

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री जॉर्ज माथन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, □□□□ □□□□□ के समक्ष
BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2048/Chny/2018

निर्धारण वर्ष /Assessment Year: 2013-14

M/s. MegaWin Switch Gear Private
Limited
No.35/1 & 35/2, Perumalmalai
Adivaram, Narasothipatty,
Salem – 636 004.

Vs. The Assistant Commissioner of
Income Tax, Circle – 1,
3, Gandhi Road,
Salem – 636 007

[PAN: AAECM 4516E]

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Ms. Sriniranjani , Advocate

प्रत्यर्थी की ओर से /Respondent by

: Ms. R. Anitha , JCIT

सुनवाई की तारीख/Date of Hearing

: 26.11.2019

घोषणा की तारीख /Date of Pronouncement

: 26.11.2019

आदेश / O R D E R

PER SHRI GEORGE MATHAN, JUDICIAL MEMBER :

This is an appeal filed by the assessee directed against the order of the learned Commissioner of Income Tax (Appeals), Salem (hereinafter called as 'CIT(A)') in ITA No.13/2016-17 dated 25.04.2018 for the assessment year 2013-14.

2. Ms. Sriniranjani , Advocate represented on behalf of the Assessee and Ms. R. Anitha, JCIT represented on behalf of the Revenue.

3. It was submitted by the learned Authorized Representative that the appeal had been adjudicated by the Co-ordinated Bench of this Tribunal against the assessee vide order dated 08.11.2018. It was a submission that however as Ground No.4 of the assessee's appeal had not been specifically adjudicated, the order of the Tribunal had been recalled for the purpose of adjudicating Ground No.4 vide Miscellaneous Application Order dated 07.06.2019 in Miscellaneous Petition No.49/Chny/2019.

It was submitted by the learned Authorized Representative that the assessee had made payment on testing charges to M/s. Korea Electrotechnology Research Institute, Korea. The same was disallowed by invoking the Provisions of Section 40(a)(i) of the Income Tax Act, 1961 on account of non-deduction of TDS. It was a submission that in Ground No.4, the assessee has challenged the action of the Assessing Officer and the learned CIT(A) in not directing disallowance of an appropriate proportion of the sum chargeable to tax as mentioned in sub-section (1) of Section 195 that was liable to be disallowed.

At this point, the learned Authorized Representative was requested to point out whether the assessee has made the application u/s.195(2) of the Income Tax Act, 1961 for determination of the appropriate proportion of the sum so chargeable and on which the TDS is liable to be deducted under sub-

section (1) of Section 195. To this, the learned Authorized Representative submitted that such an application u/s.195(2) has not been made.

4. In reply, the learned Departmental Representative vehemently supported the order of the learned Assessing Officer and the learned CIT(A).

5. It was a submission that as the application u/s.195(2) has not been made, no proportionate tax could be determined.

6. We have considered the rival submission and perused the materials available on record.

7. As it has been clearly admitted that no application u/s.195 (2) has been made, the proportionate tax that is liable to be deducted in respect of the proportionate income cannot be determined and consequently Ground No.4 of the assessee's appeal stands dismissed.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 26th November, 2019 in Chennai.

Sd/-

(इंटूरी रामा राव)

(INTURI RAMA RAO)

लेखा सदस्य/**ACCOUNTANT MEMBER**

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai, दिनांक/Dated: 26th November, 2019.
IA, Sr. P.S

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A) 4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF