

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई [शिविर: मदुरै]

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI [CAMP: MADURAI]

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.578 & 579/Mds/2016

निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09

The Assistant Commissioner of  
Income Tax,  
Corporate Circle I,  
Madurai.

v.

M/s Fenner Conveyor Belting (P.)  
Ltd.,  
Madurai-Dindigul Road, Nagari,  
Vadipatti Tk, Madurai – 625 221.

(अपीलार्थी/Appellant)

PAN : AABCJ 3010 D

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Renga Rajan, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri S. Sridhar, Advocate

सुनवाई की तारीख/Date of Hearing : 16.02.2017

घोषणा की तारीख/Date of Pronouncement : 27.04.2017

### **आदेश / O R D E R**

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

Both the appeals of the Revenue are directed against the respective orders of the Commissioner of Income Tax (Appeals) -1, Madurai, dated 16.12.2015 and pertain to assessment years 2007-08 and 2008-09. We heard both the appeals together and disposing of the same by this common order.

2. Shri S. Renga Rajan, the Ld. Departmental Representative, submitted that the first issue arises for consideration is reopening of assessment. The Assessing Officer reopened the assessment on the ground that income otherwise chargeable to tax towards payment of royalty and management fee has escaped taxation. The CIT(Appeals), however, found that the assessment was reopened after expiry of four years, hence, the reassessment was without jurisdiction. Referring to Explanation 1 to Section 147 of the Income-tax Act, 1961 (in short 'the Act'), the Ld. D.R. submitted that mere production of books may not be sufficient. According to the Ld. D.R., the assessee has failed to furnish necessary details before the Assessing Officer, therefore, the CIT(Appeals) is not justified in holding that there was no failure on the part of the assessee in disclosing the material facts.

3. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the assessee has produced all the details of royalty and management fee before the Assessing Officer. In fact, the Assessing Officer after calling for entire details, completed the assessment under Section 143(3) of the Act on 24.12.2009. After expiry of four years, the Assessing Officer issued notice once

again on the ground that the assessee claimed payment of ₹1,42,10,396/- towards royalty and payment of ₹79,83,833/- towards management service charges. The Assessing Officer picked up this figure only from the material furnished by the assessee in the course of regular assessment, therefore, it is obvious that the assessee has furnished entire details before the Assessing Officer at the time of original assessment. From the reasons recorded for reopening, there is no negligence on the part of the assessee in furnishing the required particulars for completing assessment. According to the Ld. counsel, reopening of assessment after expiry of four years cannot be sustained since there was no allegation that the assessee failed to furnish required particulars. In fact, the entire particulars for completing assessment under Section 143(3) of the Act were available before the Assessing Officer and the Assessing Officer himself picked up the payment of royalty and management fee only from the material filed by the assessee, therefore, reopening of assessment was rightly held to be invalid.

4. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the original assessment was completed under Section

143(3) of the Act on 24.12.2009. After expiry of four years, the Assessing Officer reopened the assessment by issuing notice under Section 148 of the Act on the ground that the payment made by the assessee towards royalty and management fees were allowed as revenue expenditure which is actually capital in nature. From this, it appears that the royalty and management service charges are very much available on record at the time of completing original assessment. Therefore, it is obvious that the material relating to payment of royalty and management service fees were furnished by the assessee during the course of original assessment.

5. We have carefully gone through the provisions of Section 147 of the Act. Proviso to Section 147 of the Act clearly says that when the assessment was completed under Section 143(3) of the Act, the same cannot be reopened after expiry of four years in case there was no failure on the part of the assessee in furnishing the required material for completing assessment. In this case, as rightly submitted by the Ld.counsel for the assessee, there was no allegation that the assessee failed to furnish required particulars for completing assessment. Moreover, the particulars are available on record at the original assessment stage itself. Therefore, reopening

of assessment after expiry of four years from the end of the relevant assessment is not justified. Therefore, this Tribunal is of the considered opinion that the CIT(Appeals) has rightly found that there was no failure on the part of the assessee in providing required material for completing assessment. Hence, the reassessment proceeding cannot be justified in the eye of law.

6. In view of this, it may not be necessary for the Tribunal to go into the merits of the addition made by the Assessing Officer.

7. Now coming to assessment year 2008-09, the first issue arises for consideration is with regard to management and service charges.

8. Shri S. Renga Rajan, the Ld. Departmental Representative, submitted that the payment made by the assessee towards management service charges is in the nature of capital expenditure. The Assessing Officer has allowed depreciation. According to the Ld. D.R., the payment made by the assessee would give enduring benefit, therefore, it was construed as capital expenditure. In fact, the management and service charges were paid to M/s J.H. Fenner Ltd., UK in order to improve profitability in controlling the

expenditure. The services were provided with regard to managerial, technical and administrative side. Since the service received by the assessee provides for enduring benefit, the Assessing Officer has rightly treated the same as capital in nature and allowed depreciation at the rate of 25%.

9. On the contrary, Shri S. Sridhar, the Ld.counsel for the assessee, submitted that the services were rendered by M/s J.H. Fenner Ltd., UK in general and specific managerial, technical and administrative assistance to improve the profitability of the assessee. The actual payment was made on the service rendered in each quarter. In fact, the payment was varying based upon the actual service rendered. It is not the fees of fixed sum. Therefore, the CIT(Appeals) found that the assessee has not derived any enduring benefit. In fact, the payment was made for increasing the profit of the assessee, therefore, it has to be treated as revenue expenditure.

10. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the payment was made based upon the service rendered in each quarter. In fact, the payment varied with respect

to the actual service rendered by the parent company. Therefore, at any stretch of imagination, it cannot be said that the assessee received enduring benefit from the service rendered by the parent company, namely, M/s J.H. Fenner Ltd., UK. Therefore, this Tribunal is of the considered opinion that the payment made by the assessee to M/s J.H. Fenner Ltd., UK has to be treated as revenue in nature. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

11. In the result, both the appeals of the Revenue stand dismissed.

Order pronounced on 27<sup>th</sup> April, 2017 at Chennai.

sd/-

(अब्राहम पी.जॉर्ज)

(Abraham P. George)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 27<sup>th</sup> April, 2017.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

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.        |