

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 4148/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

Samex Agency 201, 2 nd Floor, Sabari Samridhi, Plot No.10, Opp. Union Park, V. N. Purav Marg, Chembur, Mumbai- 400071.	बनाम/ Vs.	ITO-17(3)(2) 114, Aaykar Bhavan, M. K. Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAKFS6502P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Navin B. Gandhi (AR)	
Revenue by:	Shri T. S. Khalsa (DR)	

सुनवाई की तारीख / Date of Hearing: 16/02/2021
घोषणा की तारीख /Date of Pronouncement: 07/04/2021

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 03.05.2019 passed by the Commissioner of Income Tax (Appeals) -28, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2014-15.

2. The assessee has raised the following grounds: -

“ Ground 1

(a) The Hon’ble CIT (A)-28, Mumbai has erred in confirming the disallowance u/s 40(a)(i) of Income Tax Act, 1961 (the act) by affirming payments of Rs.12,22,102/- (US \$ 18,904.27) made to non-resident having no Permanent Establishment (PE) in India viz. Al-Zaheni & Malhotra General Trading Co. W.L.L, P.O. Kuwait towards reimbursement of exhibition expenses and cost of free samples distributed in Super Markets & Co-operative stores in Kuwait as



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"managerial services covered in ETS" as per Explanation 2 to Section 9(1) (vii) of the act.

The appellant firm humbly submits that:

As per the provisions of Section 5 of the act and provisions of the DTAA between India and Kuwait. no income has accrued or arisen or deemed to have been accrued or arisen in India in the hands of the said non-resident viz. Al-Zahem & Malhotra General Trading Co. W.L.L. P.O. who has no PE in India out of the payments of Rs. 12,22,102/- made towards the reimbursement of expenses.

b) The payments of Rs. 12,22,102/- to the said non-resident were merely reimbursement of expenses and did not have any element of supervision, superintendence, control, direction and guidance which is the essence of managerial services so as to bring the said services within the ambit of Fees for Technical Services (FTS).

Relief Claimed:

The appellant firm humbly submits that the entire addition is incorrect, unjustified and bad in law and hence may please be deleted.

Ground 2

The appellant firm prays for your leave to add, alter & amend the above grounds of appeal if necessary."

3. The brief facts of the case are that the assessee filed its return of income on 01.09.2014 declaring total income to the tune of Rs.53,52,296/- for the A.Y.2014-15. The return was processed u/s 143(1) of the I. T. Act, 1961 accepting the income returned by the assessee. Thereafter, the case was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee company was engaged in the business of Export of agriculture produce, spices such as Cardamom, Ginger, Black Pepper etc. The assessee has debited a sum of Rs.12,22,102/- in the profit and loss account as foreign sales promotion expenses. No TDS was deducted on Rs.12,22,102/-. The notice was issued and after the reply of the assessee, the said amount in sum of Rs.12,22,102/- foreign sales promotion expenses was disallowed and added to the income of the assessee.



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The total income of the assessee was assessed in sum of Rs.65,74,400/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the order of the AO, therefore, the assessee has filed the present appeal before us.

GROUND NO.1

4. Under this issue the assessee has challenged the confirmation of the disallowance u/s 40(a)(i) of the Act in sum of Rs.12,22,102/- made to non-resident having no Permanent Establishment (PE) in India. At the very outset, the Ld. Representative of the assessee has argued that the issue has duly been covered by the decision of the Hon'ble ITAT in the assessee's own case bearing ITA. No.70/Mum/2019 for the A.Y.2012-13 dated 27.02.2020, therefore, the claim of the assessee is liable to be allowed. However, on the other hand, the Ld. Representative of the Department has refuted the said contention. Before going further, we deem it necessary to advert the finding of the Hon'ble ITAT in the assessee's own case (supra). The relevant finding is hereby reproduced as under:-

"7. We have heard the rival submissions and perused the relevant materials on record. Admittedly, the assessee explained before the Ld. CIT(A) that Rs.9,94,000/- was paid to Al-Zaham & Malhotra to make the 'Emperor Akbar' brand cardamom for display and sale on the shelves of various supermarkets and malls; the firm had paid listing fees to the supermarkets and malls by virtue of which the different sizes of the 'Emperor Akbar' cardamom pouches are registered into the bar code system of the supermarkets/malls and thus the products of the firm are now available for sale in various supermarkets and malls of Kuwait. The assessee also filed before the Ld. CIT(A) the debit note of Al-Zaham & Malhotra and photographs of the firm's 'Emperor Akbar' product displayed for sale on the shelves of supermarkets and malls in Kuwait. Further, in respect of payment of the balance amount of Rs.2,31,247/- paid to Al-Zaham & Malhotra, the assessee had submitted debit note of Al-Zaham & Malhotra and photographs of the firm's 'Emperor Akbar'



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product displayed for sale at Incredible India Promotion Festival. We find that the assessee-firm had filed the debit notes along with the other details before the AO during the course of assessment proceedings. A perusal of the documents filed before the AO as well as CIT(A) clearly indicates that the said expenses are mere reimbursement of expenses incurred by Al-Zaham & Malhotra and there is no element of supervision, superintendence, control, direction and guidance which is the essence of managerial services so as to bring the said services within the ambit of FTS. When the above details were filed before the AO and CIT(A), it was incumbent on them to examine and make further inquiry. Even elementary examination has not been made by them. In such a situation, considering the facts and circumstances of the case, we set aside the order of the Ld. CIT(A) and delete the addition of Rs.12,25,247/- made by the AO.”

5. Since the issue has duly been covered by the decision of Hon’ble ITAT in the assessee’s own case bearing ITA. No. 70/Mum/2019 dated 27.02.2020, therefore, by honoring the decision of the Hon’ble ITAT in the assessee’s own case (supra), we allowed the claim of the assessee and decide this ground in favour of the assessee against the revenue.

6. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 07/04/2021

Sd/-

(SHAMIM YAHYA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 07/04/2021

Vijay Pal Singh/Sr. P.S.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



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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//

(Assistant Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai