

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 2064/Ahd/2015

निर्धारण वर्ष/Assessment Year: 2011-12

M/s. Matrix Comsec Pvt Ltd C-1, 394, GIDC, Makarpura, Baroda PAN : AABCM 5892 Q	Vs.	Dy. Commissioner of Income-tax, Circle - 2(1)(2), Baroda
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Ms. Urvashi Sodhan, AR
Revenue by :		Shri Mudit Nagpal, Sr DR

सुनवाई की तारीख/Date of Hearing : 20/08/2019

घोषणा की तारीख /Date of Pronouncement: 21/08/2019

**आदेश/O R D E R**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

The assessee is in appeal before the Tribunal against the order of the ld. CIT(A)-2, Vadodara dated 28.05.2015 passed for Assessment Year 2011-12.

2. Though the assessee has taken three grounds of appeal, but its grievances revolve around a single issue viz. the learned CIT(A) has erred in confirming the disallowance of advertisement expense of Rs.14,15,038/- which was disallowed by the Assessing Officer with the aid of Section 40(a)(ia) of the Income-tax Act on account of non-deduction of TDS.

3. The brief facts of the case are that the assessee has filed its return of income electronically on 23.09.2011 declaring total income at Rs.33,18,890/-. The case of the assessee was selected for scrutiny assessment and notice under Section 143(2) was issued and served upon the assessee. On scrutiny

of the accounts, it revealed to the Assessing Officer that the assessee has debited the expenditure on account of advertisement etc. He has reproduced the details of such payments on page nos. 5 & 6 of the assessment order. He further observed that expenditure of Rs.15,76,424/- was debited under the head "advertisement domestic (indirect)" and Rs.2,32,868/- was debited under the head "exhibition expenses - domestic (indirect)". The assessee has contended that these are expenses which were incurred by the assessee towards reimbursement; somehow, learned Assessing Officer not satisfied with the explanation of the assessee and observed that assessee has made total payment of Rs.19,32,177/-, on which it failed to deduct the TDS and, therefore, disallowance deserves to be made.

4. Appeal to the learned CIT(A) did not bring much relief to the assessee.

5. Learned Counsel for the assessee at the very outset contended that, out of total expenditures, learned CIT(A) has allowed some of the expenditures and, with respect to Rs.12,96,125/- and Rs.1,18,913/- are concerned, according to the assessee, these were in the nature of reimbursement, hence no requirement of making TDS was there; however, by placing reliance on the order of the learned CIT(A) passed for assessment year 2010-11, learned CIT(A) in the present year upheld the disallowance. She took us through the findings of the learned CIT(A) recorded in paragraph 6.3.1, which reads as under:-

*"6.3.1. So far as balance payments of Rs.12,96,125/- and Rs.1,18,913/- are concerned, the appellant's claim is that these are in the nature of reimbursement and hence, no requirement of making TDS on such payments is there. Similar issue was involved in appellant's own case for AY 2010-11. In the appellate order passed on 22.08.2013 in appeal No. CAB/III-258/12-13, it has been held that the appellant was required to make TDS on these*

*payments. Following the same, in the current year also the appellant's contentions are rejected and the disallowance of these expenses u/s 40(a)(ia) is upheld."*

6. Learned Counsel for the assessee further contented that in assessment year 2010-11 the dispute was travelled upto the Tribunal in ITA Nos. 2446 & 2907/Ahd/2013 and this issue was decided in favour of the assessee and the disallowance was deleted. She also placed reliance on the order of the tribunal dated 24.04.2018 in the aforesaid case.

7. On the other hand, learned Departmental Representative relied upon the order of the learned CIT(A).

8. We have duly considered the rival contentions and gone through the record carefully. We find that in Assessment Year 2010-11 the assessee has debited the expenditure of Rs.19,32,177/- which was incurred towards reimbursement of advertisement expenses. Learned Assessing Officer has disallowed this expenditure and the issue travelled upto the Tribunal. The Tribunal has allowed the claim of the assessee by recording the following finding:-

*"13. Grievance raised by the assessee-appellant is as follows:-*

*"The learned CIT(A) has erred in law and on facts of the appellant's case in confirming the action of the Learned AO of disallowing reimbursement of advertisement expense of Rs.19,32,177/- u/s.40(a)(ia) of the Act on the erroneous plea that TDS was deductible on the same and the appellant has not deducted the same."*

14. *Briefly stated, the relevant material facts are like this. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has incurred certain advertisement and exhibition expenses, through an intermediary - namely Ashish Mistry, but not deducted tax at source. The assessee did point out that these expenses represent only credit notes for reimbursement of expenses to the extent of 35% and 50% as per respective agreements and the expenses were not actually incurred by the assessee. However, the Assessing Officer did not accept the explanation of the*

*assessee and held that the assessee ought to have deducted tax at source from these payments but the assessee has not done so. As a corollary to this finding, the Assessing Officer proceeded to disallow the said expenses which aggregated to Rs.19,32,177/-. Aggrieved, assessee carried the matter in appeal before the ld. CIT(A) but without any success. The CIT(A) initially did not even deal with this grievance of the assessee. When assessee pointed it out by way of a rectification petition, learned CIT(A) dealt with the matter on merits but rejected the grievances anyway – this time on merits. The assessee is not satisfied and is in further appeal before us.*

15. *We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.*

16. *We find that there is no dispute that what is paid by the assessee is a reimbursement, a partial reimbursement in fact, of the advertisement and exhibition expenses. It is not in the nature of income at this stage but is only a reimbursement of expenses to the person who has actually incurred the advertisement expenses and exhibition charges. The character of payment, so far as the assessee is concerned, is simply of reimbursement of expenses. On materially similar facts, Hon'ble jurisdictional High Court, in the case of CIT Vs. Gujarat Narmada Valley Fertilizers Co. Ltd, [(2014) 361 ITR 192 (Guj)], has decided the issue in favour of the assessee, and observed, inter alia, as follows:-*

*“2. It appears that the assessee claimed deduction under Section 40(a)(ia) of Rs. 6,93,372/- towards reimbursement of CHA charges paid to C & F agent and Rs. 76,00,509/- towards reimbursement of expenses towards consignment agents. The aforesaid expenses were disallowed by the Assessing Officer solely on the ground that the assessee has not deducted the TDS on the aforesaid accounts.*

*3. In an appeal by the assessee the Commissioner (Appeals) allowed such deductions observing that so far as the amount of Rs. 6,93,372/- is concerned as such the agent had already deducted the TDS and deposited in the Government and, therefore, there was no further liability of the assessee to deduct the TDS. With respect to Rs. 76,00,509/-, the CIT(A) observed that the said amount was towards the reimbursement of the expenses to the consignment agent, which was in fact incurred on behalf of the assessee and there was no profit element. The CIT(A) held that the assessee was not required to deduct the TDS on such reimbursement and, therefore, the Assessing Officer was not justified in making the above disallowance and accordingly directed to delete the same. Being aggrieved and dissatisfied with the order passed by the CIT(A) in holding the above the appellant-revenue*

*preferred appeal before the Income Tax Appellate Tribunal and by the impugned order the Income Tax Appellate Tribunal has confirmed the order passed by the CIT(A). It is required to be noted that while confirming the order passed by the CIT(A) and deleting the disallowance, it has been specifically observed by the tribunal that in fact the expenses were incurred by the agent on behalf of the assessee for transportation and other charges, which has been spelt out in the bill itself including the commission to the agent. The learned tribunal also observed that the relation between the assessee and the agent is principal and an agent. The learned tribunal also observed that so far as the obligation to deduct tax at source from the payment of transport charges and other charges is concerned, the same was complied with by the agent, who had made payment on its behalf. On the aforesaid facts the learned tribunal also observed that the circular relied upon by the revenue that it is the liability of the assessee as principal agent to deduct the TDS will not be applicable and the said circular would be applicable for payment made to principal to principal. Considering the aforesaid facts and circumstances of the case, when the learned tribunal has confirmed the order passed by the CIT(A) quashing and setting aside the order passed by the Assessing Officer in deleting the disallowance of Rs. 6,93,372/-and Rs. 76,00,509/- claimed by the assessee under Section 40(a)(ia) of the Income Tax Act, we see no reason to interfere with the same. No error has been committed by the learned tribunal in confirming the order passed by the CIT(A). No question of law, much less substantial question of law, arises in the present appeal. Hence, the present appeal deserves to be dismissed and is accordingly dismissed."*

17. *Quite clearly, reimbursements of expenses do not require tax deduction at source. The tax deduction liability arises only at the point of time when payment is "for carrying out any work in pursuance of a contract" for the specified purposes. The payment, in the present case, is not for carrying out any work of the specified nature but only a partial reimbursement of such a payment of specified nature. The distinction is subtle and significant. The lower authorities clearly lost sight of the above aspect of the matter, and proceeded to treat reimbursement of expenses as incurring of expenses.*

18. *Learned CIT(A) has also stated that there is no evidence of the fact that the tax deduction at source was made by the person actually making payment of expenditure. In our considered view, this is wholly irrelevant. All that we are concerned at this stage is whether the assessee has failed to discharge his tax withholding obligation, and when the assessee has not*

*committed any such failure, there is no question of his being visited with the consequences of such a non-existent failure.*

19. *In the light of the above discussions, as also bearing in mind entirety of the case, we uphold the plea of the assessee and direct the Assessing Officer to delete the impugned disallowance of Rs.19,32,177/-. The assessee gets the relief accordingly."*

9. In the present year also, on perusal of findings of the learned CIT(A) extracted supra, it would reveal that the disallowances of Rs.12,96,125/- and Rs.1,18,913/- were made out of the expenditure incurred towards reimbursement. Learned CIT(A) put reliance upon the order of the CIT(A) passed in Assessment Year 2010-11 which has been reversed by the ITAT in the findings reproduced above. Therefore, there is no disparity on facts and relying upon the order of the ITAT in the immediately preceding assessment year, we delete the disallowance and allow the appeal of the assessee.

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

**Order pronounced in the Court on 21<sup>st</sup> August, 2019 at Ahmedabad.**

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Ahmedabad; Dated 21/08/2019

*By T. S. P.*

Sd/-

(RAJPAL YADAV)  
JUDICIAL MEMBER

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

उप/सहायक पंजीकार (Dy./ Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad

