erred both in fact and in law in upholding the initiation of penalty proceedings under section 271 (1)(c) of the Act by the Assessing Officer."

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is into the business of outsourcing offering a range of services in Information Technology (IT) and the supply chain management. Assessee claimed dividend income of Rs.1,97,979/-. Assessing Officer (AO) by invoking the provisions contained under section 14A of the Income-tax Act, 1961 (for short 'the Act) read with Rule 8D of the Income-tax Rules, 1962 (for short 'the Rules') made a disallowance of Rs.20,857/- as is expenses incurred in earning dividend income.

3. AO also made disallowance of Rs.5,78,078/- on account of disallowance u/s 40(a)(ia) of the Act as the assessee has failed to deduct the tax u/s 195 of the Act on the payment made to AMR Research Inc., Boston (A Gartner Company) (hereinafter referred to AMR Research Inc.).

4. Assessee carried the matter by way of an appeal before the ld. CIT (A) who has confirmed the additions by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

GROUND NO.1

6. Ground No.1 is general in nature, hence does not require any specific adjudication.

GROUND NO.2

7. Ld. AR for the assessee challenging the impugned addition made on account of disallowance of Rs.20,857/- contended that since the assessee has not incurred any expenses during the year under assessment, the addition is not sustainable because the assessee has earned income by way of dividend on investment in mutual funds invested in earlier years in which dividend received got automatically reinvested as per standing instructions given by the assessee at the time of initial investment. However, on the other hand, ld. DR for the Revenue relying upon the order passed by the AO as well as ld. CIT (A) contended that to earn the dividend, indirect expenses cannot be ruled out.

8. Perusal of the assessment order as well as the impugned order passed by the ld. CIT (A) goes to prove that there is not an iota of evidence on record to work out if the assessee has incurred any direct or indirect expenses in earning the dividend. When dividend has been undisputedly earned on the basis of earlier investment made in the earlier years in which the assessee has given standing instructions to reinvest the dividend earned, no expenses directly or indirectly can be attributed to have been incurred by the assessee.

9. No doubt, at the time of making initial investment, assessee must have incurred expenses but when it is undisputed fact that no investment has been made during the year under investment and only dividend has been earned on the reinvestment of dividend earned in the earlier years and there was no intervention of human labour and mind, section 14A is not attracted. So, we are of the considered view that AO without bringing on record any evidence as to how and under what circumstances the expenses have been incurred in the given circumstances applied Rule 8D mechanically which is not sustainable in the eyes of law. The ld. CIT (A) has also erred in confirming the addition made u/s 14A of the Act. So, disallowance made u/s 14A is ordered to be deleted. Consequently, ground no.2 is determined in favour of the assessee.

GROUND NO.3

10. AO made disallowance of Rs.5,78,078/- u/s 40(a)(ia) of the Act on the ground that assessee has made foreign remittance to AMR Research Inc. without deducting the tax u/s 195 of the Act. Ld. AR for the assessee contended that as per advice rendered by the tax auditor, the assessee was not required to deduct the tax at source in view of the judgment rendered by the Tribunal in case of ***M/s. Wipro Ltd. vs. ITO (2005) 94 ITD 9 (Bang.)***. However, on the other hand, ld. DR for the Revenue in order to repel the arguments addressed by the ld. AR for the assessee contended that the said decision rendered by the Tribunal has been overruled by the Hon'ble Karnataka High Court cited as ***CIT vs. M/s. Wipro Ltd. (2011) 16 taxmann.com*** and as such, this ground is liable to dismissed.

11. Undisputedly, assessee has not deducted the tax at source by relying upon the decision rendered by the Tribunal in case of ***M/s. Wipro Ltd. vs. ITO*** (supra). It is also not in dispute that the aforesaid case of M/s. Wipro Ltd. decided by the Tribunal has been overruled by Hon'ble Karnataka High Court wherein it is held that any payment made by the assessee to a non-resident in order to obtain licence to use the database maintained by it is to be treated as royalty.

12. When the case of Wipro Ltd. is undisputedly applicable to the facts and circumstances of the case as contended by the ld. AR for the assessee, there cannot be a second view that the assessee was required to

deduct the tax at source while making the payment to AMR Research Inc. So, AO has rightly disallowed the amount of Rs.5,78,078/- u/s 40(a)(ia) of the Act and is required to be added to the income of the assessee. So, we find no illegality or perversity in the addition made by the AO and confirmed by the ld. CIT (A), hence ground no.3 is determined against the assessee.

GROUND NO.4

12. Ground No.4 being premature needs no specific findings.

13. Resultantly, the appeal filed by the assessee is partly allowed.

Order pronounced in open court on this 17th day of July, 2019.

Sd/-	**sd/-**
(R.K. PANDA)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 17th day of July, 2019
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Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(A)-35, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.