

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' 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.835, 836 & 837/Chny/2018

निर्धारण वर्ष / Assessment Years : 2008-09 & 2009-10

M/s Ashok Leyland Ltd.,
(Since Ashok Leyland Project
Services Limited merged with Ashley
Services Limited which subsequently
merged with Ashok Leyland Limited)
1, Sardar Patel Marg, Guindy,
Chennai - 600 032.

v. The Deputy Commissioner of
Income Tax,
The Assistant Commissioner of
Income Tax,
Company Circle – 1(1),
Nungambakkam,
Chennai - 600 034.

PAN : AAACA 4651 L
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Sh. R. Vijayaraghavan, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri R. Clement Ramesh Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 14.08.2018

घोषणा की तारीख/Date of Pronouncement : 19.09.2018

आदेश / O R D E R

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

These appeals filed by the assessee are directed against the respective orders of the Commissioner of Income Tax (Appeals)-3, Chennai, dated 30.11.2017 for the assessment years 2008-09 and 2009-

10. Since common issues arise for consideration, we heard all these appeals together and disposing of the same by this common order.

2. The first common issue arises for consideration is disallowance made by the Assessing Officer under Section 14A of the Income-tax Act, 1961 (in short 'the Act').

3. We heard Sh. R. Vijayaraghavan, the Ld.counsel for the assessee and Shri R. Clement Ramesh Kumar, the Ld. Departmental Representative. The CIT(Appeals) restricted the disallowance to the extent of income earned by way of dividend. Therefore, this Tribunal do not find any reason to interfere with the order of the lower authority and accordingly the same is confirmed.

4. The next common issue arises for consideration is disallowance made under Section 40(a)(i) of the Act for non-deduction of tax.

5. Sh. R. Vijayaraghavan, the Ld.counsel for the assessee, submitted that the assessee made payment to M/s 3i Infotech, Dubai for carrying out some software related work in Dubai. The entire services were rendered in Dubai. M/s 3i Infotech has no permanent establishment or business connection in India. Therefore, according to the Ld. counsel, the payment made to M/s 3i Infotech is not taxable in India and hence, the assessee is not liable for deduction of tax. Similarly, according to the

Ld. counsel, the payment to M/s FTZ Corporate Services, Austria was also made in relation to on-shore work in Iran. Therefore, according to the Ld. counsel, there cannot be any disallowance.

6. On the contrary, Shri R. Clement Ramesh Kumar, the Ld. Departmental Representative submitted that the assessee made payments in foreign currency for technical services, therefore, what was paid by the assessee is for technical services. Hence, according to the Ld. D.R., the assessee is liable to deduct tax.

7. We have considered the rival submissions on either side and perused the relevant material available on record. It is not in dispute that the non-residents M/s 3i Infotech, Dubai and M/s FTZ Corporate Services, Austria rendered services outside the country. It is not in dispute that both the companies have no permanent establishment in India and they have no business connection in India. In view of the above, the income earned by M/s 3i Infotech, Dubai and M/s FTZ Corporate Services, Austria are not taxable in India, hence, the assessee is not liable to deduct tax. Therefore, we are unable to uphold the orders of the authorities below. Accordingly, orders of both the authorities below are set aside and the disallowance made by the Assessing Officer is deleted.

8. In the result, all the three appeals filed by the assessee are partly allowed.

Order pronounced in the court on 19th September, 2018 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 19th September, 2018.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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