

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री इंटूरी रामा राव, लेखा सदस्य के समक्ष
BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A.No.759/Chny/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

M/s. Appasamy Associates, 310, Sidco Industrial Estate, Ambattur, Chennai – 600 098.	Vs	The ACIT, Non Corporate Circle – 7(1), Chennai.
PAN: AAFA4543Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri S. Sridhar, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri Lalmalsawma Pachuau, JCIT

सुनवाई की तारीख/Date of hearing	:	20.06.2019
घोषणा की तारीख /Date of Pronouncement	:	21.06.2019

आदेश / O R D E R

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

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-7, Chennai dated 16.01.2017 and pertains to the assessment year 2012-13.

2. Shri S. Sridhar, the Ld. Counsel for the assessee submitted that the only issue arises for consideration is disallowance of Rs.88,15,000/- U/s.40(a)(ia) of the Act.

3. According to the Ld.Counsel for the assessee, the assessee regularly participated in conferences and seminars conducted by various organizations in India and abroad. In the course of its business activity, the assessee has paid various societies / trusts / associations who had organized the conference and exhibitions for using the booth / stall / kiosk to exhibit the assessee's products in the exhibition. The Assessing Officer disallowed the claim of the assessee on the ground tax was not deducted at source. According to the Ld.Counsel, it is only reimbursement of expenditure. Therefore tax need not be deducted. Moreover payments were made only to the societies / trust, whose income is exempt from taxation. Therefore tax was not required to be deducted at source. Placing reliance on the judgment of the Hon'ble Delhi High Court in CIT Vs. Ansal Lank Mark Township (P.) Ltd., reported in [2015] 61 taxmann.com 45, the Ld.Counsel submitted that the recipient association / society paid the taxes then there cannot be any liability on the part of the assessee.

4. On the contrary, Shri Lalmalsawma Pachuau, the Ld. Departmental Representative submitted that what was paid by the assessee is not reimbursement of expenditure. It is a rent for usage

of the premises in the conference / exhibitions. Therefore the assessee is liable to deduct tax U/s.194I of the Act. Referring to the claim of the assessee that the payment was made only to the trust / society, the Ld. DR submitted that taxability of recipient society / trust has to be examined by the respective Assessing Officer, it is not totally exempted. Therefore it is not correct to say that the payment made to society / trust was exempt from taxation. Referring to the claim of the assessee that the recipient society / trust might have paid the taxes, the Ld.DR submitted that when the assessee claims that the recipient society / trust are exempt from taxation, the claim of the assessee that the recipients were paid taxes on the said amount is contradictory to each other. Therefore there is no merit in the assessee's appeal.

5. We have considered the rival submissions on either side and perused the materials available on record. The assessee claimed before the Assessing Officer that the payment was only reimbursement of expenditure and it is not a rent. This Tribunal is unable to accept the contents of the Ld.Counsel for the assessee. The Ld.CIT(A) has reproduced the correspondences between the assessee and the recipient society and the trust at page 9 of the

impugned order. For the purpose of convenience, the same is reproduced hereunder:-

“We are in receipt of your letter dated 20.08.2011 along with your tariff and thank you for the same. We are pleaded to book five stalls for us to exhibit our products in prime area. Herewith we are enclosing our cheque No.618674 dated 28.09.2011 for Rs.20,00,000/- as advance payment of stall charges. Kindly acknowledge the receipt of the same.”

In another letter dated 08.04.2011, it is stated as follows:-

“We thank you very much for having received your cheque No.619721 dated 06.04.2011 for Rs.2,00,000/- (Rupees Two Lakhs only) towards the advance payment of Traders Stall for 59th Annual Conference of TNOA – Nellai Sandhippu. The official receipt for the above amount will be sent directly to you from the TNOA Office, Chennai and also we will be sending the stall layout early.”

From the above correspondences as reproduced by the Ld.CIT(A) in the impugned order, it is very clear that what was paid by the assessee is the charges for using a portion of the premises in the exhibitions / conference. It may not be a rent in the strict sense but certainly it is a license fee for usage of the premises. Therefore in view of Explanation 1 to Section 194I of the Act, the assessee is liable to deduct tax in respect of the amount paid for usage of the premises in the exhibitions / conference. Therefore as rightly contended by the Ld.DR, what was paid by the assessee is a fee /

rent for usage of the premises in the conference / exhibitions and not for reimbursement of expenditure.

6. The next contention of the Ld.Counsel for the assessee is that the recipients are exempted from taxation. We find no merit in this contention also. Trust / society are not exempted from taxation under the Income Tax Act. For the purpose of claiming exemption, the respective society / trust has to get registered itself either U/s.12A or approval U/s.10(23C) of the Act. Moreover each receipt has to be examined independently by the Assessing Officer to find out the nature and the claim of exemption. Therefore merely because the payments are made to the trust / society, it does not mean that the entire payment is exempted.

7. Now coming to the claim of the assessee that the recipient has paid the taxes, therefore there cannot be any recovery from the assessee. As rightly submitted by the Ld.DR, this is a contradictory claim made by the assessee. However in view of the second proviso to Section 40(a)(ia) of the Act, the claim of the assessee has to be examined. If the recipient trust / society has included the amount in the total income and paid the taxes, there cannot be any further

demand from the assessee, in view of the judgment of the Hon'ble Delhi High Court in CIT Vs. Ansal Land Mark Township (P.) Ltd., *supra*. Therefore the matter is remitted back to the file of the Assessing Officer only for a limited purpose of examining whether the recipient society / trust has included the amount received from the assessee in their total income and paid taxes and thereafter decide the issue afresh in the light of the judgment of the Hon'ble Delhi High Court in CIT Vs. Ansal Land Mark Township (P.) Ltd., *supra*.

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

Order pronounced in the court on 21st June, 2019 at Chennai.

Sd/-

(इंटूरी रामा राव)
(Inturi Rama Rao)

लेखा सदस्य /Accountant Member

Sd/-

(एन.आर.एस. गणेशन)
(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,
दिनांक/Dated, the 21st June, 2019.

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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