

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, CHANDIGARH

श्री संजय गर्ग, न्यायिकसदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
Ms. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकरअपीलसं./ITA No. 563/CHD/2019

निर्धारणवर्ष / Assessment Year : 2010-11

M/s Compaq International, VPO-Shadipur, Tehsil-Jagadhari, Distt.Yamunanagar	बनाम	The DCIT , Circle Office, Income Tax Office, Yamunnagar
स्थायीलेखासं./PAN NO: RTKCO2239G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्वकीओरसे/ Revenue by : Smt. Vandana Mohinte, Sr DR

सुनवाईकीतारीख/Date of Hearing : 31/10/2019
उद्घोषणाकीतारीख/Date of Pronouncement : 23/12/2019

आदेश/Order

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 22.02.2019 of the Commissioner of Income Tax (Appeals)-4, Ludhiana [hereinafter referred to as 'CIT (A)'].

2. The assessee in this appeal has taken following grounds of appeal:-

1. *That the order of the Ld. CIT(A) 4 Ludhiana is wrong, illegal and against the facts of the case.*

2. *That the Ld. CIT(A)-4, Ludhiana is wrong is not allowing relief of Rs. 20,65,171/- u/s 250(6) of the Income Tax Act, 1961.*
3. *The appellant reserves a right to add, amend or alter any of the grounds of appeal.*
4. *The appellant prays that the appeal may very kindly be allowed in total.*

3. Apart from this, the assessee has taken the following additional legal grounds of appeal:-

1. "That the Ld. Assessing Officer has erred in reopening the case u/s 148 and, thereby, resorting to the assessment made u/s 143(3)/147.

2. That there was no reason to believe with the Assessing Officer for the purposes of reopening of the case and nor there was any application of mind independently by the Assessing Officer, as the reopening proceedings are purely based on audit objection, and, as such, the reopening is bad in law.

3. That the entire details relating to the freight charges amounting to Rs. 20,17,397/- and interest on Partner's Capital were filed during the 143(3) proceedings and thus, the reopening of the case is nothing but change of opinion on the part of the Assessing Officer.

4. The assessee through the additional grounds of appeal has raised the legal issue regarding validity of the reopening of the assessment; hence, the same is taken first for adjudication.

As pointed out through the aforesaid grounds of appeal and further from the perusal of the paper book pages 81A to 81F, it is revealed that the Audit party pointed out that the assessee had not deducted the tax at

source on the payments made on account of freight to M/s Movers International Pvt Ltd., New Delhi, M/s Movers Mumbai and M/s DHL Lemur Logistic Pvt Ltd etc. and, hence, there was a violation of provisions of section 194C of the Act.

5. Now the counsel for the assessee has contended that the Assessing Officer had no reason to believe that the income of the assessee had escaped assessment. That it was a change of opinion of the Assessing Officer. That the entire details were already supplied to the Assessing Officer during the assessment proceedings carried out under 143(3) of the Act. However, the Ld. counsel could not point out from record that the aforesaid issue of no deduction of freight payments was ever examined by the Assessing Officer during the assessment proceedings. So far as the issue that the information should come to the Assessing Officer through some tangible material, the assessee itself has furnished copies of the audit objections etc. which shows that the aforesaid information of non-deduction of TDS on the freight payments was supplied to the Assessing Officer by the audit party by way of audit objections, thus, the information had come to the Assessing Officer through tangible material about the escapement of the income of the assessee from taxation.

6. In view of this, the Assessing Officer had got the reason to believe that the income of the assessee has escaped assessment after getting

information from tangible material. We, therefore, do not find any merit in this ground, on this issue, hence, the legal grounds raised by the assessee regarding the reopening of the assessment are hereby dismissed.

7. Now coming to the merits of the case, the assessee in this appeal has raised two issues, firstly, in respect of the addition of Rs.20,17,393/- on account of disallowance of expenditure on account of non-deduction of TDS and, secondly, regarding validity of the addition of Rs. 4,774/- on account of difference in interest calculation on the partner's capital.

8. So far as the issue relating to the non-deduction of TDS on account of expenditure on export freight is concerned, the Ld. Counsel for the assessee has submitted that the assessee was not liable to deduct TDS on payments made to the resident shipping companies which were acting as agents to the non-resident company. He, in this respect has relied upon the CBDT Circular No. 723 dated 19.9.1995 and further has also submitted that since the provisions of section 172 of the Act were applicable to the case of the assessee and as per law laid down by the Hon'ble Bombay High Court in 'CIT vs V.S. Dempo and Co.' (2016) 66 taxman.com 93 (Bombay), the provisions of Chapter XVII of the Act for collection of the recovery of the tax and its deduction at source vide

section 195 of the Act, would not be applicable. The Ld. counsel has further submitted that Ld. CIT(A) while deciding the issue has relied upon the decision of the Hon'ble Bombay High Court in the Tax Appeal No.7/2005 in the case of 'CIT Vs M/s Oriental Goa Pvt Ltd.' dated 16.10.2009, which issue is not applicable to the facts and circumstances of the case, whereas, the decision of the Delhi Bench of the Tribunal in the case of 'ITO vs Arun Kumar' ITA No. 5063/Del/2012 vide order dated 4.12.2015 was duly cited before the Ld. CIT(A), however, the Ld. CIT(A) failed to refer to the same in the impugned order. The Ld. Counsel for the assessee has submitted that the aforesaid payments were made to the resident companies which were agents to the foreign companies and, therefore, as per CBDT Circular No. 723 of 1995 dated 19.9.1995, the payment was deemed to be made to the foreign companies and that the law laid down by the Hon'ble Bombay High Court in 'CIT vs V.S. Dempo and Co.' is squarely applicable.

9. The Ld. DR, on the other hand, has submitted that the assessee has not proved with reliable evidence that the aforesaid companies to whom the payments were made, were agents of the foreign companies. That even the payments were not made to their foreign office.

10. On the other hand, Ld. Counsel for the assessee has submitted that from the bills and vouchers, it can be ascertained that the payments were

made to the foreign companies through their agent 'Indian resident companies'.

11. Both the Ld. representatives of the parties, at this stage, have submitted that both the issues require factual examination at the hands of the Assessing Officer. In view of this, the order of the CIT(A) is set aside and the matter is restored to the file of the Assessing Officer for factual examination of the aspects and then to decide the issues afresh in accordance with law.

In the result, the appeal of the assessee stands allowed for statistical purposes

Order pronounced in the Open Court on 23.12.2019.

(अन्नपूर्णा गुप्ता / ANNAPURNA GUPTA)

लेखा सदस्य/ Accountant Member

(संजय गर्ग / SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

Dated : 23.12.2019

"आर.के."

आदेशकीप्रतिलिपिअग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त/ CIT
4. आयकरआयुक्त (अपील)/ The CIT(A)
5. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्डफाईल/ Guard File

आदेशानुसार/ By order,

सहायकपंजीकार/ Assistant Registrar