



DSP Merrill Lynch Limited
Assessment Year :1995-96

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./ I.T.A. No.2727/Mum/2004
(निर्धारण वर्ष / Assessment Year: 1995-96)

DCIT-Circle 4(1) 6 th Floor, Room No.640 Aaykar Bhavan Mumbai-400 020.	बनाम/ Vs.	DSP Merrill Lynch Limited (formerly known as DSP financial consultants Limited) Ground Floor, A wing One BKC, G Block Bandra Kurla Complex Bandra (East), Mumbai-400 005
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACD-0535-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./ I.T.A. No.7806/Mum/2004
(निर्धारण वर्ष / Assessment Year: 1995-96)

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स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAACD-0535-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Appellant by	:	Shri Nitesh Joshi- Ld. AR
Respondent by	:	Ms. Kavita P. Kaushik- Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	28/11/2019
घोषणा की तारीख / Date of Pronouncement	:	02/01/2020



आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by revenue as well as assessee for Assessment Year [in short referred to as 'AY'] 1995-96 contest the order of Ld. Commissioner of Income-Tax (Appeals)-IV, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-IV/Cir.4/450/03-04* dated 09/08/2004 on certain grounds of appeal.

Revenue's Appeal, ITA No.2727/Mum/2004

2. The revenue has taken up following grounds of appeal: -

1. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in directing the A.O. to modify the claim of the assessee u/s.80-0 treating the receipt of Rs.3,96,86,123/- from Merrill Lynch Ltd. as fee received in consideration of the services rendered in terms of agreement dt. 23.3.1993 without appreciating the fact that the said amount was on account of co-lead manager and not for any commercial and technical services as specified u/s.80-0 of the Income-tax Act.
2. Further, placed in the above factual and legal scenario, the impugned order of the CIT(A) is, the appellant prays, patently perverse and contrary to law and consequently merits to be set aside and that of the Assessing Officer be restored.

It is evident that the sole subject matter of revenue's appeal is quantum of assessee's claim u/s 80-O.

3. We have carefully heard the rival submissions, perused relevant material on record including written submissions filed before us and applied our mind to the subject matter of the appeal. We have also deliberated on judicial pronouncements as cited before us. Our adjudication would be as given in succeeding paragraphs.

4.1 Facts on record would reveal that the assessee being resident corporate assessee stated to be engaged in providing financial consultancy and allied services was subjected to reassessment proceedings for year under consideration u/s 143(3) r.w.s.147 of the Act,



on 28/03/2003 wherein the eligible amount u/s 80-O was reduced to Rs.375.65 Lacs as against Rs.772.51 Lacs stated to be determined in an assessment framed u/s 143(3) on 30/03/1998.

4.2 The assessee had claimed deduction u/s 80-O for Rs.382.57 Lacs, being 50% of fees received from 5 entities. The manner as well as computation of deduction claimed has already been extracted in para-2 of the reassessment order under consideration. In an assessment framed u/s 143(3), the said claim was already reduced to Rs.297.14 Lacs after making some adjustment in the fees as well as expenditure, as claimed by the assessee. Out of 5 entities, one of the entities was Merrill Lynch, against whom the assessee reflected total fees of Rs.706.35 Lacs and claimed deduction u/s 80-O.

4.3 Subsequently, the case was reopened by issuance of notice u/s 148 dated 22/03/2002 in view of the fact that the assessee made false claim u/s 80-O in respect of ADR issue of *M/s Raymond (I) Limited (Raymond)* as no services were provided by the assessee to Merrill Lynch International. It was alleged that what the assessee received from Merrill Lynch International (*MLINT*) was its share of underwriting spread (selling commission) of the Raymond issue for which it was an independent manager, *dehors* the lead manager i.e. MLINT. The assessee received its share of commission from Raymond and MLINT merely coordinated the issue and remittances by the latter to the assessee was on behalf of Raymond and not on its own behalf for service rendered. Thus, the assessee rendered no services to MLINT for which it claimed deduction u/s 80-O. Accordingly, the case was



reopened and statutory notices were issued u/s 143(2) & 142(1) calling for requisite details from the assessee.

4.4 The perusal of reassessment order would reveal that the subject matter of dispute before us is on account of fees received from three entities, for which the assessee acted as co-lead manager and received fees from MLINT: -

No.	Name	Amount (Rs.)
1.	East India Hotels	104.38 Lacs
2.	JCT Ltd	115.93 Lacs
3.	Raymond Woolen Mills	176.55 Lacs
	Total	396.86 Lacs

The assessee defended the claim by relying upon agreement dated 23/03/1993 between the assessee and MLINT. It was submitted that as per the terms of the agreement, the fees were received for services rendered and not towards underwriting commission as alleged. It was also submitted that in terms of FERA Regulations, the assessee could not have purchased any shares without the prior approval of Reserve Bank of India (RBI) which was evidenced by RBI approval letter dated 02/11/1994 which specifically provided that there would be no devolvement of any foreign exchange obligations on the assessee while acting as co-lead manager. Therefore, no securities were underwritten by the assessee and no payment, on this account was ever received either by assessee or any other issuer. It was also submitted that assessee's name was merely mentioned as co-lead manager to enhance its image in the international markets. Nevertheless, the services were rendered by the assessee to MLINT as per specific terms of agreement dated 23/03/1993. A confirmatory letter dated 24/01/2003 from MLINT was also submitted to support the same.



4.5 However, upon perusal of subscription agreement concerning Raymond, Ld. AO noted that the assessee, in its own capacity, gave a commitment to purchase part of the issue and it acted as an independent agent in its own capacity to provide managerial services to Raymond in successfully carrying out the ADR issue. Further, as per the terms of separate agreement dated 09/11/1994 between MLINT and other managers, it was agreed that MLINT being the lead manager would coordinate the issue and collect the commission payable by the Raymond to all the managers by way of deducting the same from the sale proceeds of the ADRs abroad and then remit to each manager its proportionate share of management-cum-underwriting commission. Not only this, as per certificate given by Indian solicitor in the offering circular, the assessee was named as co-lead manager for the aforesaid issue. Further, as per service agreement dated 27/03/1995 entered into by Merrill Lynch Group entities, the assessee could provide as well as avail services in respect of new issue transactions and derivative instrument transactions.

4.6 In the above background, it was noted that the assessee could not lead any evidences of rendering of services. No correspondences could be filed by the assessee. Therefore, the fact that the transactions were between persons who were closely linked with each other and the option clause was a colorable device. The agreement dated 23/03/1993 (wrongly referred to as dated 31/03/1993 in the reassessment order) was merely a letter written by MLINT to assessee which mentioned rendering of general services rather than specific services. The RBI approval letter was termed as mere no objection to the assessee to act as co-lead



manager. In the above background, it was concluded that the assessee received commission from Raymond and no services were ever rendered by the assessee to MLINT. Therefore, the aggregate amount of Rs.396.86 Lacs stated to be received from MLINT with respect to 3 entities was reduced while computing eligible amount u/s 80-O. The said action would reduce the final deduction u/s 80-O and accordingly, enhance the total income of the assessee.

5.1 Aggrieved, the assessee preferred further appeal before learned first appellate authority vide impugned order dated 06/02/2004 wherein the assessee's claim was accepted by observing as under: -

6. I have considered the submissions of the assessee and also the order of the A.O. Assessing Officer has mainly relied on subscription agreement entered into between Raymond Woollen Mills Ltd. and Merrill Lynch i.e. assessee where assessee has been named as one of the co-lead managers. Assessing Officer also accepted the fact that in his capacity as co-lead managers, the assessee should buy 9 million worth shares and assessee has 'green shoe option' to purchase further 10% but RBI approval given to the assessee clearly states that there will be no devolvement of foreign exchange on assessee for acting as lead manager. In the absence of permission from RBI, assessee would not have discharged this commitment as co-lead manager when it was required to purchase the shares in his capacity as lead manager. Further this fact was also confirmed by Merrill Lynch that amounts which have been paid to the assessee are in consideration of the services rendered by the assessee to Merrill Lynch in terms of agreement dated 23.3.1993. Further there is no evidence on record to show that the amounts have been received by assessee in his capacity as co-lead manager. The working filed by the assessee show that assessee has been in receipt of fee in terms of agreement with Merrill Lynch as per agreement dated 23.3.1993. From the evidence furnished by assessee, it is clear that assessee has not received any amount from Merrill Lynch in his capacity as co-lead manager but only in consideration of the services rendered in accordance with agreement dated 23.3.1993. Hence the Assessing Officer is directed to modify the claim of the assessee u/s 80-O treating the receipt of fee as fee received in consideration of the services rendered in terms of agreement dated 23.03.1993.

It is evident that learned CIT(A) has given relief by noticing that fee was received by the assessee against services rendered in terms of service agreement dated 23/03/1993 as supported by the confirmatory letter of



MLINT. It was also noted that there was no evidence which would prove that the said fee was received in the capacity of co-lead manager.

Aggrieved, the revenue is in further appeal before us.

5.2 The Ld. DR, supporting the findings of Ld.AO as given in reassessment order, submitted that the assessee was not eligible to claim the deduction u/s 80-O with respect to the 3 entities. *Au Contraire*, Ld. AR, reiterating the stand taken before Ld. CIT(A), submitted that fees was received only in terms of service agreement dated 23/03/1993 as per revenue sharing formula agreed therein. The attention has also been drawn to confirmatory letter of MLINT confirming the aforesaid fact. It has also been pointed out that the RBI approval letter specifically prohibited devolvement of foreign exchange to the assessee and therefore, the assessee could not have discharged the commitment of underwriting as a lead manager.

6. Upon careful consideration of factual matrix as enumerated in the preceding paragraphs, we are of the considered opinion that no addition would be sustainable in law merely on the basis of suspicion, conjectures or surmises. The assessee had placed on record sufficient documentary evidences to substantiate its claim u/s 80-O with respect to services rendered to MLINT. The claim was duly supported by the confirmatory letter of MLINT as well as RBI approval letter which specifically prohibited devolvement of foreign exchange to the assessee. On the contrary, except for mere suspicion & allegation, nothing was brought on record by Ld. AO to counter the assessee's claim. It is beyond doubt that the assessee was acting as co-lead manager in the aforesaid issues but the allegations of Ld.AO that the fee was received in



that capacity through MLINT is without any corroborative evidences. Therefore, the conclusion of Ld. CIT(A) could not be faulted with and hence concurring with the same, we dismiss the appeal filed by the revenue.

Assessee's Appeal, ITA No.7806/Mum/2004

7. This appeal is against the order passed by learned first appellate authority in Appeal No. CIT(A)-IV/Cir.4/450/03-04 order dated 09/08/2004 in the matter of rectification u/s 154 carried out by Ld. AO vide order dated 05/12/2003. The Ld. AR submitted that the appeal is not pressed. The revenue did not raise any objection against the same. In view of admitted position, the appeal stands dismissed as being *not pressed*.

Conclusion

8. Both the appeals stand dismissed.

Order pronounced in the open court on 02nd January, 2020.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 02/01/2020

Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपि प्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.