

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.2260/Mds/2014

निर्धारण वर्ष / Assessment Year : 2011-12

The Assistant Commissioner
of Income Tax,
Business Circle – XI,
Chennai - 600 006.

v. M/s Kamil Leathers,
23, Karpura Street,
Periamet, Chennai - 600 003.

(अपीलार्थी/Appellant)

PAN : AADFK 4054 B
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri N. Madhavan, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri B.Raghav Prasad, CA

सुनवाई की तारीख/Date of Hearing : 25.05.2015

घोषणा की तारीख/Date of Pronouncement : 19.06.2015

आदेश / O R D E R

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

This appeal of the Revenue is directed against the order of the order of the Commissioner of Income Tax (Appeals) – IV, Chennai, dated 25.04.2014 and pertains to assessment year 2011-

12.

2. Shri N. Madhavan, the Ld. Departmental Representative, submitted that the only issue arises for consideration is with regard to addition of ₹26,37,197/- made on account of non-deduction of tax at source towards the payment made by the assessee under Section 40(a)(ia) of the Income-tax Act, 1961 (in short "the Act"). The Ld. D.R. further pointed out that the Assessing Officer found that the non-resident collected all information about the fashion trend and communicated the same to the assessee so as to enable the assessee to develop its product according to the latest trend prevailing outside the country. The assessee has also made arrangements for collection of orders outside the country and paid commission. Since the assessee received information with regard to latest fashion trend, which was at last for development of its production, according to the Ld. D.R., what was paid by the assessee was not a mere commission it would amount to fees for technical service. Therefore, the CIT(Appeals) is not correct in allowing the claim of the assessee.

3. On the contrary, Shri B. Raghav Prasad, the Ld. representative for the assessee, submitted that mere furnishing of information about latest trend in the fashion does not amount to providing any technical service. According to the Ld.

representative, what was paid by the assessee is a commission for the orders procured by the non-resident outside India. Therefore, the CIT(Appeals) has rightly allowed the claim of the assessee. The Ld. representative placed his reliance on the decision of this Bench of the Tribunal in ACIT v. T. Abdul Wahid Tanneries Pvt. Ltd. in I.T.A. No.2123/Mds/2013 dated 2.06.2014 and submitted that on identical set of facts, this Tribunal found that the assessee is not liable to deduct tax. The Ld. representative has also filed a copy of the agreement entered between the assessee and the non-resident for the services said to be provided to the assessee.

4. We have considered the rival submissions on either side and perused the relevant material on record. The only objection of the Revenue is that latest trend in the fashion was communicated to the assessee so as to enable the assessee to produce/manufacture its products in tune with latest trend which prevailed in that part of the country. This Tribunal is of the considered opinion that mere communication of latest trend/fashion prevailed in a particular country cannot amount to providing technical service. Technical service is something which goes in the manufacturing process by applying the techniques provided by the non-resident. In this case, no techniques were provided by the non-resident and what was

communication is, admittedly, fashion/trend prevailing outside India. Therefore, this Tribunal is of the considered opinion that this does not amount to providing any technical service. Therefore, this Tribunal do not find any infirmity in the order of the CIT(Appeals) and accordingly the same is confirmed.

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

Order pronounced on 19th June, 2015 at Chennai.

sd/-
(A.Mohan Alankamony)
(ए. मोहन अलंकामणी)
लेखा सदस्य/Accountant Member

sd/-
(N.R.S. Ganesan)
(एन.आर.एस. गणेशन)
न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 19th June, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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