

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 400/MUM/2018
Assessment Year: 2014-15**

Income Tax Officer-
2(1)(1), Room No. 543,
5th floor, Aayakar
Bhavan, M.K. Road,
Mumbai-400020.

Appellant

M/s AAA Technologies
Pvt. Ltd. 5, Apeejay
House, Ground floor,
130, Bombay Samachar
Marg, Fort, Mumbai-
400023.

Vs.

**PAN No. AADCA8858Q
Respondent**

**C.O. No. 144/MUM/2019
(ITA No. 400/MUM/2018)
Assessment Year: 2014-15**

M/s AAA Technologies
Pvt. Ltd. 5, Apeejay
House, Ground floor, 130,
Bombay Samachar Marg,
Fort, Mumbai-400023.

**PAN NoAADCA8858Q
Appellant**

Income Tax Officer-
2(1)(1), Room No. 543,
5th floor, Aayakar
Bhavan, M.K. Road,
Mumbai-400020.

Vs.

Respondent

Revenue by : Mr. Maurya Pratap, DR
Assessee by : Mr. Shubham Rathi, AR

Date of Hearing : 06/06/2019
Date of pronouncement : 29/07/2019

ORDER

PER N.K. PRADHAN, AM

The appeal by the Revenue and the cross objection by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-4, Mumbai and arise out of the penalty order passed by the Assessing Officer (AO) u/s 143(3) of the Income Tax Act 1961, (the 'Act').

ITA No. 400/MUM/2018
Assessment Year: 2014-15

2. The grounds of appeal filed by the revenue read as under:
1. On the facts and Circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the disallowance of expenses paid to overseas parties of Rs.9,55,20,000/-even though no proof of payment nor any agreement with foreign supplier was furnished by the assessee, for getting 0.5% commission."
 2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in allowing expenses paid to foreign parties even though no TDS was deducted u/s 195 and hence is liable to be disallowed u/s40(a)(i) of the IT Act.
 3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) contradicted himself by stating that no services were rendered and on the other hand allowing the professional fees paid to foreign parties.
 4. On the facts in the circumstances of the case and in law, the Ld. CIT (A) erred in accepting a growth link fund as Keyman Insurance Police, defined under explanation to clause (c) of section 10(10D).

5. On the facts in the circumstances of the case and in law, the CIT (A) erred in overlooking the fact that the policies were originally taken in the name of the employees but later assigned to the assessee company.

3. Briefly stated, the facts are that the assessee filed its return of income for the assessment year (AY) 2014-15 on 28.09.2014 declaring total income of Rs.22,08,050/-. The nature of business of the assessee is information system audit, IT consultancy etc. During the course of assessment proceedings, the Assessing Officer (AO) observed that the expenditure amounting to Rs.9,56,74,000/- claimed by the assessee is not evidenced by any bills, nature of services rendered, mode of payment, bank statements. In response to a query raised by the AO, the assessee filed a reply which has been extracted at para 2.2 of the assessment order dated 21.12.2016. However, the AO was not convinced with the said reply as the assessee failed to prove the genuineness of expenditure of Rs.9,55,20,000/- claimed under the head professional fees.

The AO also drew a finding that as the assessee failed to establish its primary onus regarding the above expenditure, it is not possible to verify the applicability of TDS u/s 40(a)(i) of the Act. Therefore, he disallowed the expenditure u/s 40(a)(i) of the Act.

During the year under consideration the assessee also claimed insurance amounting to Rs.5,00,000/- on its Chairman and Managing Director Mr. Anjay Agarwal and Mr. Venugopal M. Dhoot. Following the order of his predecessor-in-office, the AO disallowed the above sum of Rs.5,00,000/-.

4. In appeal, the Ld. CIT(A) followed the order of his predecessor-in-office for AY 2012-13 and deleted the disallowance of Rs.9,55,20,000/- made by the AO.

Regarding the disallowance made by the AO u/s 40(a)(i), the Ld. CIT observed that –

“7.5.4 So far as the provision of TDS is concerned u/s 40(a)(ia), alternatively I also rule that if such explanation is considered as such under Income Tax Act then such expenditure do not require TDS to be done because it is not taxable in India. For such view carried by me, I rely on the judgment of GE India Technology P Ltd v CIT (2010) 327 ITR 456 (SC). As per Section 195 of the IT Act, TDS is only deductible where the income is chargeable to tax in India and payment is made to a non resident. In this case, no service is rendered, there is no income chargeable to tax in India and thus no TDS is deductible u/s 195 of the IT Act. In the light of the above facts and in the absence of any material evidence to negate the statements of the appellant, the explanation offered by the appellant that its financial statement has been presented in such a manner on account of journal entries passed only on the advice of Chartered Accountant and no actual payment was made to the non-residents cannot be ignored. Thus, I am of the view that such expenses are not to be disallowed u/s 40(a)(ia) of the IT Act as no payment has been made or incurred by the appellant.”

Regarding the disallowance of Rs.5,00,000/- made by the AO in respect of expenditure on keyman policy, the Ld. CIT(A) observed that the assessee is only paying the insurance premium and not the employees. In case the employee expires, it is the assessee who will earn the sum assured of Rs.25,00,000/- and it is not relevant as to the

manner in which the premium is utilized, whether in debt or equity. Again following the order of her predecessor-in-office for AY 2012-13, the Ld. CIT(A) deleted the addition of Rs.5,00,000/- made by the AO towards keyman insurance premium.

5. Before us, the Ld. DR relies on the order of the AO, whereas the Ld. counsel for the assessee relies on the order of the Tribunal in assessee's own case for AYs 2009-10 and 2012-13.

6. We have heard the rival submissions and perused the relevant materials on record. Similar issue arose before the ITAT 'A' Bench, Mumbai in assessee's own case for AYs 2009-10 and 2012-13 (ITA No. 3454 & 3455/Mum/2017). Regarding the disallowance of professional fees by the AO, the Tribunal *vide* order dated 17.05.2019 held :

“There is considerable force in the submissions of the assessee and we are in complete agreement with the findings and the decision of the Ld. CIT(A) in holding that the professional fee debited by the assessee cannot be treated as bogus expenses, especially when the Assessing Officer agrees that the assessee has not rendered any services and has accepted the receipts shown by the assessee in the profit and loss account. Having accepted the receipts shown by the assessee in the profit and loss account, the Assessing Officer should not have disallowed the expenses debited in the profit and loss account. Facts go to show that the assessee was only rendering its name for the foreign parties for execution of contracts at overseas by the foreign parties for a small consideration. Therefore, at the most what can be taxed is the commission income which the assessee had already offered to tax in the return of income. In the circumstances, we do not see any infirmity in the

order of the Ld. CIT(A) and thus we uphold the order of the Ld. CIT(A) and reject the grounds raised by the Revenue.”

6.1 Regarding the disallowance u/s 40(a)(i), the Tribunal held that the foreign parties have no permanent establishment in India and they have not rendered any services in India and therefore, in view of the decision of the Hon’ble Supreme Court in the case of *GE India Technology P. Ltd. v. CIT* 327 ITR 456, no TDS is liable to be deducted and hence the provisions of section 40(a)(i) would not be applicable.

6.2 Regarding the disallowance of Rs.5,00,000/- made by the AO towards keyman insurance policy, the Tribunal following the decision in *Shri Nidhi Corporation v. ACIT* 151 ITD 470 (Bom), *Ambica Overseas v. ACIT* [ITA No. 45/ASR/2010 dated 31.08.2015], *Suri Sons v. ACIT* 155 ITD 825 (Amritsar), *F.C. Sondhi & Co. (India) Pvt. Ltd. v. DCIT* in ITA No. 117/ASR/2010 dated 27.11.2015, upheld the order of the Ld. CIT(A) and rejected the grounds raised by the revenue.

6.3 Facts being identical, we follow the above order of the Co-ordinate Bench and confirm the order of the Ld. CIT(A).

7. In the result the appeal filed by the revenue is dismissed.

8. The Ld. counsel submits that the cross-objection filed by the assessee “relating to the order passed by the Ld. CIT(A) dismissing the ground of appeal challenging the validity and legality of the assessment order passed”, is not pressed. We dismiss the cross-objection filed by the assessee as not pressed.

9. In the result, the appeal filed by the revenue and the cross-objection filed by the assessee are dismissed.

Order pronounced in the open Court on 29/07/2019.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 29/07/2019

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai