

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, CHENNAI

श्री बी.आर. बास्करन, लेखा सदस्य एवं श्री विकास
अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं./ **I.T.A. No.2610/Mds/2014**
(निर्धारण वर्ष / Assessment Year : 2010-2011)

The Deputy Commissioner of Income Tax, Company Circle VI(4) Chennai 600 034.	Vs.	M/s. Spencer and Company Ltd, Flat No.2D, 2 nd floor, Queens Court, 98-145, Montieth Road, Egmore, Chennai 600 008.
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(अपीलार्थी/Appellant)

[PAN :AAACS5058F]
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri. A.V. Sreekanth, JCIT, IRS.
प्रत्यर्थी की ओर से / Respondent by : Shri. R. Sivaraman, Advocate

सुनवाई की तारीख/Date of hearing : 22.01.2015.
घोषणा की तारीख /Date of Pronouncement : 27.01.2015.

आदेश / O R D E R

PER VIKAS AWASTHY, JUDICIAL MEMBER

The appeal has been filed by the Revenue against the order of Commissioner of Income Tax (Appeals)-VI, Chennai dated 28.07.2014 for the assessment year 2010-2011.

2. The assessee is a company engaged in the business of bread franchise operation and property rentals. The assessee filed its return for the assessment year 2010-2011 on 23.09.2010 admitting income of ₹71,72,070/-. The case of the assessee was selected for scrutiny under CASS and notice u/s. 143(2) was issued on 29.08.2011. During the course of assessment proceedings the Assessing Officer inter-alia held that the licencee fees of ₹25,00,000/- paid by the assessee to RPG Enterprises Ltd is not an allowable business expenditure. Aggrieved by the assessment order dated 19.03.2013, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income Tax (Appeals) following the decision of Jurisdictional High Court in assessee's own case accepted this ground of appeal of the assessee. Against the findings of Commissioner of Income Tax (Appeals) on this issue the Revenue has come in appeal before the Tribunal.

3. Shri. A.V. Sreekanth representing the department reiterated the grounds raised in the appeal and vehemently defended the assessment order. The learned Departmental

Representative prayed for reversing the findings of the Commissioner of Income Tax (Appeals) on this issue.

4. Shri. R. Sivaraman appearing on behalf of the assessee submitted that similar issue had come up in assessee's own case in assessment year 2001-02. The matter travelled upto the Hon'ble High Court. The Hon'ble Jurisdictional High Court upheld the findings of the Tribunal in favour of the assessee. The learned counsel placed on record a copy of the judgment of Hon'ble Madras High Court in the case titled CIT vs. Spencers & Co. Ltd (No.2) reported as 359 ITR 630 (Mad).

5. Both sides heard. The orders of the authorities below perused. We find that the issue in appeal is identical to the one already adjudicated by the Hon'ble Jurisdictional High Court in the case of assessee for the assessment year 2001-2002. One of the question which was before the Hon'ble High Court in the aforesaid appeal was :

“Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the licence fee paid to

M/s. RPG Enterprises Ltd. can be deducted as a business expenditure”?

The Hon’ble High Court after considering the submissions of both sides held as under:-

“13. We have carefully examined the order of the Tribunal, which is impugned before us in this appeal. We find that while concurring with the Commissioner of Income Tax (Appeals) on the issue of licence fee paid, the Tribunal had set aside this finding of the assessing authority. The essential fact which emerged from the material on record was whether the expenditure incurred by the assessee towards payment of licence fee to M/s. RPG Enterprises Ltd, was justifiable on the facts for allowance. We note from the order of the Commissioner of Income Tax (Appeals) as well as the order of the Tribunal that the respondent-assessee by availing of service benefits from the group resource company, viz., M/s.RPG Enterprises Ltd availed of valuable benefit, for their business operations and that the payment of licence fee to M/s. RPG Enterprises Ltd, by the respondent-assessee was towards their share of actual expenses incurred by M/s. RPG Enterprises Ltd. The Commissioner of Income Tax (Appeals) and the Tribunal in their orders clearly pointed out that the expenditure incurred by the respondent-assessee towards the licence fee payment to M/s. RPG Enterprises Ltd, were relatable to the business expediency and profits of the respondent-assessee and that the benefits availed of by the respondent-assessee from the service of the group resource company was tangible and justified. We do not see any reason to interfere with the concurrent finding of fact recorded by the Commissioner of Income Tax (Appeals) and the Tribunal. The orders passed by the Commissioner of Income Tax (Appeals) and Tribunal contained cogent reasons for arriving at such findings.

14. The issue regarding licence fee paid is squarely covered by two decisions of the High Courts of Bombay and Calcutta (referred to above) in which the question of law raised by the Revenue was rejected in the assessee’s group company case. It is settled law in so far as the scope, power and ambit of the High Court in exercise of jurisdiction under section 260A of the Income-tax Act and the sum and substance of the decisions relied upon by the learned counsel on either side is that once the Tribunal and the appellate authority has decided the case with reference to the explanation offered by the assessee in detail then the court cannot interfere on the case. Further, if the findings of fact arrived at by the authorities below are based on proper appreciation of the facts and the material available on record and surrounding circumstances then that will not involve any substantive question of law. In our judgement in the tax appeals in T.C. (A) Nos. 310 to 312 of 2007 and T.C (A) Nos.1388 to

1390 of 2007 (CIT v. RPG Tranmissions Ltd [2013] 359 ITR 673 (Mad) (infra), which was heard along with this appeal and disposed of today, we have held that a transaction or an arrangement which is perfectly permissible and which may have the effect of reduction of tax burden need not be seen with tainted disfavour. In this appeal also we do not find any reason on the facts and circumstances of the matter to take a different view.

15. Following the said decisions, we answer the substantial question of law No.1 raised in this appeal in favour of the assessee and against the Revenue.”

6. Since, the issue in present appeal has already been decided by the Hon'ble Jurisdictional High Court in favour of the assessee, we find no merits in the appeal of the Revenue.

7. In the result, the appeal of the Revenue is dismissed being devoid of merits.

Order pronounced on Tuesday, the 27th of January, 2015, at Chennai.

Sd/-

बी.आर. बास्करन)

(B.R. BASKARAN)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

(विकास अवस्थी)

(VIKAS AWASTHY)

न्यायिक सदस्य /JUDICIAL MEMBER

दिनांक/Dated:27.01.2015.

K.V

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.

