

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' : NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.1277/Del/2014
Assessment Year : 2010-11

Income Tax Officer,
Ward-11(2),
New Delhi.

(Appellant)

Vs. M/s Escorts Asset Management
Limited,
11, Scindia House,
Connaught Circus,
New Delhi – 110 001.
PAN : AAACE2671E.
(Respondent)

Appellant by : Shri V.R. Sonbhadra, Senior DR.
Respondent by : Shri R.M. Mehta, Advocate.

Date of hearing : 09.06.2016
Date of pronouncement : 04.07.2016

ORDER

PER G.D. AGRAWAL, VP :-

This appeal by the Revenue for the assessment year 2010-11 is directed against the order of learned CIT(A)-XIII, New Delhi dated 6th December, 2013.

2. The first ground of Revenue's appeal reads as under:-

"Whether on the facts and in the circumstances of the case and in law, Id.CIT(A) has erred in deleting the addition of Rs.34,61,045/- made by the AO on account of common services expenses without deducting TDS u/s 40(a)(ia) of the Income Tax Act, 1961."

3. We have heard the submissions of both the sides and have perused the material placed before us. We find this issue to be squarely covered in favour of the assessee by the decision of ITAT, Mumbai Bench in the case of ACIT Vs. J.B. Boda & Surveyors Pvt.Ltd. in ITA No.4252/Mum/2009, wherein ITAT held as under:-

“On plain reading of above section, we find that any interest, commission or brokerage, rent, royalty fees for professional services or fees for technical services payable to a resident, or amounts payable to a contractor or subcontractor being resident for carrying out any work including supply of labour for carrying out any work on which tax is deductible at source under chapter XVII-B and such tax has not been deducted or after deduction has not been paid within stipulated period. In the case under consideration, the Assessing Officer did not specifically point out as to under which clause or under which sub-section of section 40 the claim of the assessee was disallowed. The contention of the assessee is that the payment made to parent company, M/s J.B., Boda & Co.Pvt.Ltd. is payment of reimbursement of expenses and not against carrying out any contract work as a contractor or sub-contractor, on which, tax is deductible at source under chapter XVII-B of the Act. The assessee has established that the payment to their parent company M/s J.B. Boda & Co.Pvt.Ltd. was not subject to TDS as payments were not made against any contract work carried out. It is an admitted fact in the case consideration that the payment made to parent company, M/s J.B. Boda & Co.Pvt.Ltd. is a payment of reimbursement of expenses. In case of reimbursement of expenses, the expenditure incurred is related to the person who was not made the original payment. In other words, the payment of expenditure is made by X party on behalf of the Y party and later on the same is reimbursed to the X party, by Y party, the expenditure is pertaining to Y party and not pertaining to X party. Thus, the payment to M/s J.B. Boda & Co. Pvt.Ltd. made by the assessee is a simple reimbursement. In the case under consideration, the parent company M/s J.B. Boda & Co. Pvt.Ltd. has acted merely the role of agent for making payment of expenditure on behalf of the assessee and getting

reimbursement. Therefore, the payment made by M/s J.B. Boda & Co. Pvt.Ltd. is not on account of any expenditure. Section 40(a)(ia) applicable only in a case of expenditure. The said section clearly provides that certain specific expenditure which is subject to TDS is not allowable if the assessee failed to make TDS or after making deduction of TDS does not pay within the stipulated period. As stated above, the payment made to M/s J.B. Boda & Co. Pvt.Ltd. is on account of personal account in terms of accounting principle paying and then receiving amount which is not an expenditure in the hands of the assessee, therefore, the Assessing Officer is not correct in invoking section 40(a)(ia) or other provision of section 40 of the Act. It is also to be noted here that there is no evidence or material on record based on which it can be said that payment made to M/s J.B. Boda & Co. Pvt.Ltd. is subject to tax deducted at source under chapter XVII-B of the Act. Whether the revenue has taken any proceedings for default of not making TDS under chapter XVII-B of the Act against the assessee is also not on record. In addition to above it has also noticed that the Assessing Officer did not disallow such claim of the assessee in the subsequent year for A.Y. 2007-08 even after raising query in this regards. In the light of the above discussion, we do not find any infirmity in the order of CIT(A) in deleting the disallowance of Rs.29,58,608/- on account of reimbursement made to the parent company M/s J.B. Boda & Co. Pvt.Ltd.”

4. The ratio of the above decision would be squarely applicable to the case of the assessee because in the case under appeal before us also, there was common sharing of expenses for upkeep of office between the assessee company and M/s Escorts Securities Ltd. and M/s Escorts Finance & Investments Ltd. The expenditure is primarily incurred in the first instance by these companies. The assessee only borne its share of expenses by making the reimbursement to these two companies. The responsibility of TDS would be on those two companies when they actually incurred the expenditure. The assessee has only reimbursed the expenditure which belonged to the assessee share. Therefore, on these facts, the decision of ITAT Mumbai Bench

would be squarely applicable wherein the ITAT held that on such reimbursement of expenditure, there is no liability of TDS. We, therefore, respectfully following the above decision of ITAT Mumbai Bench, uphold the order of learned CIT(A) on this point and reject ground No.1 of the Revenue's appeal.

5. Ground No. 2 of the Revenue's appeal reads as under:-

"Whether on facts and in the circumstances of the case and in law, Id.CIT(A) has erred in deleting the addition of Rs.18,90,877/- made by the AO on account of ongoing expenses without deducting TDS u/s 40(a)(ia) of the Income Tax Act, 1961."

6. We have heard the submissions of both the sides. This issue is also similar to the issue relating to disallowance of common office expenses. The facts relating to this issue are that the assessee is in the business of management of mutual fund scheme of Escorts mutual fund as per norms prescribed by SEBI. The assessee earns management fee which is based on the quantum of asset management. For this purpose, the assessee aggressively sells its scheme to the investors. However, there is a limit prescribed by SEBI up to which the total expenses can be charged to mutual fund scheme. Any expenditure in excess of the prescribed limit of SEBI is borne by Asset Management Company. In this case also, the expenditure is primarily incurred and paid for by the mutual fund and thereafter to the extent it exceeds the limit prescribed by SEBI, it is recovered by mutual fund from the Asset Management Company. Thus, the primary obligation to deduct TDS is on the mutual fund at the time of payment for the expenditure. The assessee only reimbursed the expenditure to the mutual fund which is in excess of the limit prescribed by SEBI. Therefore, in our opinion, the ratio laid down by the ITAT in the case of

M/s J.B. Boda & Co. Pvt.Ltd. (supra) would be squarely applicable on this ground of appeal also. We, therefore, respectfully following the decision of ITAT in the case of M/s J.B. Boda & Co. Pvt.Ltd. (supra), uphold the order of learned CIT(A) and reject ground No.2 of the Revenue's appeal.

7. In the result, the appeal of the Revenue is dismissed.
Decision pronounced in the open Court on 04.07.2016.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(G.D. AGRAWAL)
VICE PRESIDENT

VK.

Copy forwarded to: -

1. Appellant : Income Tax Officer, Ward-11(2), New Delhi.
2. Respondent : M/s Escorts Asset Management Limited,
11, Scindia House, Connaught Circus,
New Delhi – 110 001.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar