

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

श्री चंद्र पूजारी, लेखा सदस्य एवं
श्री चल्ला नागेन्द्र प्रसाद, न्यायिक सदस्य के समक्ष
BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER &
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
आयकर अपील सं./ **I.T.A. No.3114/Mds/2014**
(निर्धारण वर्ष / Assessment Year : 2008-2009)

M/s. DCS BPO (P) Ltd,
New No.1, Old No.9,
15th Street,
Sastri Nagar,
Adyar,
Chennai 600 020.

The Assistant Commissioner of
Vs Income Tax,
Central Circle I(4),
Chennai 600 034.

[PAN: AABCD 7248K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Ms. K. Hemalatha, C.A

प्रत्यर्थी की ओर से / Respondent by : Shri. N. Madhavan, IRS, JCIT.

सुनवाई की तारीख/Date of hearing : 17.06.2015

घोषणा की तारीख /Date of Pronouncement : 19.06.2015.

आदेश / O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER

This appeal by assessee is directed against the order of the Commissioner of Income Tax (Appeals)-I, Chennai, dated 27.10.2014 for the assessment year 2008-2009.

2. The Id. Authorised Representative for assessee raised the following grounds:-

'1. The learned Commissioner of Income Tax (Appeals) erred in confirming the order of the Assessing Officer which is contrary to law, facts and circumstances of the case.

2. The learned Commissioner of Income Tax (Appeals) erred in confirming disallowance under section 40(a)(ia) of the Income-tax Act, 196 (the ACT) for non deduction of TDS on internet lease line charges amounting to ₹10,75,479/- on the rental advance adjusted against rent amounting to ₹2,15,000/-.

3. Without prejudice to ground No.2 above, the learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance u/s.40(a)(ia) of the act without following the jurisdictional ITAT decision "Theekathir Press (ITA No.2076/Mds/2012)" that the disallowance u/s.40(a)(ia) of the Act applies to expenditure that are remaining 'payable' as on the balance sheet date and does not apply to expenditure which is 'paid'.

3. The facts of the case are that the assessee was engaged in transcription business. The issue adjudicated relates to disallowance u/s.40(a)(ia) for non-deduction of TDS on internet lease line charges to the tune of ₹10,75,479/-. The assessee incurred lease line expenditure towards the use of internet to Reliance Communication and Bharati Airtel Ltd. The Assessing Officer contended that the assessee should have deducted tax at source, as is required under section 194J, since it was a dedicated leased line provided to the assessee exclusively for the use of the assessee catering to its specific needs and it was not the same as a service provided to the public at large. Further, the Assessing Officer held that even if the payment

made by the assessee may not qualify to be for a technical service, it has to be considered as royalty payments requiring TDS to be done in the light of the decision of *ITAT, Delhi, reported in 391 ITR 269*. Aggrieved, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals).

4. On appeal the Commissioner of Income Tax (Appeals) observed that the decision relied upon by the assessee is not applicable to the facts of the case and he decided the case against the assessee. Against this, the assessee is in appeal before us.

5. We have heard both the parties and perused the material on record. A similar issue is considered by the Special Bench of the Tribunal (Vizag) in the case of *Merilyn Shipping and Transports vs. ACIT (2012) 136 ITD 23 (Visakhapatnam)* wherein it was held that the provisions of section 40(a)(ia) are applicable only to the expenses that are "payable" and outstanding at the end of the close of the year relevant to the assessment year and not to the amount already paid.

6. The same view was taken by the High Court of Allahabad in the case of *CIT vs. M/s. Vector Shipping Services (P) Ltd in ITA No.122 of 2013 dated 09.7.2013* by holding that sec 40(a)(ia) is not

applicable when there is no outstanding balance at the end of the close of the year relevant to the assessment year and SLP filed by the Revenue in Supreme Court of India in CC No.8068/2014 dated 02.07.2014 is also dismissed. Being so, in our opinion an amount outstanding at the end of the close of the assessment year is not to be allowed u/s.40(a)(ia) of the Act. We direct the Assessing Officer to disallow only that amount which is outstanding at the end of the close of the assessment year. With these observations, we are remitting the issue back to the file of the Assessing Officer for fresh consideration.

7. In the result, the appeal of the assessee in ITA No.3114/Mds/2014 is partly allowed for statistical purposes.

Order pronounced on Friday, the 19th day of June, 2015, at Chennai.

Sd/-

(चल्ला नागेन्द्र प्रसाद)

(CHALLA NAGENDRA PRASAD)

न्यायिक सदस्य/ JUDICIAL MEMBER

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य/ ACCOUNTANT MEMBER

चेन्नई/Chennai.

दिनांक/Dated:19.06.2015.

KV

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.

