

आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

BEFORE SRI MAHAVIR SINGH, VP AND SRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ ITA No. 5006/Mum/2018

(निर्धारण वर्ष / Assessment Year 2013-14)

Hexagon- MIDCO India Private Limited 8 Suleman Chambers 4, Battery Street, Colaba, Mumbai-400 039	बनाम/ Vs.	The Commissioner of Income tax (Appeals)-4 5 th Floor Room No. 548, Aayakar Bhavan, Churchgate, Mumbai-400 021
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AABCH4236M		

अपीलार्थी की ओर से/ Appellant by	:	Shri Ameet Patel, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Gurbinder Singh, DR

सुनवाई की तारीख / Date of hearing:	20.04.2021
घोषणा की तारीख / Date of pronouncement:	20.04.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /

PER MAHAVIR SINGH, VP:

This appeal of assessee is arising out of the order of Commissioner of Income Tax (Appeals)-4, Mumbai, [in short CIT(A)], in appeal No. CIT(A)-4/e-file-01/DCIT-2(1)(2)/2016-17 dated 05.06.2018. The assessment was framed by the Dy. Commissioner of Income Tax, Circle-2(1)(2), Mumbai (in short DCIT/ AO), for the A.Y 2013-14 vide order dated 29.02.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the disallowance made by Assessing Officer in regard to reimbursement of salary cost paid to its associate party on the ground that no taxes have been withheld by invoking the provisions of section 40(a)(ia) of the Act. For this, assessee has raised the following ground:-

"I. Disallowance of Expenditure under section 40(a)(ia) – Rs.23,93,893/-

1.1 On the facts and circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance made by the Assessing Officer in respect of the reimbursement of salary cost paid to its related party on the ground that no taxes have been withheld on the same.

1.2 In doing so, the learned CIT(A) erred in dismissing the detailed submissions made by the appellant and also ignoring the various case laws relied upon by the appellant.

1.3 The learned CIT(A) erred in rejecting the appellant's stand that the Assessing Officer failed to appreciate the fact that the appellant had reimbursed actual cost incurred by its related party (MIDCO Ltd.) on cost to cost basis without charging any mark up and there was no service provided by the related party to the appellant and therefore, the payment did not attract the provisions of

any TDS section on the ground that the appellant had broken up the working of the reimbursement into costs under minor heads and had also charged service tax on the total amount.”

3. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the Assessing Officer as well as CIT(A) during the course of assessment proceedings and appellate proceedings noted that the assessee has made payment to its holding company MIDCO Ltd under the head salary but no TDS was deducted. The Assessing Officer noted that the employees on the payroll of the holding company were deputed for working in the assessee company and the cost of the said employees was reimbursed to the holding company without deduction of TDS. Before the Assessing Officer as well as before CIT(A), the assessee contended that the cost of salary was reimbursed of actual salary without any markup and as the TDS was deducted by the holding company with the MIDCO company on the salary component. Therefore, the assessee claimed that no additional TDS was deducted but the assessee failed to provide the details before the Assessing Officer as well as before CIT(A), hence, the lower authorities made disallowance and confirmed the disallowance by invoking the provisions of section 40(a)(ia) of the Act. Aggrieved, against the order of CIT(A) now, assessee is in appeal before Tribunal.

4. Now before us, the assessee's counsel made submissions that he is ready to produce the evidence that the holding company has deducted TDS on reimbursement of salary. He stated that he is ready to produce



these evidences before the Assessing Officer in case the matter is set aside and on principle the issue can be decided.

5. On the other hand, the learned Sr. DR fairly agreed that in case the holding company MIDCO Limited has deducted the TDS on salary paid to these employees no further requirement of TDS on principle but assessee has to produce evidence before the Assessing Officer. Hence, on Principle, we are of the view that once the holding Company MIDCO Limited has deducted TDS on salary to seconded employees, the assessee is not required to deduct TDS on the same salary because there is no markup. Hence, we remit the this issue back to the file of the Assessing Officer just for the purpose of verification that the holding company MIDCO Limited is deducted the TDS and the assessee is able to prove that the holding company MIDCO Limited has deducted the TDS then no disallowance is to be made but assessee has to produce the evidence before the Assessing Officer. In term of the above, the matter is remanded back to the file of the Assessing Officer.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20.04.2021.

Sd/-

(मनोज कुमार अग्रवाल / MANOJ KUMAR AGGARWAL)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह / MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 20.04.2021

सुदीप सरकार, व. निजी सचिव/ Sudip Sarkar, Sr.PS



आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**