

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH “E”, MUMBAI
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
ITA No. 6649/Mum/2013 for Assessment Year: 2010-11

Sanaa Syntex Pvt. Ltd. 135/B, Sanjay Building, Mittal Industrial Estate, Marol, Andheri (East), Mumbai. PAN: AAACS6150L	Vs.	ACIT 4(3), Aayakar Bhavan, M.K. Road, Mumbai-400020.
(Appellant)		(Respondent)

Assessee by : None
Revenue by : Shri Amit Pratap Singh (DR)
Date of hearing : 30.09.2009
Date of Pronouncement : 01.11.2019

Order under section 254(1) of Income-tax Act

PER PAWAN SINGH, JM:

1. This appeal by assessee is directed against the order of Id. CIT(A)-8, Mumbai dated 08.08.2013 for Assessment Year 2010-11. The assessee has filed the following ground of appeal:

The Id. Assessing Officer erred in disallowing Rs. 17,40,439/- u/s. 40(a)(ia) as expenditure incurred in relation to services given by foreign non resident out of India.

2. This appeal was initially adjudicated vide order dated 08.11.2016, however, the order was recalled on Miscellaneous Application (MA) filed by assessee vide order dated 05.01.2018. After recalling the order, the appeal was fixed for hearing afresh. The notice of hearing of appeal was sent through registered post for two occasions. However, the notices sent through registered post returned

by postal authorities with the remark 'unclaimed'. Thus, we left no option except to decide the appeal on the basis of material available on record.

3. Brief facts of the case are that assessee is a company engaged in manufacturing of grey cloth fabrics and exporter of finished goods filed its return of income for relevant A.Y. on 12.10.2010 declaring income of Rs. 85,74,820/-. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee has debited an amount of Rs. 17,40,439/- in Profit & Loss A/c as Export Sales Commission. The assessee was asked to explain whether TDS was deducted. No response from assessee, if any tax was deducted on source of such payment. The Assessing Officer further noted that the similar addition was made in earlier years i.e. A.Y. 2009-10. Accordingly, the Assessing Officer disallowed the same. On appeal before the Id. CIT(A), the assessee in its statement of fact stated that certain payments towards commission is directed by the export clients on the term agreed that services rendered by their agents, in their respective country shall be bear by the assessee and the same shall be deducted before remittance to be made to the assessee in India towards Export Bills. The said expenses were debited as Export Commission, as the income has been accrued are for the services rendered out of India as well as receipts are not taxable in India, thus, the TDS is not applicable. The assessee also relied upon the decision of Hyderabad Tribunal in DCIT vs. Divis Laboratories Ltd. ITA No. 601 to 604/Hyd/2009 and Eon Technology (P.) Ltd. vs. DCIT [2011] taxmann.com 53 (Del.). The Id. CIT(A) not accepted the submission of assessee and held that on similar issue he has dismissed the

appeal for A.Y. 2009-10. Aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before us.

4. None appeared on behalf of assessee as we have noted above, therefore, we left no option except to hear the submission of Id. DR for the revenue and to decide the appeal on the basis of material available on record. The Id. DR for the revenue supported the order of lower authorities. The Id. DR further submits that the assessee failed to demonstrate, if any, payment on account of commission was paid by assessee out of India. In absence of any evidence, the lower authority was justified in disallowing the commission payment made without TDS. The Id. DR for the revenue prayed for dismissal of the appeal.
5. We have considered the submission of Id. DR and perused the record carefully. We have noted that the assessee has claimed that the commission payment was made outside India to a non-resident. The services were allegedly rendered out of India and the receipts are not taxable in India. Thus, the provisions of TDS are not applicable. However, no such material is placed on record that any services were rendered or commission was paid to non-resident for the services rendered by them outside India. This appeal is pending since 2013. The assessee has not filed even a single document to substantiate its contention. As already noted above, this appeal was earlier decided on 08.11.2016 on the basis of material available on record. Despite seeking the recall of the order, the assessee has neither filed any documentary evidence nor any written submission to substantiate the ground of appeal. Moreover, the notices sent by Tribunal are not accepted and returned unclaimed. The assessee is a corporate entity and despite repeated notices none is appearing on behalf of assessee. No

authority letter from the filing of appeal in 2013 till date of hearing is placed on record. There is no material on record that the assessee made the payment of commission outside India or to a non-resident for rendering service outside India. Therefore, we do not find any merit in the ground of appeal raised by assessee and the same is dismissed with cost of Rs. 10,000/-.

6. In the result, appeal filed by assessee is dismissed.

Order pronounced in the open court on this 1st November 2019

Sd/-

Sd/-

(RAJESH KUMAR)

(PAWAN SINGH)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 01/11/2019

S.K.PS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरण,मुंबई/ DR,
ITAT, Mumbai
6. गार्डफाईल / Guard file.

आदेशानुसार/BY ORDER,

उप/सहायकपंजीकार

(Asstt.Registrar)

आयकरअपीलीयअधिकरण,मुंबई / ITAT, Mumbai