

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.150/VIZ/2019
(निर्धारण वर्ष/Assessment Year : 2013-14)**

Asst.Commissioner of Income Tax
Circle-3(1)
Visakhapatnam

Vs. M/s Miracle Software Systems
(India) Pvt. Ltd.
MIG 49-4-67-3/1
Lawsons Bay Colony
Visakhapatnam
[PAN :AABCM4988R]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri P.Srinivasa Murthy, DR
: Shri Y.Surya Chandra Rao, AR

सुनवाई की तारीख / Date of Hearing

: 17.07.2019

घोषणा की तारीख/Date of Pronouncement

: 07.08.2019

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the revenue against the order of the Commissioner of Income Tax [CIT(A)]-9, Hyderabad vide ITA No.10270/CIT(A)-9/Hyd/2018-19 dated 26.12.2018 for the Assessment Year (A.Y.)2013-14.

2. Ground No. 1 is general in nature which does not require specific adjudication.

3. Ground No. 2 to 4 are related to the disallowance of consultancy charges paid by the assessee to its Associated Enterprises (AEs). During the assessment proceedings, the Assessing Officer (AO) found that the assessee has made the payment of Rs.88,91,065/- to M/s I.T.Lokam Services which is a subsidiary of the assessee company and the Directors/share holders in both the companies are one and the same. The assessee submitted that it had outsourced some of the works and the payment was made by the company for the services rendered by the I.T. Lokam Services. The assessing officer viewed that there is no nexus with the business of the assessee and accordingly disallowed the entire expenditure paid to M/s I.T.Lokam Services . On identical facts the same disallowance made in the earlier years which was allowed by the Tribunal. The detailed reasons for disallowance of expenditure discussed in the assessment order and for the sake of clarity we reproduce from para No.3 to 3.2 of the assessment order which reads as under :

"3. It is seen from the Profit & Loss A/c that the assessee debited an amount of Rs.88,91,065/- towards 'Consultancy charges' under the head 'Other expenses'. This amount has been paid to M/s. I T Lokam Services Pvt. Ltd.,

which is a subsidiary of the assessee-company and the directors/shareholders in both the companies are one and the same. This issue was examined thoroughly during the course of the assessment proceedings for the AYs.2009-10 to 2012-13 and the relevant details were called for. Since the issue as pertaining to the above assessment years has also continued for the A.Y.2013-14, the findings therein are relied upon in this order.

3.1 *In view of the consultant being a subsidiary company and further in view of the shareholders/directors being common between the assessee and the consultant company, the nature of consultancy was sought to be looked into. Accordingly, during the course of hearing for the Asst. Years 2009-10 & 2010-11, the AR was asked to explain the consultancy charges paid with reference to the nature of consultancy as to the specific service rendered (project-wise/client-wise). Further, the AR was also asked to bring out the nexus between the consultancy and the specific receipt of income along with the relevant correspondences with regard to the consultancy received and its correlation with the project undertaken by the assessee or the service rendered by the assessee towards its client. In reply thereto, the assessee had submitted as under:*

The Assessee company has outsourced some of its Domestic project work to M/s IT Lokam Private Limited and TDS was made on the said turnover. The consultancy is towards services rendered by the personnel in the fields of software such as Java/J2EE, DB2, Websphere technologies etc. The revenue from the supporting services is received from Indian Software Companies. The assessee company engages its own staff to render the said services and in case of short fall of the personal it takes support from the other companies who provide such kind of services. For executing the said contract it engages its own employees and out sourced persons, hence the expenditure for salaries (own staff) and consultancy charges (outsourced persons) appears in profit and loss account.

3.2. *At the outset, the reply of the assessee was analyzed to be too general. The reply did not answer the specific query put forth to the assessee with regard to the specific consultancy received and its corresponding application/utility to the project/ supporting services undertaken by the assessee towards its clients. The assessee had neither listed out the client-wise support services matching them with the corresponding consultancy received nor had cited specific instances to demonstrate the necessity for obtaining the alleged consultancy. The assessee company in its reply had further stated that the it engages its own staff for rendering services and in case of shortfall of personnel, it takes support from other companies which provide such services. It was noticed that the assessee had not been taking such services from any other company except from M/s. I.T. Lokam Services Pvt. Ltd. alone. Similarly, it was also noticed from the accounts of M/s I.T. Lokam services Pvt. Ltd. that the consultancy services are rendered by it only to the assessee company and*

not to anybody else. Had the assessee drawn personnel from other company to meet its support service obligations, then it would have obviously correlated the specific skills (trend manpower/human resource) obtained to the specific Service area where they are deployed rather than giving a vague and general reply as the one reproduced above. In this regard, reliance was also placed in the case of Emson Tools Manufacturing Corporation Ltd. vs CIT 296 ITR 304 (P&H) which squarely applies to the instant case. In view of the assessee's inability to specifically demonstrate the nature of consultancy service obtained from its subsidiary, M/s.IT Lokam Services Pvt. Ltd., it was held that the alleged expenditure towards consultancy charges purportedly paid to M/s IT Lokam Services Pvt. Ltd. has no nexus with the business of the assessee and holding thus, the expenditure towards consultancy paid was disallowed. The assessee had contested the said disallowance made for A.Ys.2009-10 & 2010-11, 2011-12 & 2012-13 before the Commissioner of Income-tax(Appeals), Visakhapatnam."

4. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) deleted the addition made by the AO following the order of this Tribunal in the assessee's own case for the A.Y.2009-10 and 2010-11. We extract the relevant part of the order of the Ld.CIT(A) which reads as under :

"5.1. The Assessing officer in Para 3 of his order, has relied on the decision of CIT(A) and has made the addition as done in earlier years AY 2009-10, and 2010-11. Further the Assessing Officer has rejected the agreement stating that it may be antedated and it is self serving. Therefore on facts there is no change. The Hon'ble ITAT Visakhapatnam in ITA No 711,739,712,740/2013, and 403/2015 and 5/2016 in para 17 has decided the issue as under:

"Considering the facts and circumstances of this case, we are of the view that consultancy charges paid by the assessee to M/s. IT. Lokam Services India Pvt. Ltd. is having nexus between earning of income. The assessee has proved beyond doubt with necessary supporting documents that it has incurred consultancy charges wholly and exclusively for the purpose of business. The CIT(A), without appreciating the facts, simply confirmed the additions made by the A. O. by holding that the impugned expenses have

not been proved to be incurred wholly and exclusively for the purpose of assessee's business. Therefore, we set aside order passed by the CIT(A) and direct the A.O. to allow consultancy charges paid by the assessee for the assessment years 2009-10 to 2011-12."

5.2. Respectfully following the decision in appellants own case, the Assessing Officer is directed to delete the addition of Rs.88,91,065/-

5.3. The second issue is disallowance of employees contribution of PF not paid within due date of PF act. This issue is also decided in the same order as under:

"Considering the facts and circumstances of the case and also respectfully following the coordinate bench decision, we are of the view that if employees contribution to provident fund is paid within the due date specified u/s 139(1) of the Act, then no disallowance can be made towards employees contribution to provident fund for the assessment year 2009-10 to 2011-12."

5.4. Respectfully following the decision in appellants own case, The Assessing Officer is directed to delete the addition of Rs.5,37,791/-."

5. During the appeal hearing the Ld.DR did not dispute the facts and no new facts were brought on record. The order of the tribunal was not reversed by the Hon'ble jurisdictional High court. Since the facts are identical and the Ld. CIT(A) allowed the appeal of the assessee following the order of this Tribunal in assessee's own case for the A.Y 2009-10 and 2010-11., we find no reason to interfere with the order of CIT(A) and accordingly, Ground Nos.2 to 4 are dismissed.

6. Ground No. 5 to 8 are related to the Employees contribution to PF u/s 36(1)(va) r.w.s. 2(24)(x) of the Act. During the assessment proceedings, the AO found that the assessee had remitted the employees contribution to PF belatedly beyond the due date specified under the P.F.act, including the grace period provided under PF rules, the details are as follows :

Sl.No.	Month	Employees Contribution (Rs.)	Date of Payment
1.	May 12	77,493/-	21.06.2012
2.	July 12	89,083/-	21.08.2012
3.	September 12	1,14,131/-	22.10.2012
4.	January 13	1,27,033/-	22.02.2013
5.	March 13	1,30,051/-	22.04.2013
	Total	5,37,791/-	

6.1. The AO made the addition u/s 36(1)(va) r.w.s.2(24)(x) of the Act, stating that in the case of employees' contribution to PF, the employer would get deduction only if the payment is made before the due date as prescribed under the respective Act, Rule or Notification governing such funds. The AO further observed that this provision is to ensure that the beneficial legislation in favour of the employees is complied with strictly as the contribution was made by the employees. It is only in the case of employer's contribution to PF, to which provisions of sec.43B are attracted and the deduction is allowable under the first proviso to section 43B if it is

paid on or before the due date for filing the return of income. Thus the AO held that the deduction is not available to the assessee even if the same is paid before the due date for filing the return on income. Accordingly, the belated PF payments of employees contributions aggregating to Rs.5,37,791/- are treated as income of the assessee u/s 36(1)(v) r.w.s. 2(24)(x) of the Act.

7. Aggrieved by the order of the AO, the assessee went on appeal before the CIT(A) and the Ld.CIT(A) observed that though the assessee has remitted the employees contribution to PF beyond the due date provided in the PF Rules, it was remitted before the due date of filing the return of income. Since the contribution towards PF was remitted before the due date of filing the return of income, the Ld.CIT(A) allowed the appeal of the assessee following the order of this Tribunal in the assessee's own case for the A.Y.2009-10 and 2010-11.

8. Aggrieved by the order of the Ld.CIT(A) the revenue is in appeal before this Tribunal.

9. We have heard both the parties and find that the assessee has remitted the Employees contribution to P.F beyond the due date specified

under P.F Act, but before the due date for filing the return of income. This tribunal has consistently taken the view that the deduction is to be allowed even in case of employees contribution, if the same is paid before the due date of filing the return of income. The Tribunal has followed the decision of Hon'ble Karnataka High Court in the case of ESSAE Teraoka Pvt Ltd. Vs. DCIT [366 ITR 408] and the decision of ITAT, Hyderabad in the case of Tetra Soft India Pvt. Td. Vs. ACIT (2015) (40 ITR Tribunal 470) while delivering the above ruling. Further this Tribunal on identical facts decided the issue in favour of the assessee in it's order in I.T.A No.485/Viz/2018 dated 25.01.2019. Since the Ld.CIT(A) allowed the appeal of the assessee following the order of this Tribunal, we find no reason to interfere with the order of the CIT(A), accordingly the revenue's appeal in ground No.5 to 8 are dismissed.

10. In the result, appeal of the revenue is dismissed .

Order pronounced in the open court on 7th August, 2019.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 07.08.2019

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee- M/s Miracle Software Systems (India) Pvt. Ltd.
MIG 49-4-67-3/1, Lawsons Bay Colony, Visakhapatnam
2. राजस्व/The Revenue - Asst.Commissioner of Income Tax, Circle-3(1),
Visakhapatnam
3. The Pr.Commissioner of Income Tax-1, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-9, Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam