

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.374/Viz/2018
(निर्धारण वर्ष/Assessment Year:2013-14)**

M/s Sri Parameswari Projects
Pvt. Ltd.
Regidi Village, Regidi
Amadalavalasa Mandalam
Srikakulam
[PAN :AAICS3336E]

Vs Income Tax Officer
Ward-3
Srikakulam

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से / Respondent by

: Shri Y.A.Rao, AR
: Shri V.Rama Mohan, DR

सुनवाई की तारीख / Date of Hearing

: 27.02.2020

घोषणा की तारीख/Date of Pronouncement

: 04.03.2020

आदेश /ORDER

Per Shri D.S.Sunder Singh, Accountant Member :

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]-9, Hyderabad in ITA No.10502/ITO-3, Srikakulam / 2017-18 dated 05.04.2018 for the Assessment Year (A.Y.)2013-14.

2. All the grounds of appeal are related to the addition of Rs.26,79,887/- u/s 40(a)(ia) of the Income Tax Act, 1961 (in short 'Act'). Brief facts of the case are that during the assessment proceedings, the Assessing Officer (AO) found that the assessee has made the payment of Rs.26,79,887/- under the head 'Distributor Hire Charges" and the AO was under the impression that that the said payment was in the nature of contractual obligation, therefore viewed that the assessee is liable for deduction of tax at source u/s 194C of the Act. Since the assessee has failed to deduct the tax at source, the AO held that the expenditure is not allowable as provided u/s 40(a)(ia) of the Act. The AO also observed that the payment was either rental payment or the contract payment, thus the provisions of deduction of tax at source is applicable on both the events.

3. Against which the assessee filed appeal before the CIT(A) and the Ld.CIT(A) confirmed the addition made by the AO.

4. Against the order of the Ld.CIT(A) the assessee is in appeal before us. During the appeal hearing, the Ld.AR argued that the assessee is in the activity of exhibiting films and it has made the payment to the film distributors. The revenue is shared between the film distributor as well as the theatre owner, therefore, the same cannot be treated as contractual

payment and consequently TDS provisions are not applicable. The Ld.AR further argued that the payment was neither contractual payment nor is the rent payments and it was sharing of the revenue for exhibiting the films between the distributor and the theatre owner. The Ld.AR further submitted that identical issue has come up before the AO for the A.Y.2011-12, 2012-13 and the AO considered the disallowance, whereas the Ld.CIT(A) deleted the addition. The Ld.AR further submitted that in the subsequent years also, the identical issue has come up before the AO and the AO allowed the relief and did not make the addition following the Board Circular No.681 dated 08.03.1994 and 736 dated 13.06.1996. Therefore, requested to set aside the order of the Ld.CIT(A) and delete the addition made by the AO and allow the appeal of the assessee.

5. On the other hand, the Ld.DR strongly supported the orders of the lower authorities.

6. We have heard both the parties and perused the material placed on record. In the instant case, the assessee is exhibiting the films and making payments to the distributor. The assessee argued that the revenue was shared between the theatre owner and the film distributor and it is neither a contractual payment nor a rent payment. The assessee relied on Circular

No.681 dated 08.03.1994 and Circular No.736 dated 13.06.1996 to support that the payment was neither in the nature of contractual payment nor rental payment and for the payments were made to the film distributor towards its share for screening the film, therefore submitted that the TDS provisions are not covered. The assessee also placed reliance on earlier assessments and subsequent assessments made by the AO. In the earlier assessments, on identical facts, the Ld.CIT(A) deleted the addition and it appeared that the department has not filed the appeal. In the subsequent year, though the assessment was made on identical facts, no such addition was made by the AO. The AO did not dispute that the payment is the sharing of revenue between the theatre owner and the assessee. The AO also has not made out a case, to establish that the payment was either in the nature of contract payment or in the nature of rental payment. In the instant case, the payment was made by the theatre owner who is exhibiting the films, therefore, it cannot be held as rental payment. In the case of rent, the assessee ought to have received the payment, but in the instant case, the assessee is making the payment to film distributor. Similarly, the assessee is screening the films being the theatre owner, it cannot be held that the same is contract payment. Therefore, we are of the view that the AO has not made out the case of either contractual payment or rental

payment for holding that it attracts the TDS. Department also did not make out a case of assessee in default for non deduction of tax at source u/s 201(1) of the Act. Hence, the order of the Ld.CIT(A) is unsustainable and accordingly, we set aside the order of the Ld.CIT(A) and delete the addition made by the AO.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 4th March, 2020.

Sd/-

(वी.दुर्गा राव)

(V. DURGA RAO)

न्यायिक सदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

विशाखापटणम /Visakhapatnam

दिनांक /Dated : 04.03.2020

L.Rama, SPS

Sd/-

(डि.एस. सुन्दर सिंह)

(D.S. SUNDER SINGH)

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ TheAssessee–M/s Sri Parameswari Projects Pvt. Ltd., Regidi Village, Regidi, AmadalavalasaMandalam, Srikakulam
2. राजस्व/The Revenue –Income Tax Officer, Ward-3, Srikakulam
3. The Pr.Commissioner of Income Tax-2, Visakhapatnam
4. The Commissioner of Income Tax (Appeals)-9,Hyderabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/DR, ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

// True Copy //

Sr. Private Secretary
ITAT, Visakhapatnam