

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'B', BENGALURU

BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.970/Bang/2018
(Assessment Year : 2014-15)

Euromonitor Research & Consulting (India) P. Ltd,
Unit N 1503, 15th floor, World Trade Centre,
Brigade Gateway Campus,
26/1, Dr. Rajkumar Road, Bengaluru 560055 .. Appellant
PAN : AACCE7021L

v.

Asst. Commissioner of Income-tax,
Circle – 2(1)(2), Bengaluru .. Respondent

Assessee by : Shri. Rishi Harlalka, CA
Revenue by : Shri. R. N. Siddappaji, Addl. CIT

Heard on : 05.02.2019
Pronounced on : 06.02.2019

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER :

This is an appeal filed by the assessee against the order of the
CIT (A)-2, Bengaluru, dt.15.12.2017, for the assessment year
2014-15.

02. The assessee has raised the following grounds of appeal :

1. The learned CIT(A) has erred in law and on facts in upholding the order of the learned Assistant Commissioner of Income Tax, Circle 2(1)(2) ("learned AO").

Ex-parte Order

- 2A. The learned CIT(A) factually erred in stating in Para 3 of his order that hearing was posted for 11 December, 2017.
- 2B. The learned CIT(A) factually erred in stating in Para 3 of his order that the hearing on 11 December, 2017 was the final opportunity granted to the appellant.
- 2C. The learned CIT(A) erred in passing an *ex-parte* order without granting the appellant an opportunity for personal hearing, in spite of accepting the request for adjournment of the Appellant.

Disallowance under Section 37 of the Act

3. The learned CIT(A) has erred in law and on facts, by upholding the action of the learned AO to disallow a sum of Rs. 3,00,000 incurred by the Appellant, on account of non-production of bills/ invoices.

Management Fee

4. The learned CIT(A) has erred by upholding the action of the learned AO by not granting the deduction of management fees amounting to Rs. 1,00,77,442.

The assessee has also raised an additional ground, which is as follows :

Addition to Ground of Appeal

To be inserted after existing Ground of Appeal No. 04

Ground No. 05: The Management Fees incurred by the Appellant should be allowed as a deduction as the same was offered for disallowance under Section 40(a)(i) of the Income-tax Act, 1961 due to misinterpretation of the law, even though tax was not required to be deducted therefrom.

03. The assessee is in appeal before us against the *ex-parte* order passed by the CIT (A). In para 3 the CIT (A) has observed as under:

*3. The case was posted for hearing on 11.9.2017. The appellant sought adjournment vide letter dated 11.9.2017 on **the** pretext that the AR is travelling. The case was re-posted for hearing on 20.9.2817. Again, the appellant sought adjournment on the pretext that the AR*

is travelling. At its request the case was again posted for hearing on 27.10.2017. In response to the said hearing notice, the appellant filed a request letter for adjournment on the ground that requisite documents were being collated. At its request the case was adjourned to 22.11.2017. In response the appellant further filed request letter for adjournment on 21.11.2017 on the same pretext that still in the process of collating the requisite documents. Based on the said request the case was posted for hearing on 11.12.2017 which was conveyed to the appellant as a final opportunity. However, the appellant has again filed another letter seeking adjournment.

From the above, it is clear that the appellant is not keen to pursue its appeal and indulging in dilatory tactics wasting the precious time and resources of this office. Considering the same, I proceed to dispose of the appeal without giving any further opportunity based on the materials available on record.

04. It is submitted by the Ld. AR that the assessee was collecting the records pertaining to disallowance made by the AO of Rs.3 lakhs and therefore the authorised representative was that able to appear before the Commissioner. Further on instructions it was submitted that the assessee is not pressing the ground in respect of disallowance of Rs.3 lakhs.

Further it was submitted that the CIT (A) has not decided the issue which was raised by the assessee for the first time before the CIT (A) in respect of the Management Fees and the Commissioner had dismissed the ground of the assessee on the premise that the assessee has not raised this ground before the AO. It was submitted by the Ld. AR that it was incumbent upon the CIT (A) to decide the issue on merit the issue of taxability of Management Fees. The Ld. AR relied upon the following decisions:

- *National Thermal Power Co. Ltd v. CIT [(1998) 229 ITR 383 (SC)]*
- *Nathpa Jhakri Joint Venture v. ACIT [(2010) 37 SOT 160-Mum]*
- *CIT v. Jai Parabolic Springs Ltd [(2008) 172 taxman 258 (Del)]*

It was submitted that the assessee has wrongly claimed the deduction before the AO, is not a ground to deny the adjudication of the ground by the first appellate authority as the proceeding before the CIT (A) is a continuation of the assessment proceedings and it was the duty of the CIT (A) to adjudicate the grounds raised before it in respect of the taxability or non-taxability of Management Fees. It is submitted that the purpose of proceedings before the AO / CIT (A) / ITAT is to determine the taxable income and there is no adversary litigation between the Revenue and the assessee.

05. On the other hand the Ld. DR has submitted that the assessee despite granting of adequate opportunity has not come forward to make the submission before the CIT (A) and it was the further case of the Ld. DR that once the assessee has admitted and disallowed the claim u/s.40(a)(i) of the Act, before the AO, it is not open for the assessee to take a contrary stand before the CIT (A).

06. We have heard the rival submissions and perused the record. At this juncture, we may mention that we are disinclined to sustain the preliminary objection taken by the Ld. DR that the assessee should be prohibited from 2nd innings before the CIT(A). It goes without saying that the object of assessment is to determine the income in respect of which the assessee is rightly chargeable to tax. As the income not originally offered for taxation, if otherwise chargeable, is required to be included in the total income, in the

same breath, any income wrongly included in the total income, which is otherwise not chargeable, should be excluded. There can be no estoppels against the provisions of the Act.

07 Para 3 of the CIT (A) reproduced hereinabove, speaks volumes about the conduct of the assessee, more particularly when the assessee is represented by a battery of good lawyers and also by the chartered accountants of reputed consultancy firms. We fail to understand under what circumstances the assessee was given to understand that the management fees are not taxable by the assessee and the assessee has wrongly disallowed the same in the return of income. We also fail to appreciate that a consultancy firm which is representing the assessee, despite knowing very well about the date of hearing fails to appear before the CIT (A). From a perusal of the Para 3 of CIT (A), it is clear that sufficient opportunities were granted to the assessee to file its response. However we also find that the assessee has continuously sought time on four occasions without any justifiable reason. In the absence of adequate cooperation by the ARs of the assessee, the CIT (A) had no option but to proceed on the basis of the materials available on record. Invariably, we would have been dismissing such requests for granting one more opportunity to the assessee for appearance before the CIT(A). However considering the fact that a legal issue about the Inter group Management Services had not been adjudicated by the CIT (A), in the interest of justice and considering the totality of facts, we remand the matter relating to Intergroup Management Services, back to the file of the CIT (A), subject to the payment of

cost of Rs 2,00,000/- or equivalent to Fees paid by the assessee to its consultancy firm for pursuing the appellate proceedings before the CIT(A), whichever is lower. We further direct the assessee to deposit the same amount equivalent to the legal fees into the account of the Chief Minister's Relief Fund.

08 . We may observe that whenever the assessee wishes to raise any ground which is not emanating from the order passed by the assessing officer, in that eventuality, the assessee should raise additional grounds before the Commissioner. In the present case the needful had not been done by the assessee therefore the Commissioner was having no option but to decide the ground based on the material available and in accordance of the. Since now the assessee has requested before us that the ground raised by the assessee before the Commissioner may be treated as an additional ground, we find no reason to decline this request, therefore we direct the Commissioner to entertain ground as an additional ground and pass appropriate order in accordance with law as deem fit.

09. In this view of the above we remand the matter to the file of the Commissioner to decide the issue afresh after holding denovo appellate proceedings and The CIT (A) shall admit the additional ground of 40(a)(i) in accordance with law and the CIT (A) shall consider the material produced before him in accordance of law with law. Needless to say the assessee shall appear on each and

every date fixed by the Commissioner and file the documents /
reply as and when called upon by the Commissioner.

10. In the result, appeal of the assessee is allowed for statistical
purposes.

Order pronounced in the open court on 6th day of February, 2019.

Sd/-

Sd/-

(A. K. GARODIA)
ACCOUNTANT MEMBER

(LALIET KUMAR)
JUDICIAL MEMBER

Bengaluru

Dated : 06.02.2019

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By order

Assistant Registrar
Income Tax Appellate Tribunal,
Bangalore.