

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No. 154 of 2017(O&M)

Date of decision: 11.12.2017

The Pr. Commissioner of Income Tax, Rohtak

.....Appellant

Vs.

Smt. Kavita 8, State Bank Colony, Rohtak

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAJ MOHAN SINGH**

Present: Mr. Inderpreet Singh, Senior Standing Counsel
for the appellant-assessee.

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed the present appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 19.05.2016, Annexure A.III, passed by the Income Tax Appellate Tribunal, Delhi Bench 'D' New Delhi (in short, "the Tribunal") in ITA No. 5106/Del/2012, for the assessment year 2009-10, claiming following substantial questions of law:-

- (i) "Whether the ITAT is correct in fact and law while ignoring that the payment of ₹ 72,52,052/- received by assessee from M/s Vodafone Essar Digilink Limited under contractual obligation after deduction of TDS under Section 194C/194H is a contract receipt/commission income in the hands of assessee which the assessee subsequently cannot justify as reimbursement of expenses to the sub dealers/retailers?
- (ii) Whether as per the terms and conditions of the contract, the payments were made or were due to the assessee, especially since the reimbursement to the sub-dealers

made by the assessee is not envisaged explicitly in caluse-17 and therefore, the decision of ITAT is bad inlaw?

- (iii) Whether the receipt of ₹ 72,52,052/- in the hand of the assessee is admittedly a contractual receipt on which TDS under Section 194C/194H has been deducted from it and the assessee has violated the provisions of the Income Tax Act, 1961 by not including these receipts in the P & L account and therefore, the decision of ITAT is bad in law?
- (iv) Whether the order of the ITAT is perverse to the facts of case as the fact that the explanations of the assessee did not co-relate to the figure in the Forms AS26 and the fact that the lack of information about the recipients, their PAN numbers or receipt confirmation?
- (v) Whether the assessee was liable to deduct TDS before making the claimed payments and non-deduction of TDS makes the assessee liable under Section 40(a)(ia) of the Act and the order of the ITAT is erroneous for not considering the same?”

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. The respondent- assessee, the main distributors of M/s Vodafone for Rohtak district under the name and style of M/s VM Teleconnect, filed return of income declaring total income of ₹ 2,92,360/-. During the course of assessment proceedings, the Assessing Officer noted from Form 26AS downloaded from ITD database that the appellant received income in the nature of contracts and commission amounting to ₹ 72,52,052/- from M/s Vodafone on which TDS amounting to ₹ 2,36,281/- had been deducted under

Sections 194C and 194H of the Act. The Assessing Officer noted that these receipts had not been reflected in the profit and loss account. Vide order dated 28.12.2011, Annexure A.I, the Assessing Officer made an addition of ₹ 72,52,052/-. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. Vide order dated 24.07.2012, Annexure A.II, the CIT(A) deleted the whole addition of ₹ 72,52,052/- with the observation that receipt of ₹ 10,65,345/- from Vodafone was on account of reimbursement of salary, which had been clarified by the assessee in re-casted profit and loss account. It was further recorded that receipt of discount of ₹ 13,09,267/- from Vodafone was on account of reimbursement of amount paid to Assistant Distributors. Apart from this, the assessee had incurred ₹ 62,000/- on account of short claims etc which had been booked under the head 'discount' and, therefore, only ₹ 62,000/- was debited to the profit and loss account. It was also noticed that incentive of ₹ 48,77,440/- was paid directly to retailer, by Vodafone and not routed through the account of the assessee. It was concluded that since the amount was neither due nor received by the assessee, question of adding the same as suppressed receipt did not arise and, therefore, was deleted. Not satisfied with the order, the department filed an appeal before the Tribunal. Vide order dated 19.05.2016, Annexure A.III, the Tribunal confirmed the order passed by the CIT(A) on the basis of the order dated 31.03.2017 passed by the coordinate Bench of Tribunal under identical facts in ITA No. 4679/Del/2012 (*ITO Vs. Basant Kumar*), for the assessment year 2009-10. The issue was decided in favour of the assessee. Hence the instant appeal by the revenue.

3. We have heard the learned counsel for the appellant-revenue.

4. It has been categorically recorded by the CIT(A) that the receipt of ₹ 10,65,345/- from M/s Vodafone was on account of reimbursement of salary, paid to field staff as was evident from the details obtained by the assessee from M/s Vodafone and her own ledger account which had been filed before the Assessing Officer. As the entire salary paid had been reimbursed, the assessee had not shown any item in this regard in the profit and loss account. However, this had been clarified by the assessee in the re-casted profit and loss account. Thus, it was rightly concluded by the CIT(A) that there was no justification for adding the said amount as suppressed receipts and, therefore, deleted the same. It was further recorded that the incentive of ₹ 48,77,440/- by M/s Vodafone had been made directly to the retailers. Since the said amount was neither due nor received by the assessee, the question of adding the same as suppressed receipts did not arise and, therefore, the same was deleted. As the amount of ₹ 48,77,440/- did not form part of the receipts of the assessee, credit for corresponding TDS of ₹ 1,10,767/- could not be given to the assessee and the Assessing Officer was directed not to give credit for this TDS amount. The addition of ₹ 13,09,267/- on account of receipt of discount was deleted by holding it to be on account of reimbursement of amount paid to Assistant Distributors. Thus, the addition made by the Assessing Officer of ₹ 72,52,052/- was deleted. With regard to the charging of interest under Section 234B of the Act, the appeal of the assessee was dismissed. Aggrieved by the order passed by the CIT(A), the department went in appeal before the Tribunal. After examining the entire matter in detail, the Tribunal concurred with the findings recorded by the CIT(A). The issue was decided in favour of assessee by the Tribunal relying upon the decision of the coordinate Bench in *Sh. Basant Kumar's* case (supra) for the assessment year 2009-10.

Learned counsel for the revenue has candidly admitted that no appeal has been filed against the said order and has been accepted by the revenue though the tax effect was more than the limit prescribed by the CBDT circular.

5. Learned counsel for the appellant-revenue has not been able to point out any illegality or perversity in the impugned order passed by the Tribunal dated 19.05.2016, Annexure A.III.

6. As a result, we do not find any ground to interfere with the impugned order passed by the Tribunal dated 19.05.2016, Annexure A.III. No substantial question of law arises. The appeal stands dismissed. In view of the dismissal of the appeal on merits, the application under Section 5 of the Limitation Act, 1963 for condonation of delay in filing the appeal is left open.

(Ajay Kumar Mittal)
Judge

December 11, 2017
‘gs’

(Raj Mohan Singh)
Judge

Whether speaking/reasoned
Whether reportable

Yes
Yes