

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकर अपीलसं./I.T.A.No. 2327/Chny/2019

(निर्धारणवर्ष / Assessment Year: 2012-13)

M/s. George Maijo Industries (P) Ltd. 2B, Apex Plaza, 5, Nungambakkam High Road, Chennai-600 034.	vs.	The Income Tax Officer, Ward-2(3). Chennai-600 034.
PAN: AACCG 6145R		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओरसे/ Appellant by	:	Mr. R.Vijayaraghavan, Advocate
प्रत्यर्थीकी ओर से/Respondent by	:	Mr. G. Johnson, Addl.CIT

सुनवाईकीतारीख/Date of hearing	:	06.04.2022
घोषणाकीतारीख /Date of Pronouncement	:	12.04.2022

आदेश / ORDER

PER G.MANJUNATHA, AM:

This appeal filed by the assessee is directed against order passed by the learned Commissioner of Income Tax (Appeals)-6, Chennai, dated 17.06.2019 and pertains to assessment years 2012-13.

2. The assessee has raised following grounds of appeal:-

"1. The Officers below were not justified in treating the expenditure reimbursed as payment for service rendered warranting disallowance u/s. 40a(ia).

2. The Officer below have not considered the specific direction in I.T.A.T. order to consider the payment in the light of High Court decision in the case of CIT Vs Ansal Land Mark Township (P) Ltd. 377 ITR 635.

3. As long as the amount reimbursed has been included in the hands of the recipients the provisions of S-40(a)(ia) r.w.s. 201(IA) of I.T.Act would apply as the recipient have included this as part of their income.

4. Merely because the recipient firm did not have taxable income would not characterize such expenses reimbursed as regular receipt.”

3. Brief facts of the case are that the assessee had filed its return of income for the assessment year 2012-13 on 30.11.2012 declaring total income of Rs.39,62,420/-. The assessment for the impugned assessment year had been completed u/s.143(3) of the I.T. Act, 1961, and assessed total income at Rs.1,96,08,546/- by making additions towards disallowance of payments made to employees of M/s.George Maijo and M/s.George Maio & Co., Vizag and also M/s. Pandian builders u/s.40(a)(ia) of the Act, for non-deduction of TDS. The assessee carried the matter in appeal before first appellate authority, but could not succeed. The learned CIT(A) for the reasons stated in his appellate order dated 20.06.2016 dismissed appeal filed by the assessee. The assessee carried the matter in further appeal before the Tribunal and the Tribunal vide its order in ITA No.2192/Mds/2016 dated 08.06.2017 set

aside the issue of disallowance of reimbursement of expenses to the file of the Assessing Officer for fresh verification. Consequently, the Assessing Officer while giving effect to the order of the Tribunal, assessed total income at Rs.1,96,08,546/- by disallowing reimbursement of expenses u/s.40(a)(ia) of the Act for non-deduction of TDS.

4. The assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee reiterated its arguments and submitted that payment made to associate concerns to reimburse cost of salary paid to staff, who are on deputation to assessee is in the nature of reimbursement of expenses and thus, question of deduction of TDS does not arise. The assessee further contended that employer of employees had deducted TDS u/s.192 of the Act, at the time of making payment to employees and thus, on reimbursement of said salary the assessee need not deduct TDS. The learned CIT(A), after considering relevant submissions of the assessee and also taken note of various facts, rejected arguments of the assessee and held that in the given facts & circumstances of the case, amount paid by the assessee to associate concerns cannot be treated as reimbursement of expenditure, because

employees who are on deputation to the assessee were on the pay rolls of the associate concerns and further, sister concerns had paid salaries, therefore, it cannot be held that it is eligible for reimbursement of expenses. The learned CIT(A) further held that on going through understanding between the parties, the payment made by the assessee is in the nature of payment made for rendering certain services and thus, on said payment, the assessee ought to have deducted TDS. Since, the assessee has failed to deduct TDS, the Assessing Officer has rightly disallowed expenses u/s.40(a)(ia) of the Act. Hence, the learned CIT(A) rejected arguments of the assessee and sustained additions made by the Assessing Officer. Aggrieved by the learned CIT(A) order, the assessee is in appeal before us.

5. The learned A.R for the assessee submitted that the Assessing Officer as well as learned CIT(A) erred in sustaining disallowance u/s.40(a)(ia) of the Act, towards reimbursement of expenses paid to associate enterprises without appreciating fact that the Tribunal has set aside appeal to the file of the Assessing Officer with specific direction to examine the issue in light of decision of the Hon'ble Delhi High Court in the case of

M/s.Anzal landmark Township Pvt. Ltd. (2005) 377 ITR 635 and further decision of the Hon'ble Supreme Court in the case of CIT Vs. Hindustan Coco Cola Beverages Pvt.Ltd (2007) 293 ITR 226. The learned A.R for the assessee referring to paper book filed by the assessee submitted that associate enterprises have deducted TDS at the time of payment of salary to its employees and also paid TDS to the credit of the Central Government. Further, associate concerns have accounted reimbursement amount paid by the assessee in books of account and offered for taxation for the assessment year 2012-13. Therefore, in light of the decision of the Hon'ble Supreme Court in the case of CIT Vs. Hindustan Coco cola Beverages P.Ltd.(supra), impugned payments cannot be disallowed u/s.40(a)(ia) of the Act.

6. The learned DR, on the other hand, supporting order of the learned CIT(A) submitted that first of all, payment made by the assessee to sister concerns is not in the nature of reimbursement of expenses. Further, the assessee has failed to file necessary evidence to prove that recipients have included sum paid by the assessee in their return of income and paid necessary taxes. Therefore, the Assessing Officer well

as learned CIT(A) have rightly disallowed payment u/s.40(a)(ia) of the Act, and therefore, their orders should be upheld.

7. We have heard both the parties, perused material available on record and gone through orders of the authorities below. The Tribunal had set aside appeal to the file of the Assessing Officer with a specific direction to examine claim of the assessee in light of decision of the Hon'ble Supreme Court in the case of CIT Vs. Hindustan Coco Cola Beverages Pvt.Ltd. (supra), to examine applicability of amended provisions of section 40(a)(ia) r.w.s. 201 by the Finance Act, 2012. However, the Assessing Officer and learned CIT(A) without considering findings of the Tribunal have reiterated their observations made in first round of litigation on the issue of reimbursement of expenses and sustained additions made by the Assessing Officer u/s.40(a)(ia) of the Act, for non-deduction of TDS. As regards arguments of the assessee that impugned payment is reimbursement of expenses, we find that when the employees were on the pay rolls of associate enterprises and further, the associate enterprises have paid salary to their employees on their own, it cannot be said that amount paid by the assessee

towards cost of employees salary to their associate enterprises is reimbursement of expenses, just because those employees were employed on deputation to the assessee company. The reimbursement of expenses is something, which the assessee needs to incur, but some third party has incurred expenditure on behalf of the assessee and later, the assessee had paid back amount to the third party. In this case, although, employees were on deputation to the assessee company, but they were remain in pay rolls of the associated enterprises and the associate enterprises continued to pay salary to the employees and thus, same cannot be considered as reimbursement of expenses. The learned CIT(A), after considering relevant facts has rightly held that amount paid by the assessee to associate enterprises is not in the nature of reimbursement of expenses, but payment made for rendering services.

8. Having said so, let us come back to the another legal angle of the issue. The assessee has made an alternative ground of appeal in the first round of litigation in light of the decision of Hon'ble Supreme Court in the case of CIT Vs. Hindustan Coco Cola Beverages P.Ltd (supra) in light of

amended provisions of section 40(a)(ia) of the Act. The Tribunal, after considering relevant facts has directed the Assessing Officer to examine claim of the assessee in light of the above judgement. However, the Assessing Officer did not consider the issue in light of directions of the Tribunal. Be that as it may, but fact needs to be examined is whether claim of the assessee that recipients have accounted impugned payments made by the assessee in their return of income and paid necessary taxes to exclude those payments from purview of section 40(a)(ia) of the Act, in light of amended provisions of the Act.

9. The provisions of section 40(a)(ia) of the Act, has been amended along with provisions of section 201, by the Finance Act, 2012, as per which, if an assessee not held to be an assessee in default u/s.201 & 201(1A) of the Act, and further, if recipients have included sum paid by the assessee in their return of income and paid taxes and also furnished necessary certificate to that effect, then sum paid without deduction of tax cannot be disallowed u/s.40(a)(ia) of the Act. The amendment has been examined by various courts, including the Hon'ble Delhi High Court in the case of CIT Vs Ansal Land Mark

Township (P) Ltd. 377 ITR 635 and held that said amendment is curative in nature and therefore, applicable with retrospective effect from the date of insertion of provisions of section 40(a)(ia) of the Act. The Hon'ble Supreme Court in the case of CIT Vs. Hindustan Coco Cola Beverages Pvt.Ltd. (supra) had considered an identical issue and held that if the assessee files necessary evidence to prove that recipients have accounted sum paid without deduction of tax in their return of income and offered for tax, then same cannot be disallowed u/s.40(a)(ia) of the Act. In this case, the assessee has furnished necessary certificate from the associate enterprises and argued that sum paid by the assessee to associate enterprises is accounted in their books of account and offered for taxation for the assessment year 2012-13 . We find that if claim of the assessee is correct that associate enterprises have accounted sum paid by the assessee in their return of income and offered to tax, then same cannot be disallowed u/s.40(a)(ia) of the Act, in light of decision of the Hon'ble Supreme Court in the case of CIT Vs. Hindustan Coco Cola Beverages P.Ltd (supra). But fact remains that the assessee has filed these certificates for the first time before us. The Assessing Officer did not have an

opportunity to verify claim of the assessee in light of certificates furnished by the assessee. Therefore, in our considered view, the issue needs to go back to the file of the Assessing Officer for verification of claim of the assessee in light of certificates filed by associate enterprises. Hence, we set aside the issue to the file of the Assessing Officer and direct the Assessing Officer to reconsider the issue in light of certificates furnished by the assessee and also by considering the ratio laid down by the Hon'ble Supreme Court in the case of CIT Vs. Hindustan Coca Cola Beverages Pvt. Ltd.(supra).

10. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 12th April , 2022

Sd/-
(वी. दुर्गा राव)
(V. Durga Rao)
न्यायिक सदस्य /Judicial Member
चेन्नई/Chennai,

Sd/-
(जी. मंजुनाथ)
(G.Manjunatha)
लेखा सदस्य / Accountant Member

दिनांक/Dated 12th April, 2022

DS

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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