आयकर अपीलीय अधिकरण 'बी' न्य□पीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

मा□नीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.70/Chny/2021**
(निर्धारण वर्ष / Assessment Year: 2020-21)

M/s. Ramesh Flowers Pvt. Ltd. A-62(A), Sipcot Industrial Complex, Therku Veerapandiapuram, Tuticorin – 628 002.	**बनाम** / Vs.	**ITO** (International Taxation), Tuticorin.
स्थायी लेखा सं./जीआइ आर सं./**PAN/TAN AAACR-9251-P/ MRIR-00587-G**		
(□ पीलार्थी**/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओरसे/ **Appellant by**	:	Shri D. Anand (Advocate)-Ld. AR
प्रत्यर्थी की ओरसे/**Respondent by**	:	Shri S. Senthil Kumaran (CIT)–Ld. DR
सुनवाई की तारीख**/Date of Hearing**	:	07-12-2022
घोषणा की तारीख /**Date of Pronouncement**	:	07-12-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the assessee contest validity of revisional jurisdiction u/s 263 as exercised by learned Commissioner of Income Tax (International Taxation), Chennai [CIT) vide order dated 05-02-2021 against an order passed by Ld. Assessing Officer [AO] u/s. 201(1) / 201(1A) of the Act on 31-07-2020 for Assessment Year (AY) 2020-21. The grounds taken by the assessee are as under:

1. The order of the learned Commissioner of Income tax International Taxation) is: -

a) Contrary to law, facts and circumstances of the case

b) Opposed to fair procedure and legitimate expectation
c) The order of the learned Commissioner of Income tax (International taxation) is by way of review of the opinion of the Assessing officer which is not permissible in law The Assessing Officer has made all the enquiries with respect to the facts relevant to applicability of Section 194LC. The AO has examined and concluded based on the documents produced that the assessee has complied with the ECB guidelines. Thus, the jurisdiction under Section 263 cannot be invoked.
d) The jurisdictional term "considers" used in section 263 of the Act means, debate devote attention to, examine, investigate, pay attention to ponder, meditate, think with care, being a jurisdictional fact the same cannot be assumed without the basis and hence the essential requisite for issuing the show cause notice was absent and hence the proceedings is nullity in law. (see CIT v. Karam Chand Thapar and Sons Ltd)186 ITR 372) The learned Commissioner of Income tax (International Taxation) ought to have appreciated that his directions in the order contrary to the Circular issued by the CBDT and FEMA regulations and Reserve Bank guidelines
e) The settled law is the beneficial provision must be interpreted liberally.
f) The presumption u/s; 114 (e) of the Indian Evidence Act 1872 applies viz that judicial and official acts have been regularly performed; and
g) when there exists two opinion, the opinion favourable to the assessee should be adopted
h) the provision is not mandatory ad is only discretionary
i) The twin conditions both erroneous and prejudicial to the interest of the revenue are not satisfied in the presence case.

2. The learned Commissioner of Income tax (International Taxation) made Himalayan Howler stating that the rupee denominated is not eligible relief is against the relief granted in terms of section 194 LC (ia) of the income tax Act and the section itself recommends Indian currency Bond which includes agreement, It is supported by:

> "Maxwell on the Interpretation of Statutes, 12th edition, page 228, states the rule thus:
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> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the Legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear it must not be reduced to a nullity by the draftsman's unskillfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used. Lord Reid has said that he prefers to see a mistake on the part of the draftsman in doing his revision rather than a deliberate attempt to introduce an irrational rule : 'the canons of constructions are not so rigid as to prevent a realistic solution'."

3. The learned Commissioner of Income tax (International Taxation) sings the same song that Indian currency is not foreign currency and fails to note the maxim

viz . Lex Non Cogit ad impossibilia is an age old maxim meaning that the law does not compel a man to do which he cannot possibly perform. In Hughey v. JMS Development[l], (Justice Owens of the United States Court of Appeals) no international transaction can be done rupee currency and only foreign currency can be handled/transacted /performed.

Section 3 of FEMA is extracted below: Prohibition to Borrow or Lend: -

"Save as otherwise provided in the Act, Rules or Regulations made thereunder, no person resident in India shall borrow or lend in foreign exchange from or to a person resident in or outside India and no person resident in India shall borrow in rupees from, or lend in rupees to, a person resident outside India"

It is submitted thus, that borrowing by a resident in India from a source outside India can be only in Foreign currency, as obviously the lender resident outside India (a German Company) can not possess Indian currency. The loan from a source outside India will, in all cases, be received into India only in a foreign currency and will be subsequently converted into India rupee INR for use by the Indian borrower in India.

4. The learned Commissioner of Income tax (International Taxation) in his decreetal ruling/verdict portion of the impugned order passed under section 263 of the Act directed to pass fresh order makes of the impugned proceedings as nullity.

5. The learned Commissioner of Income tax (International Taxation) ought to have appreciated the impugned order passed in terms of section 263 of the Act is neither erroneous or prejudicial to the interest of the revenue, among other things, since application in terms of section 9 (1) (v) (b) which mandates: viz;

"a person who is a resident except where the interest is payable in respect of any debt, or moneys borrowed and used, for the purpose of the business or profession carried on such person outside India or for the purpose of making or earning any income from any source outside India;... and hence there exists nil liability to pay deduct any tax,

In the assessee's case, the money borrowed from the German non-resident was used for the purpose of its export business as explained by the binding decision of the jurisdictional Madras High Court in CIT v Aktiengesellschaft Kuhnle Kopp (262 ITR 513,) income from exports arises from a source outside India

2. The Ld. AR advanced arguments supporting the order passed by Ld. AO which has been controverted by Ld. CIT-DR. Having heard rival submissions and after perusal of case records, the appeal is disposed-off as under.

3. The assessee was subjected to TDS inspection by the department on 31.07.2020. It transpired that the assessee paid interest and management charges to M/s Gala Group GMBH, Germany. These payments were held to be liable for Tax deduction at source (TDS) and

the amount of TDS required on interest payments u/s 194LC and management service charges u/s 195 was worked out to be Rs.23.87 Lacs & Rs.58.24 Lacs respectively. The assessee remitted the same and the demand was fully satisfied. The applicable TDS rate u/s 194LC was held to be 5%.

4. Subsequently, Ld. CIT, upon perusal of case records, held that the rate of 5% was concessional rate of tax and to avail the same, the conditions as prescribed therein was to be fulfilled. The primary requirement was that the loan should have been availed in foreign currency whereas the loan was taken by the assessee in Indian currency. Accordingly, the revision of the order was sought and the assessee was put to show-cause notice.

5. The assessee submitted that the loan was in the nature of External commercial borrowings (ECB). The relevant documents were furnished by the assessee at the time of inspection and the inspecting AO estimated the TDS liability and advised the assessee to remit TDS u/s 194LC. The assessee also submitted that the said tax rate was in accordance with legal opinion obtained by the assessee and based on CBDT Circular No.07/2012 dated 21.09.2012 and RBI guidelines on ECB (Circular No.17 dated 16.01.2019).

6. However, Ld. CIT maintained that foreign currency would mean any currency other than Indian currency. As per contractual terms, the loans were taken in Indian currency on which interest @8% was payable. The repayment was also to be made in Indian currency. The higher interest rate is charged in such case in comparison to when the loan is obtained in foreign currency on which interest is payable at less rate and there is leaser outgo of money out of India when the loan is in

foreign currency. The rupee denominated borrowing could not be said to be monies borrowed in foreign currency and Sec.194LC would apply only to foreign currency denominated borrowings when it comes to borrowings. Therefore, the borrowings do not fulfil the conditions prescribed u/s 194LC. The CBDT circulars clearly spelt out that the Sec.194LC applies for withholding tax rate of 5% on interest payment made by Indian companies on borrowings made in foreign currency by such companies from a source outside India. Accordingly, the order was held to be erroneous and prejudicial to the interest of the revenue and Ld. AO was directed to pass fresh order u/s 201(1) / (IA) after considering the matter in accordance with law including the terms of DTAA. Aggrieved as aforesaid, the assessee is in further appeal before us.

Our findings and Adjudication

7. Upon perusal of material facts, it could be gathered that the assessee was subjected to TDS inspection and demand was raised u/s 201(1) / (1A) in terms of Sec.194LC and 195. It could be seen that no tax was deducted by the assessee and demand was raised by Ld. AO in terms of statutory provisions after examining the relevant documents including terms of ECB. The same would lead to a conclusion that Ld. AO had applied its mind that the provisions of Sec.194LC would apply to the case of the assessee and TDS would be required at rates mentioned therein. There was complete application of mind on the issue and the same was one of the possible views since as rightly argued by Ld. AR, foreign borrowings would always come in foreign currency notwithstanding the fact that in the relevant contracts, the terms of loan has been denominated in Indian Rupees. Nevertheless,

the matter was duly examined by Ld. AO while finalizing the order and a plausible view was taken in the matter. This being so, the order could not be termed as erroneous and therefore, the impugned revision could not be sustained in law. We order so.

8. The appeal stand allowed.

Order pronounced on 07th December, 2022.

Sd/-	**Sd/-**
(MAHAVIR SINGH)	**(MANOJ KUMAR AGGARWAL)**
उपाध्यक्ष /VICE PRESIDENT	**लेखासदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 07-12-2022
EDN/-

आदेश की प्रतिलिपि ग्रेषित/Copy of the Order forwarded 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