

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

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री इंटूरी रामा राव, लेखा सदस्य एवं

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.907/Chny/2016
निर्धारण वर्ष **Assessment Year: 2012-13**

The Deputy Commissioner of Income
Tax,
Corporate Circle 4 (1),
Chennai – 600 034.

M/s. Maha Hydraulics Private
Limited,
Vs. Plot No.F-62, SIPCOT Industrial
Complex,
Irungattukottai, Sriperumbudur,
Kancheepuram – 602 105
Tamil Nadu

[PAN: AACCM 4090R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr. A. Sundararajan, Addl.CIT

प्रत्यर्थी की ओर से /Respondent by

: Mr. S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing

: 09.01.2020

घोषणा की तारीख /Date of Pronouncement

: 09.01.2020

आदेश / ORDER

PER GEORGE MATHAN, JUDICIAL MEMBER:

This is an appeal filed by the Revenue against the order of the
learned Commissioner of Income Tax (Appeals)-8 Chennai in I.T.A.
No.123/2014-15 dated 20.01.2016 for the Assessment Year 2012-13.

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2. Mr. A. Sundararajan, Additional CIT represented on behalf of the Revenue and Mr. S. Sridhar represented on behalf of the Assessee.

3. It was submitted by the learned Departmental Representative that the only issue in the Revenue's appeal was against the action of the learned CIT(A) in deleting the disallowance made by the Assessing Officer to an extent of Rs.3,98,79,140/- claimed by the assessee as the commission paid to M/s. Divine Alloys and Power Company Limited, Raipur on account of "client referral". It was a submission that when the assessee had been questioned regarding the expenditure and to prove that the expenditure was incurred wholly and exclusively for the purpose of business, the assessee was unable to produce any agreement with the said M/s. Divine Alloys and Power Company Limited nor was the assessee able to show the type of services rendered by M/s. Divine Alloys and Power Company Limited, Raipur. It was a submission that a letter had been issued to M/s. Divine Alloys and Power Company Limited, Raipur and the said company had responded that it has received the commission but the letter was silent regarding the specific query of the services rendered by the said M/s. Divine Alloys and Power Company Limited to the assessee company. It was a submission that the assessee had claimed that the said M/s. Divine Alloys and Power

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Company Limited has done liaison work with another public sector company namely M/s. Elecon Engineering company, a EPC contractor which was serving many major companies in the country. It was a further submission that the said M/s. Divine Alloys and Power Company Limited had also filed copies of six bills said to have been raised on the assessee company but the assessee company had produced only one single journal entry passed on 31.03.2012 in respect of the said expenditure. Consequently, the Assessing Officer has disallowed the said commission claimed to have been paid as the assessee had failed to prove that the expenditure was incurred wholly and exclusively for the purpose of the business of the assessee company. It was a submission that the learned CIT(A) had allowed the claim by holding that the assessee had discharged its primary onus as far as the payment of the commission was concerned. It was further a submission that other than saying that the assessee has got "client referral" from M/s. Divine Alloys and Power Company Limited, no other evidences has been produced. It was further a submission by the learned Departmental Representative that as the assessee had not proved the services rendered by M/s. Divine Alloys and Power Company Limited, the expenditure was not liable to be allowed. It was a prayer that the order of the learned CIT(A) was liable to be reversed.

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4. The learned Departmental Representative placed reliance on the decision of the Hon'ble Supreme Court in the case of Umakant B. Agarwal reported in [2015] 57 Taxmann.com 137 as also in the decision of the Hon'ble Supreme Court in the case of Lachminarayan Madan Lal vs. Commissioner of Income Tax reported in [1972] 86 ITR 439 (SC)

5. In reply, the learned Authorized Representative submitted that the nature of the services and the rendering of the services has been categorically qualified by the assessee as also by M/s. Divine Alloys and Power Company Limited as "referral business". It was a submission that the amount of commission paid was the "referral commission". It was a submission that for the Assessment Year 2011-12 and 2013-14 the turnover of the assessee company was Rs.14.00 crores and Rs.19.00 crores, whereas for the relevant assessment year on account of the "referral commission", the assessee's turnover has gone up to Rs.77.00 crores. It was a submission that the decision of the Hon'ble Jurisdictional High Court (Mad.) in the case of Commissioner of Income Tax vs. Speciality Paper Company [2009] 316 ITR 415 (Mad) apply in so far as the assessee firm had engaged the services of the company for promoting the sales of its products and the details of the volume of

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business filed by the assessee showed that its profitability increased substantially as a result of the services. It was a submission that the payment of the commission was an allowable deduction. It was further a submission that the decision relied upon by the learned Departmental Representative had no applicability in so far as in both the decisions non-proving of the expenditure was beyond doubt.

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

7. A perusal of the submissions made by the assessee before the learned CIT(A) shows that the assessee was initially in the business of after sales support for hydraulic systems that were imported into India by the user from various industries. The assessee company for the purpose of producing cost effective substitutes for the imported products had put up its own product manufacturing and testing facilities. The products developed by the assessee company required approvals from design agencies and also required recommendations from various end-users. It is claimed by the assessee that the assessee had approached the said M/s. Elecon Engineering, a Public Limited Company which was in business for more than five decades, situated at Gujarat and having huge turnover and which was undertaking EPC Contracts with many top

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notch companies to sell the assessee's motors and systems as these products were of sound design, lower costs when compared to the imported motors and was a good substitute for the imported products. As it was an extremely laborious and time consuming process to approach all the end-users consultants and to make technical presentations and convince the customers to accept their products, the assessee had taken the advice of M/s. Elecon Engineering and had appointed M/s. Divine Alloys and Power Company Limited as they were in contact with all the customers for steel supplies. It was a one-time association. It was claimed to have been required to initiate the sale of the new products in the market. It is also claimed that on account of this commission payment, the turnover of the assessee for the relevant assessment year 2012-13 jumped up from Rs.14.00 crores to Rs.77.00 crores and subsequently for the assessment year 2013-14 it fell back to Rs.19.00 crores. These above facts as submitted by the assessee before the learned CIT(A) clearly shows that the said M/s. Divine Alloys and Power Company Limited was contacted on the advice of M/s. Elecon Engineering, the person with whom the contract was entered into and this was not the act by the assessee for the purpose of getting the business of M/s. Elecon Engineering. This is not client referral by M/s. Divine Alloys and Power Company Limited but is the commission referral

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by M/s. Elecon Engineering. The assessee has been unable to produce any communication between M/s. Divine Alloys and Power Company Limited and the assessee, specifying the details of the transaction that the said M/s. Divine Alloys and Power Company Limited has done with M/s. Elecon Engineering which has led to the increased turnover. The submissions as made by the assessee before the learned CIT(A) clearly shows that the turnover has increased on account of the assessee's own activity of getting the business from M/s. Elecon Engineering. It is not understandable as to why on the basis of the advice of M/s. Elecon Engineering, M/s. Divine Alloys and Power Company Limited had to be brought into the picture for the payment of "referral commission". Nor has any evidence been brought to show what is the reference done by M/s. Divine Alloys and Power Company Limited and the quantum of turnover on account of such reference.

8. Thus, the statement of the assessee before the learned CIT(A) itself shows that M/s. Divine Alloys and Power Company Limited has not done anything, nor provided any services in respect of the transactions with M/s. Elecon Engineering. If the so-called client referral as made by the assessee in respect of M/s. Divine Alloys and Power Company Limited was effective, why was it that the assessee had only one year

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transaction with M/s. Elecon Engineering? Once the reference is made and the products of the assessee are of the top notch quality, the turnover should have been climbing instead of falling back to earlier levels.

9. This clearly shows that the assessee has been unable to prove the purpose of the payment of the amount of Rs.3,98,79,140/- crores to M/s. Divine Alloys and Power Company Limited much less that it was wholly and exclusively for the purpose of the assessee's business. The assessee has not been able to place any agreement before any of the authorities below nor has it produced before us. The assessee states that the consolidated bill was produced by the assessee whereas M/s. Divine Alloys and Power Company Limited had produced five bills but even that has not been produced before the Tribunal nor it has been proved that the expenditure has been incurred wholly and exclusively for the purpose of business of the assessee.

10. In the present the facts clearly shows that the assessee has failed to substantiate much less proved the reason for the payment of the so-called "referral commission" to M/s. Divine Alloys and Power Company Limited.

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11. This being so, the order of the learned CIT(A) stands reversed and that of the Assessing Officer restored. No other issues have been argued.

13. In the result, the appeal of the Revenue stands allowed.

Order pronounced in the open Court on 9th January, 2020 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: 9th January, 2020

IA, Sr. PS

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