



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.08.2021

CORAM :

The Honourable Mr. Justice T.S. SIVAGNANAM

and

The Honourable Mr. Justice SATHI KUMAR SUKUMARA KURUP

Tax Case Appeal No.448 of 2012

Commissioner of Income Tax-LTU,
Chennai.

...Appellant/Respondent

Vs

M/s. Wheels India Limited,
Padi, Chennai - 600 050.

...Respondent/Appellant

APPEAL under Section 260A of the Income Tax Act, 1961 against the order dated 27.07.2012 made in ITA.No.163/Mds/2012 on the file of the Income Tax Appellate Tribunal, 'A' Bench, Madras for the assessment year 2003-2004. And against the o/o the Commissioner of Income Tax (Appeals) large Tax payer Unit II floor 175 Jawaharlal Nehru Inner Ring Road, Anna Nagar Western Extension, Chennai 600 101. and made in ITA.29/10-11/LTU(A) Dated 24/11/2012 and against the Deputy Commissioner of Income Tax large Tax payer Unit Chennai. And made in G1. No./PA. No.AAACW0315K dated 30/11/2010. For the assessment year 2003-2004.

For Appellant : M/s.R.Hemalatha
Senior Standing Counsel

For Respondent : Mr.Vikram Vijayaraghavan
for Subbaya Iyar Padmanabhan

JUDGMENT

(Delivered by T.S.Sivagnanam, J)

This appeal, filed by the Revenue under Section 260A of the Income Tax Act, 1961 (for brevity, 'the Act') is directed against the order 27.07.2012 made in ITA.No.163/Mds/2012 on the file of the Income Tax Appellate Tribunal, 'A' Bench, Chennai (for brevity, the Tribunal) for the assessment year 2003-2004.

2.The appeal was admitted on 06.03.2013 on the following substantial question of law:



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"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in deleting the disallowance under Section 40(a)(i) of the Income Tax Act in respect of payments of export sales commission and service charges made to non-resident without deduction of tax at source?"

3. We have heard M/s.R.Hemalatha, learned Senior Standing Counsel for the appellant/revenue and Mr.Vikram Vijayaraghavan, learned counsel appearing for the respondent/assessee.

4. The short issue which falls for consideration is whether the Tribunal was right in affirming the order passed by the Commissioner of Income Tax [Appeals][CIT(A)], LTU, Chennai deleting the disallowance under Section 40(a)(i) of the Act in respect of the payments effected by the assessee to non-resident without deducting tax at source. Thus the core issue involves as to for what purpose the payments were effected by the assessee to the non-resident and whether the assessee was required to deduct the tax at source. This is a factual matter which needs to be considered taking note of what was available in the hands of the Assessing Officer. The Assessing Officer is of the view that the payments were in the nature of fees for technical service and therefore, tax was to be deducted at source. The Assessing Officer was of such a view by interpreting the nature of the services rendered by the non-resident as a managerial service which was received by the assessee and therefore, referred to Indo South Korean DTAA, in particular, Article 13 and held that the payments made for managing the sales affairs of the assessee Company outside India without deducting tax at source under Section 195 of the Act has to be disallowed under Section 40(a)(i) of the Act.

5. The correctness of the said contention was decided by the CIT(A). As pointed out earlier, the nature of service which was rendered to the respondent/assessee has to be decided based on the available facts. This exercise was done by the CIT(A) not only in the assessment year under consideration but also for the assessment year 2005-2006 and in both the cases, the CIT(A) has held in favour of the assessee. Though for the assessment year 2005-2006, the revenue had filed an appeal before the Tribunal, on account of low tax effect that appeal could not be pursued by the Tribunal. However, what we are required to see is whether in the instant case, the CIT(A) has recorded a finding as to the nature of services availed by the assessee from the non-resident. After hearing the submissions of the authorized representative of the assessee, the CIT(A) perused the copies of the agreement and on facts, found that the amounts paid by the assessee were sales commission and marketing services to non-



resident agents outside India for their services rendered outside India by way of canvassing sales order and none of the entities to whom payments were made by the assessee have a Permanent Establishment [PE] in India. Further, taking note of the relevant Articles in the respective DTAA agreements entered into between India and the respective Country, it was held that the income earned is taxable in those Countries. In support of the conclusion, the CIT(A) relied on the decision of the Hon'ble Supreme Court in the case of G.E.Technology Centre (P) Ltd., vs. CIT [327 ITR 456]. Thus, on facts, the nature of services rendered by the non-resident to the assessee was considered by the CIT(A) after perusing the copies of the agreement. This factual finding has attained finality as the appeal filed by the revenue before the Tribunal was dismissed by the impugned order.

6.Further, the assessee would place reliance on the decision of the Hon'ble Division Bench of this Court in the case of Commissioner of Income Tax vs. Farida Leather Company [(2016) 95 CCH 0146 ChenHC] wherein it was held that sourcing orders abroad, for which payments have been made directly to the non-residents abroad, does not involve any technical knowledge or assistance in technical operations. In the case of Commissioner of Income Tax vs. Faizan Shoes Pvt. Ltd., [(2014) 367 ITR 0155 (Mad)], it was held that the commission paid for procuring order for leather business from overseas buyers - wholesalers or retailers cannot be treated as if for technical services. In the case of Evolv Clothing Company Pvt. Ltd., vs. Assistant Commissioner of Income Tax [(2018) 407 ITR 0072(Mad)], the Hon'ble Division Bench held that the Assessing Officer accepted that the assessee therein had paid commission charges for the overseas agents and the same cannot be regarded as if for technical services.

7.As pointed out, on facts the First Appellate Authority and the Tribunal have held that what was paid by the assessee to the non-resident was sales commission and cannot be regarded as if for technical services.

8.In the light of the said factual conclusion, we find no grounds to interfere with the order passed by the Tribunal, more particularly, when no question of law or substantial question of law arises for consideration. Accordingly, the tax case appeal is dismissed. No costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal,
'A' Bench, Chennai.
2. The Commissioner of Income Tax (Appeals)
large Tax payer Unit II floor
175 Jawaharlal Nehru Inner Ring Road,
Anna Nagar Western Extension,
Chennai 600 101.
3. The Deputy Commissioner of Income Tax
large Tax payer Unit
Chennai
4. The Deputy Commissioner of Income Tax LTU
Chennai

+1 cc to M/s. T.Ravikumar ,Advocate Sr.No. 39511

TCA.No.448 of 2012

RR (CO)
CT (06/09/2021)