

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

श्री एबी टी वर्की, न्यायिक सदस्य एवं श्री एस. आर. रघुनाथा, लेखा सदस्य के समक्ष
**BEFORE SHRI ABY T VARKEY, HON'BLE JUDICIAL MEMBER AND
SHRI S. R. RAGHUNATHA, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **1531/Chny/2023**

निर्धारण वर्ष / Assessment Year: 2021-22

Omega IT Resources Pvt Ltd.,
109, Vignesh Apartments,
Veereswaram Approach Road,
Srirangam,
Trichy – 620 006.

Income Tax Officer,
v. CHE-W-(191)(1),
Chennai.

[PAN: AABCO-7735-N]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. A.S. Ramakrishnan, FCA

प्रत्यर्थी की ओर से/Respondent by

: Shri. D. Hema Bhupal, JCIT

सुनवाई की तारीख/Date of Hearing

: 01.05.2024

घोषणा की तारीख/Date of Pronouncement

: 31.05.2024

आदेश / O R D E R

PER S. R. RAGHUNATHA, ACCOUNTANT MEMBER:

This appeal by the assessee is filed against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, for the assessment year 2021-22, vide order dated 30.11.2023.

2. The sole issue is against the action of the CIT(A) confirming the disallowance made by Id.AO in disallowance of

professional expenses claimed by the assessee u/s. 37 of the Income-tax Act, 1961 (hereinafter referred to as "the Act").

3. The brief facts of the case are that, the assessee is a private limited company engaged in software development and other related services and e-filed its return of income for the assessment year 2021-22 on 12.02.2022, admitting an income of Rs.9,89,390/-. The case was taken up for scrutiny under CASS. During the course of assessment proceedings, the Assessing Officer called for explanation regarding abnormally high professional/consultancy fee. In response, the assessee filed the relevant documents such as Form 16A, bank statements, invoices/bills and ledger account of such professional fees paid. The Id. Assessing Officer, issued notices u/s. 133(6) of the Act to the recipients of professional charges paid by the assessee company and called for information. The payment made to persons who have not responded to notices as professional charges has been treated as not-genuine expenditure and disallowed the expenditure and concluded the assessment u/s. 143(3) of the Act on 20.12.2022. Aggrieved, the assessee filed an appeal before the Id. CIT(A).

4. Before the Id. CIT(A), the assessee filed a written submissions and reiterated the arguments made before the Assessing Officer. The assessee also relied upon case laws which are reproduced as under:

- (i) Havells India Ltd vs DCIT (TS-825-ITAT2022(Del)).
- (ii) Fancy Wear vs ITO [2017] 87 Taxmann.com 183
- (iii) Sonicwall Technology System India Pvt Ltd vs ACIT ITA No. 3860/Mum/2019
- (iv) M/s. Kesha Appliances Pvt Ltd vs ITO, ITA No. 2175/Del/216.

5. The Id. CIT(A), after considering the written submissions and case laws relied upon by the assessee held that, the assessee is failed to prove the genuineness of expenses claimed and case laws relied are not applicable to the facts of the present case. Therefore, Id. CIT(A) upheld the order of the Id.AO. Aggrieved by the order of the Id. CIT(A), the assessee preferred an appeal before us.

6. The Ld. Counsel for the assessee, stated that the Id. CIT(A) and the Assessing Officer erred in not considering the submissions of the assessee regarding proving the genuineness of expenses incurred towards consultancy charges during the assessment year 2021-22. The Ld. Counsel for the assessee,

filed a written submission and confirmed that the recipient of consultancy charges by Ms. Hima Bindu Poreddy of Rs.60,13,310/-, has filed her return of income and had furnished the copy of ITR-3 acknowledgment filed u/s. 139(8A) of the Act on 24.12.2022 before the Id. CIT(A). The Ld. Counsel for the assessee, stated that, the assessee submitted the relevant details of expenses like ledger account, TDS made u/s. 194J of the Act, name email ID, details of services availed, copies of bills and vouchers during the assessment proceedings. The Ld. Counsel for the assessee had placed on record that the bills and invoices issued by the recipients to establish the nature of sources provided by them in relation to the business carried on by the assessee. Apart from the relevant details, the assessee also had declared that the recipients are not related parties as per the provisions of section 40A(2)(b) of the Act. The Ld. Counsel for the assessee, requested to allow the expenditure claimed, by relying on the decision of coordinate bench of ITAT, Mumbai in the case of Sonicwall Technology System India Pvt Ltd vs ACIT ITA No. 3860/Mum/2019, which is squarely applicable to the present case by quashing the order of both CIT(A) and Assessing Officer.

7. Per contra, the Id. DR defended the action of the Assessing Officer and the Id.CIT(A), as the recipients of consultancy charges claimed as expenditure by the assessee have not responded to the notices u/s. 133(6) of the Act and hence, rightly disallowed the expenditure as the assessee could not furnish the copies of income tax returns filed by the respective recipients, having declared the corresponding revenues.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. The only issue for our consideration is regarding the assessee's claim of expenditure on consultancy charges, u/s. 37 of the Act to the following three persons are:

(i) Arivukarasu SivaSankar	Rs.4,800/-
(ii) Hima Bindu Po reddy	Rs.60,13,310/-
(iii) Selvaraj Britto	<u>Rs.66,442/-</u>
Total	<u>Rs.60,84,552/-</u>

Since, the assessee had claimed expenditure of Rs.60,84,552/-, the Id.AO asked the assessee to prove the allowability of the expenses u/s. 37 of the Act for which assessee had furnished relevant details of expenditure of consultancy charges paid like

detailed ledger account, name of the person, their E-mail ID, PAN, TDS made u/s. 194J of the Act, details of service availed along with copies of bills and vouchers and during the first appellate proceedings, the assessee also placed on record the copy of return of income filed u/s. 139(8A) of the Act by Ms. Hima Bindu Po reddy and asserted that recipient has offered the amount received from assessee in their return of income. The assessee also relied on the case law of ITAT (Mumbai) in the case of M/s. Sonicwall Technology System India Pvt Ltd vs ACIT (Supra), which according to assessee is squarely applicable to the present case. According to assessee, merely because the recipient have not responded to section 133(6) notices issued by the Id.AO, cannot be the reason to disbelieve the genuine transaction which is corroborated by relevant/contemporary evidences. We find force in the contention of the assessee. We find that assessee by filing all the documents as stated (Supra) has discharged the burden to prove the genuineness of the transaction. Therefore, considering the documents relied upon and submissions made by the assessee, we are of the prima facie view that, the expenditure of professional charges/consultancy fees needs to be allowed, provided the recipient Ms. Hima Bindu Po reddy, had offered the amount of

Rs.60,13,310/- as her income in her return of income, then the same be allowed after verification by the Assessing Officer. For that, we are remitting for limited purpose back to the file of Assessing Officer and allow expenditure in accordance with law.

9. In the result, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 31st May, 2024 at Chennai.

Sd/-
(एबी टी वर्की)
(ABY T VARKEY)
न्यायिक सदस्य/**Judicial Member**

Sd/-
(एस. आर. रघुनाथा)
(S. R. RAGHUNATHA)
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 31st May, 2024

JPV

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT – Chennai/Coimbatore/Madurai/Salem
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF