IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE MOHAMMED SHAFFIQ

Tax Case Appeal Nos. 613 and 614 of 2017

Commissioner of Income Tax
Corporate Circle III
Chennai .. Appellant in both TCAs

Versus

Tribe Investments and Services Private Limited
(Formerly Vijayshree Spinning Mills Private Limited)
New No.8, (Old No.36)
Arch Bishop Mathias Avenue,
Chennai – 600 028
PAN: AAACV 2098 Q .. Respondent in both TCAs

Appeals filed under Section 260 (A) of the the Income Tax Act, 1961 against the orders dated 27.03.2017 passed by the Income Tax Appellate Tribunal "C" Bench, Chennai, in I.T.A.Nos.929/Mds/2015 and 2196/Mds/2015.

For Appellant	:	Ms. S. Premalatha in both the appeals
For Respondent	:	Mr. R. Vijayaraghavan for Mr. Subbaraya Aiyar

COMMON JUDGMENT

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

These tax case appeals have been filed by the Revenue challenging the common order dated 27.03.2017 passed by the Income Tax Appellate Tribunal "C" Bench, Chennai, in I.T.A.Nos. 929/Mds/2015 and 2196/Mds/2015, relating to the assessment year 2006-07.

2. By order dated 08.12.2017, this court admitted the aforesaid tax case appeals on the following substantial question(s) of law:

> "*(i) Whether the Tribunal was right in deleting the proportionate disallowance u/s 40(a)(ia) for short deduction of tax at source?*
>
> *(ii) Whether the Tribunal is right in deleting the disallowance u/s 40(a)(ia) for non deduction of tax at source holding that the second proviso to Section 40(a)(ia) inserted in Finance Act, 2012 with effect from 01.04.2013 is curative in nature and hence has retrospective effect from 01.04.2005?*"

3. The assessee is engaged in the business of manufacture of Synthetic and Cotton yarns. They have filed return of income for the assessment year 2006-2007 on 07.12.2006 admitting an income of Rs.11,74,263/- and the same was processed under Section 143 (1) of The Income Tax Act (in short, the Act) on 05.03.2008. The return filed by the

assessee was selected for scrutiny and a notice under Section 143 (2) of the Act was issued. In compliance with the notice, the representative of the assessee appeared before the Assessing Officer and produced the documents called for. On scrutiny, the Assessing Officer found that the assessee had made certain payments as per the statement in para No.5, but they have not deducted Tax at Source (TDS) on such payments, besides there is a short deduction of TDS on the payments aggregating a sum of Rs.36,42,452/-. Therefore, the Assessing Officer, by an order of assessment dated 24.12.2008 disallowed the said amount under Section 40(a)(ia) apart from making other additions and ultimately assessed the total income of the assessee at Rs.2,38,64,294/- under Section 143 (3) of the Act.

4. After passing an order under Section 143 (3) of the Act on 24.12.2008, the assessing officer re-opened the case under Section 147 of the Act and issued a notice dated 22.03.2013 to the assessee. According to the assessing officer, the reasons for re-opening the assessment are that the assessee paid yarn conversion charges to the extent of Rs.60.46 lakhs, but TDS was effected only for Rs.45 lakhs and for the balance sum of Rs.15 lakhs, TDS was not effected. The assessing officer, after hearing the representative of the assessee, passed a revised assessment order dated 28.02.2014 adding a

sum of Rs.15,46,000/- to the income already assessed against the assessee.

5. Challenging the original assessment order dated 24.12.2008 as well as the revised order of assessment dated 28.02.2014, the Assessee filed appeals before the appellate authority and questioned the correctness of the order passed by the Assessing Officer relating to disallowance under Section 40 (a) (ia) of the Act. However, the Appellate Authority without considering the grounds raised by the appellant, rejected the appeals. The assessee therefore filed further appeals before the Tribunal. The Tribunal, by the common order dated 27.03.2017 allowed the appeals filed by the assessee, which has given rise to the filing of the present appeals.

6. The learned standing counsel for the appellant/revenue has submitted that the Tribunal deleted the disallowance under Section 40(a)(ia) solely on the ground that the recipient has offered the income to tax in the income tax assessment. The Tribunal did not take note of the fact that there was failure on the part of the assessee to deduct tax at source and remit it before the expiry of the time prescribed under Sub-Section (1) of Section 200 and therefore, the Assessing Officer as well as the Appellate Authority were wholly justified in disallowing Rs.36,42,452/- and in adding the same to the

total income. Further, the Tribunal erred in holding that the second proviso to Section 40 (a) (ia) inserted in Finance Act, 2012 from 01.04.2013 is curative in nature and hence has retrospective effect from 01.04.2005 is legally not sustainable. Therefore, the learned standing counsel prayed for allowing the appeals by setting aside the order passed by the Tribunal.

7. On the other hand, the learned counsel for the respondent-assessee, would submit that the Tribunal had not allowed the appeals preferred by the respondent but has remanded the matter to the Assessing Officer for fresh consideration. As against such an order of the Tribunal, the instant appeals filed by the Revenue are not maintainable. There is no question of law involved in these appeals for adjudication and therefore, he prayed for dismissal of the appeals.

8. We have heard the learned counsel for both sides and perused the materials placed on record.

9. In the common order dated 27.03.2017, which is impugned in these appeals, the Tribunal, after considering the rival submissions, remanded the matter back to the Assessing Officer for fresh

consideration. The relevant portion of the common order dated 27.03.2017 of the Tribunal is reproduced hereunder.

> "6. .....In the present case, out of total disallowance, Rs.25,95,010/- was towards short deduction of TDS by the assessee and we following the judicial decisions direct the Assessing Officer to delete the addition and allow the ground of the assessee.
>
> 7. The Ld.AO has invoked the provisions of section 40(a) (ia) of the Act, in respect of payments where the assessee has not deducted the tax. The Ld.AR submitted that the Recipient/payee has offered the income in the income tax assessment, but we find no evidence was produced before the Ld.AR or CIT (A) by the assessee supporting with income tax return particulars and assessment details. No doubt the second provisions of section 40(a)(ia) is declaratory and curative in nature and has retrospective effect from 1st April, 2005. We are of the opinion, the second provisions of section 40(a) (ia) shall be invoked, where the assessee satisfy with evidence that recepient/ payee has paid tax and made compliance. We rely on the Hon'ble High Court decision of CIT vs. Ansal Landmark Township (P) Ltd., 377 ITR 0635 (Del) and in the interest of justice, we remit the disputed issue Rs.10,47,442/- on which TDS is not deducted by the assessee to the file of AO and provide opportunity to the assessee to substantiate its claim relying on decision of CIT vs. Ansal Landmark Township (supra), submitting income tax details of payee and the AO shall pass a speaking order and the ground of the assessee is allowed for statistical purpose.
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> 8. Now, we take up ITA No.2196/Mad/2015. The assessee has raised two grounds on (i) re-opening of assessment and (ii) disallowance u/sec.40 (a) (ia) of the Act for short deduction of TDS. At the time of hearing, the Ld.AR of the assessee has not pressed the ground on re-opening of assessment and made endorsement and on second disputed issue of short deduction of TDS, we have decided the issue in ITA No.929/Mds/2015 at Para 6 and same shall apply and allow the ground and accordingly the appeal of the assessee is allowed.

9. In the result, assessee appeal in ITA No.929/Mds/2015 is allowed for statistical purpose and ITA No.2196/Mds/2015 is allowed"

10. It is evident that before the Tribunal, two appeals were filed by the Assessee, one as against the disallowance of short deduction of TDS under Section 40(a)(ia) of the Act and another in respect of re-opening of the concluded assessment. However, before the Tribunal, on behalf of the assessee, it was submitted that the relief in so far as it relates to re-opening of the assessment is not pressed.

11. In so far as the issue relating to disallowance under Sec. 40 (a) (ia) of the Act, the Tribunal rendered a finding, on facts, that there was short deduction of TDS on the part of the assessee. Thus, there is a dispute with respect to quantum of the amount payable by the assessee towards TDS and for that purpose, the matter was remanded back to the Assessing Officer by the Tribunal. We do not find any reason to interfere with such an order of remand passed by the Tribunal. The questions of law raised in these appeals are left open. However, we wish to observe that the Assessing Officer shall consider the issue with respect to short fall in payment of TDS by the Assessee after affording an opportunity of hearing and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order.

12. Accordingly, both the Tax Case Appeals are disposed of. No costs.

[R.M.D., J.] **[M.S.Q., J.]**

20.06.2022

Index : yes/no
Internet : yes/no

av/rsh

To

1. The Income Tax Appellate Tribunal "C" Bench,
   Chennai.

2. The Commissioner of Income Tax,
   Corporate Circle III
   Chennai

3. The Deputy Commissioner of Income Tax,
   Corporate Circle III (4),
   Chennai - 600 034.

4. The Commissioner of Income Tax (Appeals) - 11,
   Chennai.

R. MAHADEVAN, J
and
MOHAMMED SHAFFIQ, J

av/rsh

TCA Nos.613 & 614/2017

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