

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No.513/Chny/2020
निर्धारण वर्ष/Assessment Year: 2011-12

Shri Mutharumugam Muthukumar,
Prop: MS Leather & Leather Products,
122, Thiruneermalai Road, Nagalkeni,
Chrompet, Chennai 600 044.

Vs. The Deputy Commissioner of
Income Tax,
Non Corporate Circle 22,
Tambaram, Chennai – 600 045.

[PAN:AASPM8467D]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri K. Viswanathan, CA
प्रत्यर्थी की ओर से/Respondent by : Shri Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 03.03.2022
घोषणा की तारीख /Date of Pronouncement : 09.03.2022

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 10, Chennai dated 31.01.2020 relevant to the assessment year 2011-12. Besides challenging confirmation of disallowance of ₹.3,31,500/- paid as EMD to Pallavaram Tanners Industrial Effluent Treatment Co. Limited, the assessee also challenged confirmation of disallowance of ₹.1,79,831.89 on the ground that TDS provisions are not applicable.

2. Facts are, in brief, that the assessee filed his return of income on 26.09.2011 for the assessment year 2011-12 declaring total income of ₹.35,40,798/-. The assessee derived income from manufacturing of leather and leather products under the name and style of M.S. Leather & Leather Products. The case was selected for scrutiny and after following due procedure, the Assessing Officer has completed the assessment under section 143(3) of the Income Tax Act, 1961 ["Act" in short] by assessing total income of the assessee at ₹.1,47,75,478/- after making various additions.

2.1 With regard to the disallowance of effluent treatment charges, the Assessing Officer has noted that an amount of ₹.7,23,650/- has been debited to profit and loss account under Effluent Treatment Charges. On examination of relevant ledger account, bills, etc., the Assessing Officer noticed that the assessee has made payment of ₹.3,31,500/- to Pallavaram Tanners Industrial Effluent Treatment Company Ltd. towards RO EMD. Since the assessee has not deducted tax as required under section 194C of the Act, the Assessing Officer disallowed the same and brought to tax. On appeal, the Id. CIT(A) confirmed the disallowance of ₹.3,32,500/-.

3. On being aggrieved, the assessee is in appeal before the Tribunal. By relying on various decisions, the Id. Counsel for the assessee has submitted that since the EMD was paid to Pallavaram Tanners Industrial Effluent Treatment Co. Ltd. in respect of the production facilities taken on rental basis and EMD is not credited to the assessee's account and does not bring into existence of an asset or an advantage of enduring benefit of a trade and the operations of the assessee's unit cannot be carried out with such deposit and such deposit only facilitates the assessee to carry out the business transactions without stoppage, it was prayed that such expenditure be allowed under section 37 of the Act.

4. On the other hand, the Id. DR strongly supported the orders of authorities below.

5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including case law relied on in the grounds of appeal. The point at issue is whether the EMD remittances are capital expenditure or revenue expenditure. In this case, the Assessing Officer has disallowed ₹.3,31,500/- paid as EMD to Pallavaram Tanners Industrial Effluent

Treatment Co. Ltd. on the ground that such remittances are capital expenditure. On appeal, the Id. CIT(A) confirmed the disallowance. However, we find that since, the EMD was paid to Pallavaram Tanners Industrial Effluent Treatment Co. Ltd. in respect of the production facilities taken on rental basis and does not bringing into existence an asset or an advantage for the enduring benefit of a trade and the operations of the assessee's unit cannot be carried out with such deposit and such deposit only facilitate the assessee to carry out the business transactions, we are of the considered opinion that the expenditure incurred by the assessee should be treated as revenue expenditure. Admittedly, the expenditure does not bringing into existence of an asset or an advantage for the enduring benefit of a trade and thus, cannot be capitalized. Accordingly, we direct the Assessing Officer to allow the deduction of EMD payment as revenue expenditure. Thus, the ground raised by the assessee is allowed.

6. With regard to confirmation of disallowance of ₹.1,79,831.89, in the assessment order, the Assessing Officer has disallowed ₹.37,99,363/- under section 40(a)(ia) of the Act on account of clearing, packing and forwarding expenses. On appeal, after considering the

submissions of the assessee, the Id. CIT(A) deleted the disallowances to the extent of ₹.36,25,288/- against ₹.37,99,363/- and the balance disallowance of ₹.1,74,075/- was confirmed. Before us, the Id. Counsel for the assessee has submitted that the above expenses represent packing materials purchased and the details were furnished before the Assessing Officer and moreover, petty cartages paid of ₹.16,250/- falls within the threshold limits prescribed under section 194C of the Act for which TDS provisions are not applicable. In view of the above facts and circumstances, we direct the Assessing Officer to allow the claim of expenses.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 09th March, 2022 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 09.03.2022

Vm/-

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.