

आयकर अपीलिय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' 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 अपील सं./ITA No.: **3068/CHNY/2018**
निर्धारण वर्ष / Assessment Year: 2015-16

M/s. Herrenknecht AG,
S0268, LGF,
Greater Kailash-1,
New Delhi 110048.

The DCIT,
v. International Taxation
Circle 1(2),
Chennai.

PAN: AACCH 4421M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri T. Banusekar, CA
: Ms. R. Anitha, JCIT

सुनवाई की तारीख/Date of Hearing : 22.03.2021
घोषणा की तारीख/Date of Pronouncement : 11.06.2021

आदेश /O R D E R

Per G. MANJUNATHA, AM:

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals)-16, Chennai, dated 30.08.2018 and pertains to assessment year 2015-16.

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

GROUND - 1**Disallowance of Hire Charges Rs.2,92,500/-**

The CIT(A) erred in law and on facts of the case by disallowing Hire Charges – others expenses of Rs. 2,92,500/- on account of non-deduction of TDS for purchase against payment of VAT under the right to Use and alleging that no invoices were provided to him.

The appellant respectfully prays that the directions of the CIT(A) to the AO be quashed and AO be directed to allow the Hire charges of Rs.2,92,500/-.

GROUND - 2**Disallowance of External Services Rs.52,11,040/-**

The CIT(A) also erred in law and on facts of the case by disallowing Payments made to Related Parties against reimbursement of expenses as liable for deduction of TDS. CIT(A) also erred in assuming that expenses incurred by the Head office of the Appellant foreign company on the project are liable for deduction of TDS. CIT(A) also erred in assuming that no evidences were provided and on the other hand disallowed these expenses for non-deduction of TDS.

The appellant respectfully prays that the directions of the CIT(A) to the AO be AO be directed to allow the External Service expenses of Rs.52,11,040/-.

GROUND – 3**Disallowance of Payments made to Related Parties of Rs.77.39.322/-**

The CIT(A) erred in law and on facts of the case by disallowing Payments made to Related parties against reimbursement of expenses as liable for deduction of TDS. CIT(A) also erred in assuming that expenses incurred by the Head office of the Appellant foreign company on the project are liable for deduction of TDS. CIT(A) also erred that purchases of goods warrant deduction of TDS. CIT(A) also erred in rejecting the evidences produced.

The appellant respectfully prays that the directions of the CIT(A) to the AO be quashed and AO be directed to allow the payments made to related parties of Rs.77,39,322/-

GROUND - 4

Double Disallowance of Rs.52,11,040/-

The CIT(A) erred in disallowing an amount of Rs.52,11,040/- twice, 1st as External Service of Rs.52,11,040/- and then again in Rs.77,39,322/- under expenses incurred by Head Office.

The appellant respectfully prays that the directions of the CIT(A) to the AO be quashed and AO be directed to allow the expenses of Rs.52,11,040/-

GROUND - 5

Request for leave to add, alter, amend and/or supplement the grounds of appeal

The appellant craves leave to add, alter, amend and / or supplement any ground or grounds if necessary, at the time of hearing of the appeal.

3. The brief facts of the case are that assessee company M/s. Herrenknecht AG is a foreign company incorporated in Germany, has established a place of business in Delhi to carry out Micro Tunnelling Works for Pratiba Industries Ltd. The assessee has filed its return of income for assessment year 2015-16 on 30.11.2015 declaring total income at Rs.Nil. The assessment for the impugned assessment year has been completed u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act') on 14.02.2018 and determined total income at Rs.75,79,538/- by making addition towards disallowance of hire charges u/s.40(a)(ia) of the Act for non-deduction of tax at source u/s.194I of the Act for Rs.2,92,500/- , addition towards disallowance of External service charges paid to Head office u/s.40(a)(ia) of the Act for non-deduction of tax at

source amounting to Rs.52,11,040/- and disallowance of Head office expenses of Rs.77,39,322/- u/s.40(2)(b) of the Act for non-production of necessary bills and vouchers. The assessee carried the matter in appeal before first appellate authority but could not succeed. The Id.CIT(A) for the reasons recorded in his appellate order sustained additions made by the AO and dismissed appeal filed by the assessee. Aggrieved by the Id.CIT(A) order, the assessee is in appeal before us.

4. The first issue that came up for our consideration from Ground No.1 of assessee appeal is, disallowance of hire charges of Rs.2,92,500/-. The AO has disallowed hire charges on the ground that the assessee has filed bills and vouchers for part of expenses and has also not deducted tax at source u/s.194I of the Act. It was claim of the assessee before the AO that hire charges paid to M/s. Vardhman Diesel & Generators is sales which attract VAT at the rate of 12.5% and hence, question of deduction of tax at source on such payment does not arise. The assessee further claims that it has filed sample invoices for expenses however bills relating to total expenditure incurred were available with the assessee.

4.1 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Admittedly, the assessee has filed sample bills for hire charges and this fact has been accepted by the AO. The AO after considering bill submitted by the assessee has accepted claim of hire charges and out of total expenses incurred for the year at Rs.5,85,000/- has allowed deduction for an amount of Rs.2,92,500/-. However, balance amount of Rs.2,92,500/- was disallowed in absence of bills and vouchers. The assessee has filed a paper-book which contains copies of bills issued by M/s. Vardhman Diesel & Generators, as per which the assessee has submitted bills and vouchers for total expenditure incurred by the assessee at Rs.5,85,000/-. Therefore, we are of the considered view that the AO was erred in disallowing part of expenses even though he has accepted claim of the assessee regarding part of expenses and has also accepted legal position that there is no requirement of deduction of tax at source on such payment and hence, we direct the AO to delete addition towards hire charges at Rs.2,92,500/- u/s.40(a)(ia) of the Act.

5. The next issue that came up for our consideration from Ground No.2 of assessee appeal is disallowance of External service charges of Rs.52,11,040/-. The fact with regard to impugned dispute are

that the assessee has categorized amount of Rs.52,11,040/- as external services in P&L account out of total expenditure incurred under the head 'Administrative & Sales Overheads' allocated by the Head office of the assessee company on its various project at its overseas site. These allocation / apportionment of expenses include cost of bookkeeping, management and salary of staff working in Head office for various projects worldwide. The basis of allocation of expenses is calculated once a year by the controlling department of the company and is inserted into the SAP software which then automatically calculates and charges these overheads on various projects. As these expenses represent sharing of expenses incurred by the Head office on the project on actual basis and without any mark up or profit, these does not warrant deduction of tax at source on said payment. The AO has disallowed External service charges on the ground that the assessee company has not provided any evidence such as agreement / invoice to prove payment of expenses and further these expenses were actually expenses allocated by the Head office on projects in India.

5.1 The Id. AR for the assessee submitted that the Id.CIT(A) has erred in confirming disallowance made by the AO towards External service charges without appreciating the fact that said expenses are

allocation of company expenses by the Head office to its Branch offices without any mark up or profit and thus same is not liable for TDS. The Id.AR further submitted that one cannot make profit himself. The payment by a Branch office to its Head office is nothing but payment by self. Therefore, said payment cannot be considered as expenditure incurred by the assessee which comes under provisions of TDS. Therefore, the Id.AR submitted that the AO as well as the Id.CIT(A) has completely erred in disallowing reimbursement of expenses paid to Head office for non-deduction of tax at source.

5.2 The Id.DR on the other hand strongly supporting order of the Id.CIT(A) submitted that it is a matter of fact on record that said expenses was disallowed not only for non-deduction of TDS but also for non-submission of necessary agreement, bills and vouchers. Therefore, there is no merit in arguments of the assessee that the AO has disallowed reimbursement of expenses for non-deduction of TDS.

5.3 We have heard both the parties, perused materials available on record and gone through orders of the authorities below. It is an admitted fact that one cannot make profit by himself. Therefore,

any payment by a Branch office to its Head office is a payment by self, which cannot be considered as a payment to a third party nor bring said payment within the ambit of TDS provision. But, the fact remains that assessee has to file necessary evidences including bills and vouchers to prove that said payment is reimbursement of expenses to its Head office for allocation of common expenses. In this case, the AO as well as the Id.CIT(A) has brought out clear facts to the effect that the assessee has failed to file necessary evidences including agreement between parties and bills & vouchers in support of its claim. Therefore, we are of considered view that the issue needs to go back to file of the AO to reconsider the issue that said payment is reimbursement of expenses to its Head office for allocation of common expenses to various Branch offices. In case, the assessee files necessary evidences to prove its claim, then the AO is permitted to cause necessary enquiries and take appropriate decision in accordance with law.

6. The next issue that came up for our consideration from Ground No.3 of assessee appeal is disallowance of payment made to related parties of Rs.77,39,322/-. The facts with regard to impugned dispute are that the assessee has made certain payments to Head office for reimbursement of expenses incurred by Head office on

common expenses like administrative overheads. The assessee further claims that out of total expenses disallowed by the assessee of Rs.77,39,322/-, a sum of Rs.52,11,040/- disallowed by the AO under External service charges was also included. The assessee further claimed that said payment is nothing but payment by self towards reimbursement of common expenses incurred by the assessee and hence same is outside the scope of TDS provisions because said expenses is paid without any mark up or profit.

6.1 Having heard both sides and considered material on record, we find that although the assessee claims it has reimbursed a sum of Rs.77,39,322/- to its Head office for allocation of common expenses incurred by Head office and charged off to various Branch offices, but failed to file any evidences including agreement, bills and vouchers in support of its claim. No doubt, payment by self cannot be treated as expenditure in order to invoke TDS provisions, but it is for the assessee to place necessary evidences before the AO to support its case. In this case, the assessee has not placed any evidences before the AO to support its claim. Therefore, we are of the considered view that the issue needs to go back to file of the AO to reconsider afresh in light of claim of the assessee that said payment is reimbursement of expenses to Head office for allocation

of common overhead expenses to various Branch offices. In case, assessee files necessary evidences to prove its case, then the AO is directed to cause necessary enquiries and take appropriate decision in accordance with law.

7. In the result, the appeal filed by the assessee treated as allowed for statistical purpose.

Order pronounced in the court on 11th June, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

(V. Durga Rao)

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

(G. Manjunatha)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 11th June, 2021

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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