आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 560/CHNY/2016**

निर्धारण वर्ष / Assessment Year: 2011-12

M/s. Brakes India Pvt. Ltd., MTH Road, Padi, Chennai – 600 050	Vs	**The DCIT,** Large Taxpayer Unit-II, Chennai - 600 101.

PAN: AAACB 2533Q

(अपीलार्थी/Appellant)	(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri Durgesh Sumrott, CIT

सुनवाई की तारीख/Date of Hearing : 02.12.2021

घोषणा की तारीख/Date of Pronouncement : 25.02.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal of assessee was recalled partly in M.P 181/MDS/2017 vide order dated 15.11.2017 i.e., Ground Nos.4, 5 & 6.

2. At the outset, ld.counsel for the assessee first of all drew our attention to Ground No.4, which reads as under:

> "The learned AO erred in the said order disallowing the payment of Rs.9,94,945/- to TRW Automotive Services (SDN) BHD, Malaysia for non deduction of tax, overlooking the fact that the payment is only a reimbursement of actual expenditure devoid of any income element. Reliance is placed in GE India Centre Pvt Ltd v CIT 327 ITR 456 (SC).

3. The ld.counsel took us through the order of Tribunal in ITA Nos.558,559/Mds/2016, 444/Mds/2015 & 560/Mds/2016 dated 06.03.2017, para 5. This issue was adjudicated for assessment years 2009-10 & 2010-11 but left out for assessment year 2011-12. The ld.counsel now requested that exactly identical finding is required in this case also on Ground No.4 and matter can be restored back to the file of the AO with exactly identical directions. We noted that facts are exactly identical and Tribunal in Para 10 had restored the matter back to the file of the AO with the following directions:-

> "10. In our opinion, the assessee has to demonstrate that this impugned payment does not include any profit element so as to deduct TDS and it is only reimbursement of actual expenses. Before us, the ld. AR was not able to demonstrate that it does not include any profit element. Accordingly, we remit this issue to the file of the AO and the assessee is directed to show that this is only reimbursement on cost to cost and it does not include any element of profit. This ground is allowed for statistical purposes for both the assessment years."

When these facts were confronted to ld.CIT-DR, he agreed for the proposition of ld.counsel for the assessee.

4. After hearing both the sides, we restore this issue i.e., Ground No.4 of the assessee appeal back to the file of the AO, who will decide in term of directions given by Tribunal in Para 10, vide order dated 06.03.2017.

5. The next ground not adjudicated by the Tribunal is Ground No.5, which reads as under:-

> "5. The learned AO erred in the said order disallowing the payment of Rs.41,04,381/- to M/s. Showatech Inc. USA for non deduction of tax, overlooking the fact that the said sum is not "a fees for technical services" within the meaning of explanation 2 to clause (vii) to Sec 9(1) of the Act and hence as no income is chargeable in India, the question of deduction of tax at source does not arise. Reliance for the above view is placed on the decision of the Honourable Chennai Tribunal "C" Bench in the Appellant's own case in ITA 256 & 656/Mds/2012 for AY 2007-08, wherein it was held that there is no obligation on the part of the Appellant to deduct tax at source while making the payment."

6. The ld.counsel for the assessee before us stated that this issue was also not adjudicated for assessment year 2011-12 and Tribunal while remitting the matter back to the file of the AO in regard to Ground 4, on the issue of TDS has already sent back the matter to file of the AO in regard to assessment years 2009-10 & 2010-11 and on the similar lines, this matter also requires to be set aside so that a consistent view can be taken by the AO. We noted that the Tribunal has remitted the issue back with regard to Ground No.4 and this being a similar issue, it need to go back to the file of the AO

even for assessment year 2011-12. When this proposition was put to ld.CIT-DR, he fairly agreed.

7. After hearing rival contentions, we are of the view that let this issue be readjudicated by the AO in term of the decision of this Tribunal for assessment years 2009-10 & 2010-11, order dated 06.03.2017. This issue of assessee's appeal is remitted back to the file of the AO.

8. The next issue of assessee is as regards to Ground No.6, which reads as under:-

> "6. The learned AO in the said order erred in abating the deduction u/s 10AA and 10B Units, by Rs.9,01,25,700/- in respect of two EOU's and one SEZ unit of the Appellant by making an apportionment of R&D expenditure which had no bearing in arriving at eligible profits derived from the said undertakings.
>
> 6.1 Without prejudice to our above contention that no allocation should be made to the eligible units, the Appellant would like to state that the learned AO had erred while computing the revised deduction sin not considering the revised turnover and revised profits of the undertakings as filed through Revised Return dated 27-03-2013. Further the learned AO had erred in concluding that the Appellant has not maintained separate books of accounts and hence the expenditure needs to be apportioned between the units claiming the deduction in proportion to the turnover, which is factually incorrect.
>
> 6.2 The learned AO erred in not following directions of ITAT given for A.Y. 2007-08. The appellant prays that clear and unambiguous directions may please be given, both on facts and law."

9. At the outset, the ld.counsel for the assessee stated that the Tribunal in assessment years 2009-10 & 2010-11 has already remitted the matter back to the file of the AO, but left out recording assessment year 2011-12. Further, the Tribunal in its miscellaneous petition order dated 15.11.2017, noted that the allocation is for both the sections i.e., for section 10B & 10AA of the Act, which is inadvertently left out i.e., 10AA of the Act. Now, the ld.counsel for the assessee stated that the AO be directed to compute the deduction u/s.10AA of the Act after considering the facts of the case. When this proposition was put to ld.CIT-DR, he fairly agreed.

10. We have considered the plea of the assessee and find that the AO is to adjudicate the issue in assessment year 2011-12 in term of the decision for assessment years 2009-10 and 2010-11 and will also compute the claim of deduction u/s.10AA & 10B in respect of allocation of R&D expenditure between 10B and 10AA and other units after considering the relevant material. This issue is also remitted back to the file of the AO.

11. During the course of hearing, the ld.counsel for the assessee asked for specific directions to the AO to consider the revised return filed by the assessee on 27.03.2013 and the directions of ITAT for

assessment year 2007-08 in ITA No.266/Mds/2012 be followed. The facts are not available before us but in case, the revised return filed by assessee is as per law, the AO may consider this.

11. In the result, the appeal of the assessee is allowed for statistical purpose.

Order pronounced in the court on 25th February, 2022 at Chennai.

Sd/-	Sd/-
(जी. मंजुनाथ)	(महावीर सिंह)
(G. MANJUNATHA)	**(MAHAVIR SINGH)**
लेखा सदस्य /ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 25th February, 2022
RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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