

आयकर अपीलीय अधिकरण, “ए” खंडपीठ मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI - ‘A’ BENCH.
सर्वश्री डी .मन्नमोहन, उपाध्यक्ष एवं राजेन्द्र, लेखा सदस्य
Before S/Sh. D. Manmohan, Vice-President & Rajendra, Accountant Member
आयकर अपील सं./ITA No.4154/Mum/2013 ,निर्धारण वर्ष/Assessment Year-2009-10

ACIT 22(3), 3rd Floor, Tower No.6, Vashi Railway Complex , Vashi.	Vs.	Amit Naresh Sinha, Office No.4, Building No.2, Sector 3 Millenium Business Park, Mahape, Navi Mumbai-400092 PAN:AAJPS0953M
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(अपीलार्थी/ Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से/ Revenue by

: Capt. Pradeep S. Arya

निर्धारिती ओर से / Assessee by

: None

सुनवाई की तारीख/ Date of Hearing

: 03-09-2014

घोषणा की तारीख / Date of Pronouncement

: 10-09-2014

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

Per Rajendra,AM लेखा सदस्य राजेन्द्र के अनुसार:

Challenging the order dated 25.03.2013 of the CIT(A)-33,Mumbai Assessing Officer(AO) has raised the following grounds of appeal:

1. On the circumstances and facts of the case, the Ld.CIT(A) erred in restricting the addition of Rs. 1,30,96,695/- made by the AO u/s.40(a)(ia) to Rs.1,18,602/- by relying upon the decisions of Hon'ble ITAT Special Bench, Vishakapatnam in the case of Merilyn Shipping Agency Pvt. Ltd.
2. The appellant prays that the order of the CIT(A) on the above ground be reversed and that of the Assessing officer be restored.
3. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.

Assessee, an individual, engaged in the business of running an advisement agency and event management, filed his return of income on 30.09.2009 declaring total income of Rs. 43.09 Lakhs. The AO finalised the assessment on 31.12.2011 determining the income of the assessee at Rs. 2.05Crores.

2. During the assessment proceedings, the AO found that the assessee had made following payments without deduction of Tax Deducted at Source (TDS):

(i) Advertisement Expense (Rs. 400319) (ii) Event Management (Rs. 88.34 Lakhs) & (iii) Professional Charges (Rs. 38.61 Lakhs). He directed the assessee to file the details about the TDS. As per the AO the assessee did not file any details in this regard. Referring to the provisions of section 40(a)(ia) of the Act, he held that the assessee had defaulted in not deducting TDS as per the provisions of section 194C and 194J of the Act, that as per the provisions of section 40(a)(ia) of the Act the amount on which tax was deductible was not deducted or not paid within the time allowed, could not be allowed. As a result, he disallowed entire amount of Rs. 1.30 Crores and added it to the assessee's total income.

3. Aggrieved by the order of the AO, the assessee filed an appeal before the First Appellate Authority (FAA). During the course of appellate proceedings before her, the assessee filed a copy of confirmation letter from South Asian Enterprises Ltd. (SAEL), Bank Statements, details of payment for expenses. As the assessee had filed additional evidence, so the FAA remanded the matter to the AO. Before him, the assessee furnished the details of expenses debited actually paid. The assessee, claimed before the FAA that except in the case of Bling Ltd. (Rs. 35,877/-) remaining outstanding amount under the professional fees (Rs. 38.25 Lakhs), Advertisement Expenses (Rs. 4 Lakhs) and Event Management Expenses (Rs. 88.34 Lakhs) were debited as well as paid during the year under consideration, that same should be allowed following the decision given by the Special bench of the Tribunal in the case of Merilyn Shipping & Transports (136 ITD 23-SB), that the decision of the Special Bench, kept in interim suspension by Hon'ble Andhra Pradesh High Court, was binding on the lower authorities all over the country. The assessee relied upon the case of Sri Chamund Mopeds Ltd. (AIR 1992 SC 1439). The matter of MGB Transport decided by Kolkata ITAT in ITA No. 2280/Kol/2011 dt. 05.03.2013) also referred to. After considering the assessment order and the submission of the assessee and after perusing the balance-sheet and the schedules for outstanding liabilities the FAA held that liability towards professional fees (Rs. 87,794/-), Salaries (Rs. 10,850/-), Audit Fees (Rs. 82,725/-), Account Writing Charges (Rs. 1,32,360/-) were payable as on 31.03.2009, that out of Rs. 1.30 Crores provisions of section 194C were attracted for an amount of Rs. 1,18,602/- . Finally, he sustained disallowance of Rs. 1.81 Lakhs only and deleted the balance addition.

4. Before us, Departmental Representative (DR) stated that order of the Special Bench delivered in the case of Merilyn Shipping & Transports (supra) has been kept in abeyance of the Hon'ble Andhra Pradesh High Court, that the Hon'ble Gujarat High Court had taken a different view. Authorised Representative (AR) supported the order of the FAA. We have heard the rival submissions and perused the material before us. We find that expenses related to professional fees, advertisement and management were debited in P&L Account, that same were paid. Therefore, in our view, no disallowance u/s 40(a)(ia) of the Act should be made. We further find that while deciding the appeal in the case of Janapriya Engineers Syndicate (I.T.T.A. No. 352 of 2014- dt. 24.06.2014) the Hon'ble Andhra Pradesh High Court has clarified the issue of interim stay granted by it in the case of Merilyn Shipping & Transports (supra). We will like to reproduce the relevant part of the said order and same reads as under:

"4. We are of the view that until and unless the decision of the Special Bench is upset by this Court, it binds smaller Bench and coordinate Bench of the Tribunal. Under the circumstances, it is not open to the Tribunal, as rightly contended by Mr. Narasimha Sarma, learned counsel, to remand on the ground of pendency on the same issue before this Court, overlooking and overruling, by necessary implication, the decision of the Special Bench. We simply say that it is not permissible under quasi judicial discipline".

From the clarification issued by the Hon'ble High Court, it is clear that until and unless the decision of Marilyn Shipping & Transport (supra) is reversed by the Court, it is binding on all the benches of the Tribunal. We find that Hon'ble Court has held that judicial discipline mandates that the decision of the special bench has to be followed by other benches. As on today, the stay order granted by the Hon'ble Court has been vacated and the order of the special bench is binding on other benches of the Tribunal. Therefore, respectfully following the same, we hold that the FAA

was justified in following the order of Marilyn Shipping & Transport (supra). Considering the facts of the case and the clarification issued by the Hon'ble Andhra Pradesh High Court on 24.06.2014 in the case of Janapriya Engineers Syndicate, we decide the effective ground of appeal in favour of the assessee and confirm the order of the FAA.

As a result, appeal filed by the assessee stands allowed.

फलतः निर्धारित द्वारा दाखिल की गई अपील स्वीकृत की जाती है.

Order pronounced in the open court on 10th September, 2014.

आदेश की घोषणा खुले न्यायालय में दिनांक 10 सितम्बर, 2014 को की गई।

Sd/-

Sd/-

(डी .मन्नमोहन /D.Manmohan)

(राजेन्द्र/Rajendra)

उपाध्यक्ष /VICE PRESIDENT

लेखा सदस्य /ACCOUNTANT MEMBER

मुंबई/Mumbai, दिनांक/Date: 10.09.2014.

SK

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. Assessee /अपीलार्थी
2. Respondent /प्रत्यर्थी
3. The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4. The concerned CIT /संबद्ध आयकर आयुक्त
5. DR "A" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, ए खंडपीठ, आ.अ.न्याया.मुंबई
6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai

		Date	Initials	
1.	Draft dictated on	05.09.2014		
2.	Draft placed before author	05.09.2014		
3.	Draft proposed & placed before the Second Member			
4.	Draft discussed/approved by Second Member			
5.	Approved draft comes to the Sr.PS			
6.	Kept for pronouncement			
7.	Date on which the file goes to the Bench Clerk			
8.	Date on which file goes to the A.R. for signature of the Order			
9.	Date of dispatch of the Order			