

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' 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.3411/Chny/2016
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Verizon Data Services Pvt. Ltd., Vs **The ACIT,**
Plot No.1, Sidco Industrial Estate, Corporate Circle – 3(2),
8th Floor, Citius Block-B, Olympia Chennai.
Technology Park, Guindy,
Chennai

PAN: AABCV1758N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri Sriram Seshadri, CA
प्रत्यर्थी की ओर से/Respondent by : Shri S. Ramakrishnan, CIT

सुनवाई की तारीख/Date of hearing : 20.02.2020

घोषणा की तारीख /Date of Pronouncement : 03.03.2020

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the assessment order consequent to the direction of the Dispute Resolution Panel dated 31.08.2016.

2. Shri Sriram Seshadri, the Ld. Representative for the assessee submitted that he was instructed to not press the Ground Nos.1,2,3,4 & 6 raised before this Tribunal. The Ld.Representative has also made an endorsement to that effect in the appeal folder. In view of the above, the grounds raised before this Tribunal as Ground Nos.1,2,3,4 & 6 are dismissed as not pressed.

3. Now coming to Ground No.5, Shri Sriram Seshadri, the Ld. Representative for the assessee submitted that the Assessing Officer estimated the notional interest on the delayed receipt of consideration from non-residents. According to the Ld.Representative, there was a delay in payment from non-residents to the assessee. As per the amended scheme of the transfer pricing, the Assessing Officer has estimated the interest by applying the Prime Lending Rate (PLR). The only grievance of the assessee according to the Ld.Representative is that the interest has to be levied only on the basis of the LIBOR and not under PLR. The Ld.Representative for the assessee very fairly submitted that he is not disputing the charging of interest on the delayed receipt of money from non-residents.

4. On the contrary, Shri S. Ramakrishnan, the Ld. Departmental Representative submitted that the source of funds on which the interest was charged is from India. Therefore the Indian rate of interest has to be levied. Hence, the DRP adopted PLR rate instead of LIBOR rate. On a query from the Bench, whether the charging of interest is on the delayed payment of money from foreign country or not, the Ld.DR submitted that the levy of interest is on the delayed payment by the non-resident outside the country.

5. Having heard the Ld.Representative for the assessee and the Ld.DR, this Tribunal is of the considered opinion that interest was levied due to change in transfer pricing policy for the delayed receipt of purchase money. Therefore the source of interest is foreign country. Moreover, it is well settled principles of law, when money is to be received from outside the country, interest has to be charged only under LIBOR rate and not under PLR rate. In view of the above, we are unable to uphold the orders of the authorities below. Accordingly, the orders of authorities below are set aside and the Assessing Officer is directed to charge interest under LIBOR rate.

6. The next issue arises for consideration is disallowance of amount reimbursed to M/s. GTE Overseas Corporation for non-deduction of tax.

7. Shri Sriram Seshadri, the Ld. Representative for the assessee submitted that the assessee approached the Authorities for Advance Rulings (hereinafter 'AAR'), whether the reimbursement expenditure is liable for TDS or not. The AAR initially found that the amount claimed as reimbursement of expenditure is nothing but a royalty. Therefore TDS has to be made. The order of the AAR was challenged before the Madras High Court. The Madras High Court remitted the matter back to the AAR for reconsideration. Therefore, now the issue is pending before the AAR for consideration. The Ld. Representative for the assessee submitted that AAR has filed an appeal before the Apex Court against the judgment of the Madras High Court. The assessee's appeal against the order of the Madras High Court is also pending before the Apex Court. In the facts and circumstances, the Ld. Representative submitted that the matter be kept pending till the AAR decide the issue one way or the other. The Ld. Representative further submitted that in the earlier assessment year, this Tribunal has remitted back the matter to the file of the

Assessing Officer for reconsideration with a direction to decide the issue after the decision of the AAR. The Ld. Representative has also placed his reliance in Section 245RR of the Income Tax Act, 1961 (in short 'the Act') and submitted that when the issue is pending before AAR, the Income Tax Authorities including the Appellate Tribunal has to keep the matter pending till the decision is arrived by the AAR.

8. We heard Shri S. Ramakrishnan, the Ld. Departmental Representative also. It is not in dispute that the matter is now pending before the AAR and also the Apex Court. If the Apex Court confirms the order of the Madras High Court, the AAR has to decide the issue one way or the other. Till the final decision is taken by the AAR, in view of the Section 245RR of the Act, no authority including this Tribunal could decide the matter. Therefore, as it was remitted back to the file of the Assessing Officer in the earlier year, this year also needs to be remitted back to the Assessing Officer. Accordingly, while setting aside the order of the authorities below, the issue of reimbursement of expenditure is also remitted back to the file of the Assessing Officer. The Assessing Officer shall re-examine the same and decide the issue afresh after AAR decide the issue one way or the other.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the court on 3rd March, 2020 at Chennai.

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य /Accountant Member

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 3rd March, 2020.

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |