

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai**

**Before Shri G. Manjunatha, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No. 498/Mum/2019
(Assessment Year: 2010-11)**

Dy. Commissioner of Income Tax-1(1)(2)
579, Aayakar Bhavan, M.K. Road,
Mumbai, Maharashtra- 400020

M/s Goldman Sachs (India) Pvt. Ltd.
951A, Rationale House,
Vs. Appasaheb Marathe Marg,
Prabhadevi, Mumbai – 400025

PAN – AAACP2448J

(Appellant)

(Respondent)

Appellant by: Shri V. Vinod Kumar, D.R
Respondent by: Shri Madhur Agarwal, Advocate

Date of Hearing: 27.02.2020
Date of Pronouncement: 28.02.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-2, Mumbai, dated 20.11.2018, which in turn arises from the order passed by the A.O under Sec.143(3) r.w.s 263 of the Income Tax Act, 1961 (for short 'Act'), dated 21.03.2016. The revenue has assailed he impugned order on the following grounds of appeal before us:

To sum up, the decision of the Ld. CIT(A) is not accepted. Further appeal is suggested in this case. Draft grounds of appeal is as under:

1. Whether on the facts and in the circumstances of the case and in Law, the CIT(A) erred in directing to delete the disallowance of 'reimbursement' of expenses of Rs.3,17,37,000/- made by A.O. u/s 40(a)(ia) for non-deduction of tax at source when the assessee, in the course of assessment proceedings failed to discharge its onus of establishing that there was no income component in the 'reimbursement' and could not even establish the exact nature of services provided and basis of calculation of the amount payable.
2. Whether on the facts and in the circumstances of the case and in Law, the CIT(A) erred in not deciding the disallowance of 'reimbursement' of expenses holding that the this issue arising from the order u/s. 263 of the Act, passed by the Pr.CIT-1. Mumbai was quashed by the Hon'ble ITAT; without appreciating the fact that the matter is now pending before the Hon'ble Bombay High Court.

The appellant craves leave to add to, amend or withdraw the aforesaid ground of appeal.”

2. Briefly stated, the assessee which is a non-banking finance company had e-filed its return of income for A.Y. 2010-11 on 30.09.2010, declaring its total income at Rs.7,44,23,711/-. Assessment under Sec.143(3) r.w.s 144C(3) of the Act, was framed on 27.11.2013, assessing the total income of the assessee company at the amount of the returned income.

3. Observing, that the cost recharges which were claimed by the assessee from its fellow subsidiaries amounting to Rs.3,17,37,000/- were not subjected to tax deduction at source, the CIT-1, Mumbai held a conviction that the aforesaid amount was liable to be disallowed under Sec. 40(a)(ia) of the Act. In the backdrop of his aforesaid observation, the CIT was of the view that the assessment framed by the A.O under Sec.143(3) r.w.s. 144C(3), dated 27.11.2013 was erroneous and prejudicial to the interest of the revenue. Accordingly, the CIT issued a 'Show cause' notice (SCN) under Sec. 263 of the Act, therein calling upon the assessee to explain as to why the aforesaid assessment may not be revised. As the reply filed by the assessee did not find favour with the CIT, therefore, he cancelled the assessment and restored the matter to the file of the AO with a direction to verify as to whether in the reimbursement of expenses any income element accrued to the recipient of the amount. It was observed by the CIT, that in case the aforesaid reimbursement comprised of any amount of income element then the assessee was obligated to deduct tax at source, which not having been done rendered the said amount liable for disallowance under Sec. 40(a)(ia) of the Act. At the same time, the CIT also directed the A.O that in case there was no income effect in the hands of the recipient, then the original assessment shall not be disturbed.

4. On the basis of the aforesaid directions given by the CIT, vide his order passed under Sec. 263 of the Act, the A.O framed the assessment under Sec. 143(3) r.w.s 263, dated 21.03.2016 and assessed the income at Rs.10,61,60,430/-. At the time of framing of the aforesaid assessment, the A.O made a disallowance of the allocation charges which were paid by the assessee to M/s GSISPL amounting to Rs.3,17,36,719/-.

5. Aggrieved, the assessee assailed the assessment framed by the A.O under Sec. 143(3) r.w.s 263, dated 21.03.2016 before the CIT(A). Observing, that the order that was passed by

the CIT-1, Mumbai, dated 18.02.2015 under Sec. 263 of the Act had been quashed by the ITAT, Mumbai, vide its order dated 11.05.2015, the CIT(A) concluded that the consequential assessment framed by the A.O giving effect to the aforesaid order of the CIT under Sec.263 of the Act did not survive any more. Accordingly, on the basis of his aforesaid observations the CIT(A) allowed the appeal.

6. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. At the time of the hearing of the appeal, it was submitted by the Id. Authorized Representative (for short 'A.R') for the assessee that the order passed by the CIT-1, Mumbai had been quashed by the Tribunal, i.e ITAT, Mumbai "G", Bench, Mumbai, vide its order dated 11.05.2016 (copy placed on record). It was submitted by the Id. A.R that as the order passed by the CIT under Sec. 263 had been quashed, therefore, the CIT(A) had rightly concluded that the consequential assessment framed by the A.O under Sec. 143(3) r.w.s 263, dated 21.03.2016 could not survive and was liable to be vacated.

7. Per contra, the Id. Departmental Representative (for short 'D.R') submitted that the department had not accepted the order of the Tribunal and has filed an appeal before the Hon'ble High Court, which is pending adjudication as on date.

8. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. Admittedly, the order passed by the CIT-1, Mumbai, under Sec. 263 of the Act, dated 18.02.2015, had been quashed by the Tribunal i.e ITAT, Mumbai, bench "G", Mumbai, vide its order passed in Goldman Sachs (I) Finance Pvt. Ltd. Vs. The Commissioner of Income Tax-1 (ITA No.2227/Mum/2015, dated 11.05.2015) (copy placed on record). In our considered view, now when the order passed by the CIT under Sec. 263 of the Act, on the basis of which the consequential assessment was framed by the A.O under Sec. 143(3) r.w.s 263, dated 21.03.2016, had been quashed by the Tribunal, therefore, the CIT(A) had rightly concluded that the said assessment cannot survive on a standalone basis. The CIT(A) while concluding as hereinabove had observed as under:

"I have considered the assessment order and appellant's submissions. Since order u/s. 263 passed by CIT-1, Mumbai dated 18.02.2015 has been cancelled by the above said order of the ITAT, Mumbai vide order dated 11.05.2015, the assessment order dated 21.03.2016, passed in consequence of the said order u/s 263 of the Act cannot survive. The same is here by cancelled/quashed. The additional ground taken by the appellant is allowed."

In our considered view, no infirmity arises from the aforesaid order of the CIT(A) who had rightly concluded that now when the order passed by the CIT under Sec.263, dated 18.02.2015 had been quashed by the Tribunal, therefore, the consequential assessment framed by the A.O under Sec. 143(3) r.w.s 263, dated 21.03.2016 cannot be sustained and has to meet the same fate. As regards the claim of the revenue that the CIT(A) had erred in not appreciating that the revenue has assailed the order of the Tribunal before the Hon'ble High Court, we are afraid that the said contention of the revenue cannot be accepted. In our considered view, as the operation of the order of the Tribunal had not been stayed by the Hon'ble High Court, therefore, no infirmity arises from the aforesaid view so taken by the CIT(A). Accordingly, not finding any infirmity in the order of the CIT(A), we uphold the same.

9. Resultantly, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 28.02.2020

Sd/-
(G. Manjunatha)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 28/02/2020

Rohit, P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai