

आयकर अपीलीय अधिकरण , ' ए ' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL "A " BENCH, CHENNAI
श्री एन.आर.एस .गणेशन, न्यायिक सदस्य एवं
श्री एस जयरामन, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 1160/Chny/2019

निर्धारण वर्ष/Assessment Year : 2015-16

M/s. HIQ Power Associates Private
Ltd.,
No. 7/442, Parsn Manere – B Wing,
Anna Salai, Mount Road,
Chennai – 600 006.

Deputy Commissioner of Income Tax,
Vs. Corporate Circle 2(2),
Chennai – 600 034.

[PAN: AABCH 3037J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. C.S. Seetharaman, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. AR V Sreenivasan, JCIT

सुनवाईकीतारीख/Date of Hearing

: 20.11.2019

घोषणाकीतारीख/Date of Pronouncement

: 18.02.2020

आदेश/ O R D E R

PER S. JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the
Commissioner of Income Tax (Appeals)-5, Chennai in ITA No.
177/TR/CIT(A)-5/2017-18 dated 19.02.2019 for assessment year 2015-
16.

2. M/s. HIQ Power Associates Pvt. Ltd., the assessee, is a service provider for metallurgical consultancy, power plant consultancy etc. The assessee admitted Rs. 74,90,973/- from sale of services, against which it has claimed employees salary and incentives of Rs. 1,15,32,641/- under the head employee benefit scheme. After considering the assessee's explanation etc., the Assessing Officer disallowed 50% of the expenditure holding, inter alia, that the assessee's reply is ambiguous and not supported by documentary evidence. Aggrieved, the assessee filed appeal before the CIT(A). The Ld. CIT(A) dismissed the appeal. Aggrieved against that order, the assessee filed this appeal.

3. The Ld. AR submitted that the assessee is a service provider for metallurgical consultancy, power plant consultancy and the nature of business is dependent on Government policy. 35 employees have been working with the company and their salaries have to be paid irrespective of the Revenue. The employment of personnel depends on ongoing projects and projects on hand and also projects expected to be awarded in future and they cannot be appointed or thrown out by our will. Therefore, the AR pleaded that the assessee's claim is in accordance with the business exigency and hence it may be allowed.

4. Per contra, the Ld. DR submitted that the assessee neither submitted the relevant documents either before the AO or before the Ld. CIT(A). He invited out attention to the relevant portion of the order of the Ld. CIT(A) and submitted that the Ld. CIT(A) required the assessee to furnish the copies of appointment letters of marketing executive along with their educational qualifications etc to justify the services rendered are of revenue in nature and it was incurred wholly and exclusively for the purpose of assessee's business. Since, the assessee has not furnished any documentary evidences, the Ld. CIT(A) held that the onus of proof at all relevant times rests upon the assessee. It is for the assessee to establish by evidence that a particular allowance is justified and relied on 73 ITR 634 (SC). Therefore, the Ld. DR supported the orders of the lower authorities.

5. We heard the rival submissions and gone through the relevant material. It is clear from the above that against the low income admitted by the assessee, the assessee has claimed huge expenditure under the head employees salary and incentives. The assessee may be right in saying that the employment of personnel depends on the ongoing projects and the projects expected to be awarded in future etc. However, the genuineness of the claim has to be explained by the assessee by furnishing the relevant material before the lower

authorities. In this case, though the assessee has not laid such evidences before the lower authorities, in the interests of justice, we deem it fit to remit this issue back to the AO for a fresh examination. The assessee shall lay relevant materials in support of its contention before the AO and comply with the requirements of the AO in accordance with law. The AO is free to conduct appropriate enquiry as deemed fit, but he shall furnish adequate opportunity to the assessee on the material etc to be used against it and decide the matter in accordance with law.

6. In the result, the assessee's appeal is partly allowed for statistical purposes.

Order pronounced on Tuesday, 18th February, 2020 at Chennai.

Sd/-

(एन.आर.एस .गणेशन)

(N.R.S. GANESAN)

न्यायिकसदस्य/Judicial Member

Sd/-

(एसजयरामन)

(S. JAYARAMAN)

लेखासदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated: 18th February, 2020

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त) अपील(/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF