

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'D' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2431/Mds/2014  
निर्धारण वर्ष / Assessment Year : 2007-08

M/s Sree Nivas Build Tech (India)  
Pvt. Ltd.,  
No.193, Rangapillai Street,  
Pondicherry – 605 001.

v. The Assistant Commissioner of  
Income Tax,  
Circle – I,  
Pondicherry.

PAN : AAICS 0970 N

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri V. Jagadisan, FCA

प्रत्यर्थी की ओर से/Respondent by : Dr. Milind Madhukar Bhusari, CIT

सुनवाई की तारीख/Date of Hearing : 31.12.2015

घोषणा की तारीख/Date of Pronouncement : 05.02.2016

### **आदेश /O R D E R**

**PER N.R.S. GANESAN, JUDICIAL MEMBER:**

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals) – VI, Chennai, dated 30.07.2014 and pertains to assessment year 2007-08.

2. Shri V. Jagadisan, the Ld. representative for the assessee, submitted that the assessee has raised an additional ground before

the CIT(Appeals) with regard to disallowance made under Section 40(a)(ia) of the Income-tax Act, 1961 (in short 'the Act'). However, the CIT(Appeals) has not disposed of the same. Therefore, the Ld. representative submitted that the matter may be remitted back to the CIT(Appeals) to consider the additional ground raised by the assessee.

3. On the contrary, Dr. Milind Madhukar Bhusari, the Ld. Departmental Representative, submitted that it is not the case of non-consideration of grounds of appeal raised by the assessee. According to the Ld. D.R., the CIT(Appeals) has disposed of the additional ground raised by the assessee by a speaking order. According to the Ld. D.R., the additional ground raised by the assessee was with regard to payment of ₹5 lakhs for the assessment years 2005-06 and 2006-07. The Assessing Officer, after considering the genuineness of the payment said to be made by the assessee to Mr. Alphonse Ligouri, found that no such payment was made. Hence, accordingly, he made an addition of ₹5 lakhs. The Ld. D.R. clarified that the disallowance was not made for non-deduction of tax but, for non-genuineness of the transaction. Referring to the order of the CIT(Appeals), more particularly, pages

13 and 14 of the order, the Ld. D.R. submitted that the issue of TDS was not under consideration for the assessment years 2005-06 and 2006-07 during the period when the payment was said to be made. Therefore, according to the Ld. D.R., the CIT(Appeals) has rejected the additional ground raised by the assessee.

4. We have considered the rival submissions on either side and perused the relevant material available on record. The assessee deducted tax of ₹5100/- on the payment said to be made to Shri Alphonse Ligouri during the year under consideration. In fact, the payment was made to Shri Alphonse Ligouri during the assessment years 2005-06 and 2006-07 and no payment was made during the year under consideration. The Assessing Officer, while considering the claim of payment of ₹5 lakhs during the assessment years 2005-06 and 2006-07, doubted the genuineness of payment and disallowed the claim of the assessee. As rightly submitted by the Ld. D.R., it is not the case of disallowance under Section 40(a)(ia) of the Act for failure of the assessee to deduct tax. The disallowance was made because the assessee could not substantiate the claim of payment. When the genuineness of the payment itself is doubted, this Tribunal is of the considered opinion that the CIT(Appeals) has

rightly rejected the claim of the assessee. Therefore, it may not be correct to say that the CIT(Appeals) has not disposed of the additional ground raised by the assessee with regard to addition of ₹5 lakhs. This Tribunal is of the considered opinion that the CIT(Appeals) disposed the ground of appeal with regard to deduction of ₹5 lakhs. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority. Accordingly, the order of the CIT(Appeals) is confirmed.

5. In the result, the appeal of the assessee is dismissed.

Order pronounced on 5<sup>th</sup> February, 2016 at Chennai.

sd/-	sd/-
(ए. मोहन अलंकामणी)	(एन.आर.एस. गणेशन)
(A. Mohan Alankamony)	(N.R.S. Ganesan)
लेखा सदस्य/Accountant Member	न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 5<sup>th</sup> February, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-VI, Chennai-34
4. आयकर आयुक्त/CIT, Pondicherry
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.