

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' 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 Nos. 792 & 793/Mds/2016

निर्धारण वर्ष / Assessment Years : 2009-10 & 2010-11

The Deputy Commissioner of
Income Tax,
Corporate Circle -1(1),
Chennai - 600 034.

v. M/s Ajuba Solutions India Pvt. Ltd.,
12-02, Tidel Park,
4, Canal Bank Road, Taramani,
Chennai - 600 113.

(अपीलार्थी/Appellant)

PAN : AACCA 8448 D

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri Supriyo Pal, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing : 10.08.2016

घोषणा की तारीख/Date of Pronouncement : 23.09.2016

आदेश /O R D E R

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

Both the appeals of the Revenue are directed against respective orders of the Commissioner of Income Tax (Appeals)-1, Chennai, dated 19.01.2016 and pertain to assessment years 2009-10 and 2010-11. Since common issue arises for consideration in

both the appeals, we heard both the appeals together and disposing of the same by this common order.

2. The only issue arises for consideration is provision for Gratuity not allowable under Section 40A(7) of the Income-tax Act, 1961 (in short 'the Act') was taken as income of the assessee.

3. Shri Supriyo Pal, the Ld. Departmental Representative, submitted that for the assessment year 2009-10, provision for Gratuity, which was not allowable under Section 40A(7) of the Act, was claimed as expenditure to the extent of ₹26,68,379/-. Similarly, for assessment year 2010-11, a sum of ₹20,13,939/- was claimed as income derived from undertaking for the purpose of exemption under Section 10A of the Act. The CIT(Appeals) allowed the claim of the assessee on the ground that disallowance made under Section 40A(7) of the Act needs to be reconsidered while arriving at profit for the purpose of deduction under Section 80-IA of the Act. Referring to the decision of Ahmedabad Bench of this Tribunal in DCIT v. Rameshbhai C. Prajapati (2013) 140 ITD 488, the Ld. D.R. submitted that one of the Members, namely, the Ld. Accountant Member, is a party to the order. On identical set of facts, this

Tribunal found that the disallowance made under Section 40(a)(ia) of the Act cannot be taken as profit for the purpose of deduction under Section 80-IB(10) of the Act. This decision of Ahmedabad Bench of this Tribunal was not brought to the notice of both the authorities below.

4. On the contrary, Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that provision for Gratuity, which was not allowable under Section 40A(7) of the Act, has to be necessarily treated as profit for the purpose of deduction under Section 10A of the Act. The Ld.counsel further submitted that the Assessing Officer has disallowed the penalty paid under the Customs Act for the purpose of claiming deduction under Section 10A of the Act. The provision for leave encashment was also taken as profit for the purpose of computing eligible profit under Section 10A of the Act. According to the Ld. counsel, the CIT(Appeals) found that the amount disallowed by the Assessing Officer has to be necessarily treated as income of the assessee and eligible for deduction under Section 10A of the Act, therefore, the CIT(Appeals) has rightly allowed the claim of the assessee.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer disallowed the interest paid under Section 201(1A) of the Act, provision for Gratuity which was not allowable under Section 40A(7) of the Act, provision for leave encashment, donations, amount paid on fringe benefit tax, wealth tax, redemption fine under Customs Act and penalty under Customs Act. This was not taken as profit for the purpose of computing deduction under Section 10A of the Act. However, the CIT(Appeals) allowed the claim of the assessee. As rightly submitted by the Ld. D.R., both the authorities below did not consider the decision of Ahmedabad Bench of this Tribunal in Rameshbhai C. Prajapati (supra). As rightly submitted by the Ld. D.R., one of us, the Ld. Accountant member is a party to this order. Therefore, this Tribunal is of the considered opinion that the Assessing Officer has to examine the claim of the assessee in the light of the decision taken by Ahmedabad Bench of this Tribunal in Rameshbhai C. Prajapati (supra). Accordingly, the orders of the authorities below are set aside and all the issues are remitted back to the file of Assessing Officer. The Assessing Officer shall re-examine the issues in the light of the decision of Ahmedabad Bench of this Tribunal in Rameshbhai C. Prajapati (supra) and thereafter

decide the issues, in accordance with law, after giving a reasonable opportunity to the assessee.

6. In the result, both the appeals of the Revenue are allowed for statistical purposes.

Order pronounced on 23rd September, 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 23rd September, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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