

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'D' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष  
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1461/CHNY/2017**

निर्धारण वर्ष /Assessment Year: 2011-12

**The Income Tax Officer,**  
Non-Corporate Ward 2(1),  
Coimbatore.

**M/s. Senthil Enterprises,**  
v. No.107-A, Senguptha Street,  
Ramnagar,  
Coimbatore – 641 009.

(अपीलार्थी/Appellant)

**PAN: AALFS 7257A**

(प्रत्यर्थी/Respondent)

&

आयकर अपील सं./ITA No.: **1058/CHNY/2017**

निर्धारण वर्ष /Assessment Year: 2011-12

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No.107-A, Senguptha Street,  
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(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

राजस्व की ओर से /Revenue by

: Shri G. Johnson, Addl.CIT

निर्धारिती की ओर से/Assessee by

: Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing

: 19.05.2022

घोषणा की तारीख/Date of Pronouncement

: 27.05.2022

**आदेश / O R D E R****PER MAHAVIR SINGH, VP:**

These cross appeals are arising out of the order of Commissioner of Income Tax (Appeals)-2, Coimbatore in ITA No.13/14-15, dated 27.02.2017. The assessment was framed by the DCIT, Central Circle – 1, Coimbatore u/s.143(3) r.w.s.144 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 17.03.2014 for the assessment year 2011-12.

**ITA No.1461/Chny/2017**

2. During the course of hearing before us, the learned AR for the assessee pointed out that the tax effect in this appeal is Rs.48,59,097/-, which is below Rs.50.00 lakhs. The learned AR for the assessee further submitted that in view of the CBDT Circular No.17/2019, dated 08.08.2019 brought out by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India, the appeal was not maintainable and be dismissed. The Ld. Senior DR also agreed to the facts stated by the Ld.AR for the assessee.

3. We have heard the rival submissions and perused the material on record. We find that the amount under dispute was

Rs.1,57,25,234/- and the disputed amount of tax was Rs.48,59,097/-. Therefore, in view of the CBDT Circular No. 17/2019 dated 08.08.2019 no appeal should be filed by the Revenue before the Tribunal which has tax effect of Rs. 50.00 lakhs or less and this circular is also applicable retrospectively to all pending appeals. Therefore, the appeal filed by the Revenue is dismissed.

### **ITA No.1058/Chny/2017**

4. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the action of AO in disallowing purchase expenses treating that as royalty payments and accordingly non-deduction of TDS u/s.194J of the Act and thereby applying the provisions of section 40(a)(ia) of the Act. For this, assessee has raised various grounds which are arguments and hence need not be reproduced.

5. Brief facts are that the AO on perusal of statement of valuation of closing stock noted that the assessee has purchase cost of limestone at Rs.5,87,10,248/- which includes purchase invoice cost of Rs.4,12,89,155/- and royalty payment of Rs.1,74,21,093/-. The AO noted that the assessee has not deducted TDS on this royalty payment and accordingly the AO required the assessee to explain as

to why the purchase expenses booked to the extent of royalty payment of Rs.1,74,21,093/- be not disallowance for non-deduction of TDS. The assessee replied that Tamin Ltd has supplied graphite and limestone and bills are raised on the assessee. They charged VAT on the same. It was explained that royalty is also purchase cost and they have charged VAT on the same. But the AO has not accepted the explanation of the assessee because the assessee is liable to deduct TDS u/s.194J of the Act at the time of payment of royalty. The AO noted that this royalty payment of Rs.1,74,21,093/- paid to Tami Ltd., without deducting TDS u/s.194J of the Act is disallowed by invoking the provisions of section 40(a)(ia) of the Act. Aggrieved, assessee preferred appeal before CIT(A). The CIT(A) also confirmed the action of AO. Aggrieved, now assessee is in appeal before the Tribunal.

6. At the outset, the Id.counsel for the assessee only argued that in view of proviso added by way of amendment in section 40(a)(ia) of the Act, and insertion of second proviso which provides that in case the recipient has included the receipts in their income, no disallowance u/s.40(a)(ia) of the Act will be applicable. At this point, the Id. Senior DR stated that the assessee has not filed any evidence that the recipient has included the receipts in their income. The matter can be referred back to the file of the AO. Per contra,

the Id.counsel stated that he is ready to file the details as prescribed under second proviso to section 40(a)(ia) of the Act, i.e., relevant certificate by the auditors of the recipient company that the receipt company has included the receipts in their income and the AO after verifying the same can decide the claim of assessee.

7. In view of the above fact that the assessee made statement at bar that the recipient has included the receipts in their return of income in regard to these expenses on which assessee has not deducted TDS, in term of second proviso to section 40(a)(ia) of the Act, we remit the matter back to the file of AO, who will consider the claim of assessee after taking relevant evidences.

8. In the result, the appeal filed by the Revenue is dismissed and the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the court on 27<sup>th</sup> May, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 27<sup>th</sup> May, 2022

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                        |                         |                              |
|------------------------|-------------------------|------------------------------|
| 1. निर्धारिती/Assessee | 2. राजस्व/Revenue       | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF.            |