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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 226/2018, C.M. APPL.7029/2018**
+ **ITA 231/2018, C.M. APPL.7159/2018**
PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI - 18
..... Appellant

versus

M/S. DLF COMMERCIAL PROJECTS CORPORATION

..... Respondent

Through : Sh. Zoheb Hossain, Sr. Standing
Counsel, for appellant.

Ms. Kavita Jha and Ms. Devika Jain, Advocates,
for Respondents.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **23.02.2018**

1. The Revenue in these appeals questions the concurrent findings of the lower appellate authority for Assessment Years (AY) 2009-10 and 2010-11.

2. The assessee is engaged in the business of development of land and colonies. As a part of its commercial activities, it entered into contracts with M/s. DLF Land Limited, a sister concern. The latter is tasked with the responsibility of rendering certain services towards procurement of land, and carrying out secretarial, administrative and inventory management activities like maintenance of books of accounts, getting accounts audited, maintenance of secretarial records, filing of various statutory returns, managing bank accounts, taking steps towards obtaining license relating to land from various statutory authorities etc. The agreements entered into by the assessee entitled it to service charge @ 5% of total expenditure

incurred. Besides that, the concern was also entitled to full reimbursement of expenses claimed. The amount paid for the concerned Assessment Years, i.e. ₹25,11,78,222/- for AY 2009-10 and ₹7,42,47,543/- for AY 2010-11 were disallowed by the Assessing Officer (AO). It was held that the reimbursement of service charges were not properly accounted for. CIT(A) and ITAT, however, granted relief on the ground that the agreements which were produced before the lower authorities and the invoices raised were sufficient evidence to justify the claim of the assessee.

3. These are purely factual findings. Furthermore, in respect of similar or identical expenses, this Court had by judgment dated 15.07.2015 (in *CIT v. DLF Commercial Project Corporation* ITA 627/2012 and ITA 507/13) for AYs 2007-08 and AY 2008-09 rejected the Revenue's claim and upheld the assessee's contentions. The Court had then stated as follows:

“Question No. 2

17. *The AO disallowed the amount of ₹ 19,69,83,236/- as deduction for the reason that the assessee deducted TDS only on the service charges paid by it to M/s DLF Land Ltd. According to the AO, TDS ought to have been deducted under the amount paid by the assessee towards reimbursement expenses to M/s DLF Land Ltd. This Court holds that the CIT(A) and the ITAT rightly set aside the AO's order, ruling that the assessee was not required to deduct TDS on reimbursement expenses paid to M/s DLF Land Ltd.*

18. *The assessee has correctly relied upon this Court's ruling in Industrial Engineering Projects Pvt. Ltd., (supra). A Division Bench of this Court in that case specifically held that “reimbursement of expenses can, under no circumstances, be regarded as revenue receipt” and therefore, it is not liable to income tax. The Court relied upon the Supreme Court's decision in CIT v. Tejaji Farasram Kharawalla Ltd., [1968] 67 ITR 95 (SC), where the Court had held that it is only the amount that exceeds the expenditure incurred by the agent that would be liable to tax. More recently, this Court in Fortis*

Health Care Ltd. (supra) has also held that amount received towards reimbursement of expenses is not taxable under the Act.

19. *In the instant case, it is undisputed that M/s DLF Land Ltd. had deducted TDS on the payments made by it under various heads on behalf of the assessee. Further, it is also not disputed that the assessee deducted TDS on the service charge paid by it to M/s DLF Land Ltd. on the reimbursement expenses. In such circumstances, this Court holds that the entire amount paid by the assessee to M/s DLF Land Ltd. is entitled to deduction as expenditure.*

20. *In arriving at the aforesaid conclusion, this Court derives support from the Gujarat High Court's decision in Commissioner of Income Tax-III v. Gujarat Narmada Valley Fertilizers Co. Ltd. (in Tax Appeal No. 315 of 2013, decided on 25.06.2013), where the facts were similar to those in the present case. The Court therein rejected the revenue's contention that non-deduction of TDS on reimbursement expenses would lead to disallowance of such reimbursement expenditure. The Court noted that the payee therein had already deducted tax on the various payments made by it to third parties (such as towards transport charges and other charges). Since the payments made by the assessee therein were only for the reimbursement of expenses incurred by the payee on behalf of the assessee, the Court held that no TDS was required to be deducted by the assessee. A special leave petition preferred by the revenue against the High Court's decision was dismissed by the Supreme Court on 17.01.2014 (in SLC CC No. 175 of 2014). This court is also supported in its reasoning by the text of Section 194C (TDS for "work") and Section 194J (TDS of income from "professional services"- the latter expression defined expansively by Section 194J (3) Explanation (a)). Neither provision obliges the person making the payment to deduct anything from contractual payments such as those made for reimbursement of expenses, other than what is defined as "income". The law thus obliges only amounts which fulfil the character of "income" to be subject to TDS in such cases; for other*

payments towards expenses, the deduction to those entitled (to be made by the payee) the obligation to carry out TDS is upon the recipient or payee of the amounts.

21. The facts of this case are identical to those in Gujarat Narmada Valley (supra) and for the reasons stated above, this Court does not find any compelling ground to arrive at a different conclusion. Thus, the ITAT's ruling in this regard is upheld."

4. The second question is with respect to disallowance of amounts claimed to have been paid to sundry creditors to the tune of ₹47,73,55,572/-. This included the sum of ₹25,11,78,222/- which was claimed under Section 37(1) of the Income Tax Act, 1961 [hereafter "the 1961 Act"]. The AO was of the opinion that since the books were rejected, the debits claimed were not justified. Both CIT(A) and ITAT noticed that there was sufficient material. Besides, they were impressed by the fact that even though the AO rejected the report, he accepted the credit and chose to completely ignore the debits. On account of this deficiency, which was clearly cured, the Court is of the opinion that no substantial question of law arises.

5. The final question urged – for AY 2009-10, is the sum of ₹1,74,50,000/- brought to tax as net expenditure credits under Section 68 of the 1961 Act. The assessee claimed to have received these amounts from 25 depositors who are members of the public. The AO was of the opinion that the assessee did not discharge the initial onus which lay upon it to establish the genuineness and creditworthiness of public deposits. Both CIT(A) and the ITAT set-aside the disallowance after noticing that all relevant particular such as the identity details relating to the depositors,

their PAN numbers, addresses and particulars relating to the cheques paid, which in turn enabled the income tax authorities to carry on necessary enquiries under law from the concerned banks, were not done. Since the AO did not make any further enquiry, the burden cast upon the Revenue clearly had not been discharged so far as to entitle it to bring the amount to tax under Section 68 of the 1961 Act. Consequently, the Court is of the opinion that the approach of the ITAT as well as CIT(A) was proper and their conclusions correct.

6. In view of the foregoing reasons, no substantial question of law arises. The appeals are accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 23, 2018/AJK