

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Order reserved on	27.02.2026
Order pronounced on	01.06.2026

CORAM

THE HON'BLE MR JUSTICE SENTHILKUMAR RAMAMOORTHY**WP No. 6176 of 2022**

M/s.Zoho Corporation Private Limited
 Represented by its Authorized Signatory
 Mr.Jaianand. N, Estancia IT Park, Plot No.140,
 151, GST Road, Vallancheri, Chennai,
 Chengalpattu District- 603 202, India.

..Petitioner(s)

Vs

The Deputy Commissioner of Income Tax
 Circle 2 (2), International Taxation Room No.410,
 4th Floor, Tower- I, BSNL Building, No.16,
 Greams Road, Chennai- 600 006.

..Respondent(s)

PRAYER: This writ petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the Respondent in relation to the Impugned Order dated 12.10.2021 passed by the Respondent and quash the same as invalid, direct the Respondent to grant a refund of the Equalisation Levy paid by the Petitioner in respect of inter-company transactions of reimbursements for the impugned period immediately.

For Petitioner(s): Mr.N.V.Balaji

For Respondent(s): Mr.B.Ramana Kumar, Senior Panel Counsel

**Background**

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The petitioner applied for refund of equalization levy for financial years 2016-17 and 2017-18. Said request for refund was rejected under order dated 12.10.2021, which is the subject of challenge in this writ petition.

2. The petitioner is a software product company headquartered in India. The software products of the petitioner are sold online. In order to carry out activities outside India, the petitioner has formed overseas subsidiary companies in several jurisdictions, including the United States of America (the USA). Such subsidiaries function as the primary re-sellers/distributors of the petitioner's products in the respective geography. Out of the overseas geographies catered to by the petitioner, the USA accounts for about 60% of the turnover.

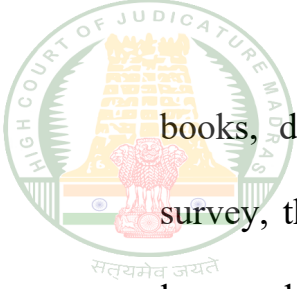
3. A subsidiary named Zoho Corporation, USA (Zoho USA) functions as the re-seller of the petitioner's products within the USA. Within said geographical area, said subsidiary markets and resells Zoho Products to end-users in consideration for the reseller margin. The main channel to market Zoho products through the online mode is by use of the Google AdWords Program, which is an online sales platform developed by Google. The Google AdWords Program was availed of by Zoho USA under an agreement entered into by it



with Google. Google invoiced Zoho USA towards services provided and payments were made by Zoho USA to Google. The petitioner, thereafter, reimbursed Zoho USA towards marketing cost reimbursements of INR 332 crore in financial year 2016-17 and INR 550 crore in financial year 2017-18.

4. An equalization levy was introduced under Chapter VIII of the Finance Act, 2016, in relation to the provision of online advertising services by a non-resident to a resident of India or the permanent establishment (PE) of a non-resident carrying on business in India. Said equalization levy was made applicable with effect from 01.07.2016. The petitioner deposited/paid a sum of Rs.20.17 crores towards equalization levy in financial year 2016-17 in respect of the reimbursement of Rs.332.84 crore to Zoho USA. Out of this sum, on the ground that only Rs.5 lakhs was payable, the petitioner had applied for refund of a sum of Rs.20.12 crore. As regards financial year 2017-18, the petitioner did not initially make payment towards equalization levy on the ground that such levy is not attracted in respect of payment made as reimbursement to Zoho USA for online advertising services availed of by its subsidiary.

5. In the above circumstances, the revenue authorities conducted a TDS survey under Section 133A of the Income-Tax Act, 1961 (the I-T Act) at the business premises of the petitioner on 19.03.2019. During the survey, the statements of several employees of the petitioner were recorded and copies of



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books, documents and records were taken by the respondents. After such survey, the petitioner deposited a sum of Rs.36.94 crore towards equalization levy under protest for financial year 2017-18. The claim for refund was made thereafter. Because such request was rejected, the present writ petition was filed.

Counsel and their contentions

6. The contentions of Mr.N.V.Balaji, learned counsel for the petitioner, may be summarised as under:

(i) Equalization levy cannot be imposed because the advertising service was provided by Google USA to Zoho USA and not to Zoho India.

(ii) The petitioner did not set up Zoho USA after equalization levy was introduced with effect from 01.07.2016. Said subsidiary was incorporated much earlier and the petitioner made similar reimbursements to the subsidiary much before equalization levy was introduced. Google AdWords agreement dated 23.07.2010 with Zoho USA; Google invoice dated 31.03.2014 to Zoho USA; Payment Advice dated 10.04.2014 from Zoho USA to Google; Debit Note dated 31.03.2014 from Zoho USA to Zoho India and reimbursement by debit from the petitioner's account on 29.04.2014 were relied on in this connection. Similar documents and evidence of reimbursement on 16.10.2015 and 11.02.2016 were also relied upon to demonstrate that such reimbursements were being made by the petitioner to Zoho USA prior to the entry into force of



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equalization levy. Effectively, the contention was that the incorporation of Zoho USA, the availing of advertising services by Zoho USA from Google USA, payments made by Zoho USA in respect thereof and the reimbursement of such costs by Zoho India were not devices to circumvent, evade or avoid equalisation levy.

(iii) The Report of the Committee on Taxation of E-Commerce titled “Proposal for Equalisation Levy on Specified Transactions”, which was submitted in February 2016, suggested and recommended, at paragraph 135 thereof, that reimbursement of expenses of the nature mentioned in the earlier entries in paragraph 135 should be made subject to equalization levy. Thereafter, specified services were defined in paragraph 193 of the report as including “reimbursement of expenses of the nature that are included in any of the above”. In spite of said recommendation by the Committee, the Finance Act did not include reimbursement within the scope of specified service, thereby indicating the legislative intent to not tax reimbursement by a resident.

(iv) Statements elicited during the survey operation have no probative value. In support of this proposition, the judgment of the *Kerala High Court in Paul Mathews & Sons v. Commissioner of Income-Tax, 263 ITR 101 (Kerala)*, particularly paragraph 11 thereof was relied on. The judgment of the Hon’ble Supreme Court in *Commissioner of Income-tax Salem v. S.Khader Khan Son, [2012] 25 Taxmann.com 413 (SC)*, dismissing the civil appeal and the judgment of the Division Bench of this Court in *Commissioner of Income-Tax v. S.*



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Khadar Khan Son, [2008] 300 ITR 157 (Mad.), were also relied on. The Division Bench of this Court compared and contrasted the power exercisable under Section 132(4) of the I-T Act with the power exercisable under Section 133A thereof. This Court specifically held that the authorised officer is not empowered to take a sworn statement under Section 133A and, therefore, statements in course of survey do not have any evidentiary value.

(v) The corporate veil cannot be lifted unless an entity is incorporated with the intention of committing a fraud or for purposes of tax evasion. In the case at hand, Zoho USA was incorporated much prior to the introduction of equalization levy. Therefore, the corporate veil cannot be pierced or lifted.

7. The contentions of Mr.Ramana Kumar, in response, may be summarised as under:

(i) Services were provided under the Google AdWords Program by Google USA to Zoho India. Zoho USA was merely the ostensible recipient of services, whereas the real recipient of services was Zoho India.

(ii) The survey unearthed strong evidence of the complete involvement of employees of Zoho India in the selection of AdWords, in the preparation of invoices for and on behalf of Zoho USA and in the operation of the bank account of Zoho USA.

(iii) Therefore, the reimbursement to Zoho USA by the petitioner was not *bona fide*. It was a subterfuge to evade payment of equalization levy. A

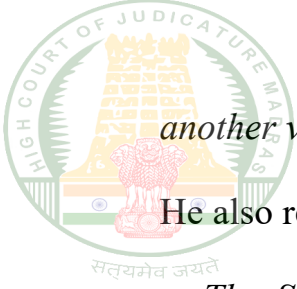


substance over form approach was endorsed by the Supreme Court in *Hyatt International Southwest Asia Ltd. v. Additional Director of Income Tax, Civil Appeal No. 9766 of 2025, Judgment dated 24.07.2025 (Hyatt International)* and *The Authority for Advance Rulings v. Tiger Global International III Holdings, Civil Appeal No.262 of 2026, Judgment dated 15.01.2026 (Tiger Global)*.

(iv) The corporate veil may be lifted if there is tax evasion or circumvention. The judgment of the Hon'ble Supreme Court in *Juggilal Kamlatpat v. Commissioner of Income-tax, [1969] 73 ITR 702 (SC)*, the judgment of this Court in *G.V.Films v. S.Priya Darshan, [2007] 163 Taxmann 74 (Madras)* and the judgment of the House of Lords in *Fire Stone Tyre and Rubber v. Lewellin, [1958 33 ITR 741 (HL)]*, were relied on in support of this proposition.

(v) Each assessment year is a distinct unit for assessment. In support of this proposition, the judgments of the Hon'ble Supreme Court in *Radhasoami Satsang v. Commisioner of Income-tax, [1992] 60 Taxmann 248 (SC)* and *C.K.Gangadharan v. Commissioner of Income-tax, [2008] 172 Taxman 87 (SC)*, were relied on.

8. By way of a brief rejoinder, Mr.Balaji referred to the judgments of the Hon'ble Supreme Court regarding lifting or piercing of the corporate veil in *Vodafone International Holdings BV v. Union of India, (2012) 6 SCC OnLine SC 77 (Vodafone International)* and to the judgment in *Balwant Rai Saluja and*



another *v. Air India Limited*, [2014] SCC OnLine SC 638 (*Balwant Rai Saluja*).

He also relied on the judgments of the Hon'ble Supreme Court in *AV Fernandez v. The State of Kerala*, 1957 (4) TMI 46, *Commissioner of Sales Tax (AV Fernandez)*, *U.P. v. Modi Sugar Mills Ltd*, 1960 (10) TMI 65 and *Union of India v. M/s.Playworld Electronics India P Ltd (SC)*, (1989) 3 SCC 181, for the proposition that tax statutes should be strictly construed.

Discussion, analysis and conclusions

9. Equalization levy was introduced in the Finance Act, 2016. Section 165, which is the charging section, reads as under:

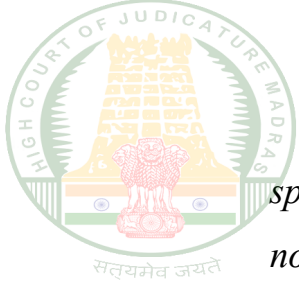
“165. (1) On and from the date of commencement of this Chapter, there shall be charged an equalisation levy at the rate of six per cent of the amount of consideration for any specified service received or receivable by a person, being a non-resident from-

(i) a person resident in India and carrying on business or profession; or

(ii) a non-resident having a permanent establishment in India.

(2) The equalisation levy under sub-section (1) shall not be charged, where-

(a) the non-resident providing the specified service has a permanent establishment in India and the specified service is effectively connected with such permanent establishment,



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(b) the aggregate amount of consideration for specified service received or receivable in a previous year by the non-resident from a person resident in India and carrying on business or profession, or from a non-resident having a permanent establishment in India, does not exceed one lakh rupees, or

(c) where the payment for the specified service by the person resident in India, or the permanent establishment in India is not for the purposes of carrying out business or profession.

[(3) The provisions of this section shall not apply to any consideration for any specified service received or receivable by a person on or after the 1st day of April, 2025.]”

10. From the text of Section 165, the following conclusions emerge:

(i) Equalization levy is charged on the consideration received or receivable by a non-resident from either a person resident in India and carrying on business or profession or a non-resident having a permanent establishment in India.

(ii) Such consideration should have been received for a specified service. This, in turn, leads to the definition of specified service. “Specified service” is defined as under in Explanation (i) to Section 164. In relevant part, the provision reads as under:

“Explanation.- For the purposes of this clause, “online sale of goods” and “online provision of services” shall include one or more of the following online activities, namely:-

“(i) “specified service” means online advertisement, any

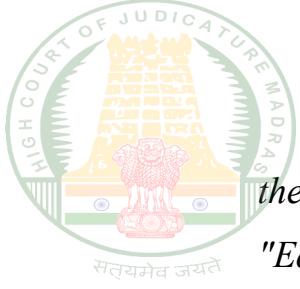


provision for digital advertising space or any other facility or service for the purpose of online advertisement and includes any other service as may be notified by the Central Government in this behalf.”

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11. In this case, Google USA provided online advertising services to Zoho USA. Undoubtedly, the nature of service qualifies as a specified service as per the definition. Such service has, however, been provided by a non-resident (Google USA) to a non-resident (Zoho USA). Hence, on a textual reading of Sections 165 and 164, equalization levy cannot be imposed on the petitioner unless reimbursement also falls within the scope of specified service. I turn to this aspect next.

12. Therefore, the next question that falls for consideration is whether reimbursing Zoho USA for expenses incurred in relation to online advertising services provided by Google USA would attract equalization levy. The Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India formed the Committee on Taxation of E-Commerce (the E-Commerce Taxation Committee). Said Committee submitted a report in February 2016 titled “Proposal for Equalization Levy on Specified Transactions”. At paragraphs 134 and 135, the E-Commerce Taxation Committee set out the categories of payments suggested for imposition of equalization levy. Said paragraphs are set out below:



“134. After detailed analysis, the Committee suggests that the following categories of payments may be subjected to 'Equalization Levy' at this stage:

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135. Any sum paid or payable or credited as a consideration for any of the following:

(i) online advertising or any services, rights or use of software for online advertising, including advertising on radio & television;

(ii) digital advertising space;

(iii) designing, creating, hosting or maintenance of website;

(iv) digital space for website, advertising, e-mails, online computing, blogs, online content, online data or any other online facility;

(v) any provision, facility or service for uploading, storing or distribution of digital content;

(vi) online collection or processing of data related to online users in India;

(vii) any facility or service for online sale of goods or services or collecting online payments;

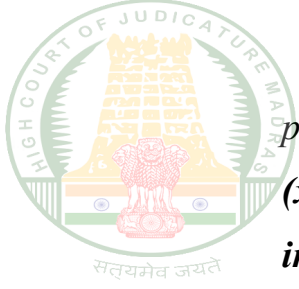
(viii) development or maintenance of participative online networks;

(ix) use or right to use or download online music, online movies, online games, online books or online software, without a right to make and distribute any copies thereof;

(x) online news, online search, online maps or global positioning system applications;

(xi) online software applications accessed or downloaded through internet or telecommunication networks;

(xii) online software computing facility of any kind for any



purpose; and

(xiii) reimbursement of expenses of a nature that are included in any of the above;

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Explanation - For the purposes of above, 'online' means a facility or service or right or benefit or access that is obtained through the internet or any other form of digital or telecommunication network."

(emphasis added)

13. At paragraph 137, the E-Commerce Taxation Committee expressly recognized the possibility of payments being made by a third party outside India, which is subsequently reimbursed by an Indian entity. In relevant part, the Committee recorded as under in this regard:

"137.Similarly, to prevent the possibility of avoiding the Equalization Levy by having the payment made by a third party outside India, which is subsequently reimbursed by the actual user, with a claim that no Equalization Levy is payable on reimbursements, it may need to be clarified that the Equalization Levy will be also payable on any payments made by a payer in India for reimbursements of expenses incurred by a third party outside India in respect of services covered under this levy. Lastly, it would need to be clarified that the Equalization Levy will become applicable once a payment is credited or paid-whoever is earlier, to the beneficial owner in the books of accounts, irrespective of when and how the actual payment is made."



14. Eventually, at paragraph 193, the recommendations of the E-Commerce Taxation Committee included the following definitions of specified services:

“193. Specified services may be defined as following:

(i) online advertising or any services, rights or use of software for online advertising, including advertising on radio & television,

(ii) digital advertising space

(iii) designing, creating, hosting or maintenance of website

(iv) digital space for website, advertising, e-mails, online computing, blogs, online content, online data or any other online facility

(v) any provision, facility or service for uploading, storing or distribution of digital content

(vi) online collection or processing of data related to online users in India

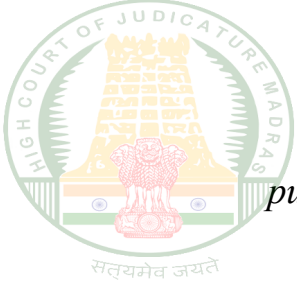
(vii) any facility or service for online sale of goods or services or collecting online payments

(viii) development or maintenance of participative online networks

(ix) use or right to use or download online music, online movies, online games, online books or online software, without a right to make and distribute any copies thereof

(x) online news, online search, online maps or global positioning system applications

(xi) online software applications accessed or downloaded through internet or telecommunication networks



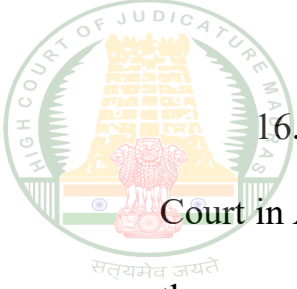
(xii) *online software computing facility of any kind for any purpose*

(xiii) *reimbursement of expenses of a nature that are included*

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[emphasis added]

15. If the specific recommendations of the E-Commerce Taxation Committee had been accepted in respect of taxation of reimbursement of online advertising services, there is little doubt that equalisation levy could have been imposed on Zoho India for the reimbursement of the consideration paid by Zoho USA to Google USA. In spite of the above concerns and specific recommendations of the E-Commerce Taxation Committee, the Finance Act, 2016, did not include reimbursement of expenses of the nature mentioned in clauses (i) to (xii) of paragraph 135 of the Report within the scope of specified service. Hence, on the ground that the petitioner reimbursed Zoho USA for costs incurred in availing of advertising services from Google, USA, equalization levy cannot be imposed. The reliance by the revenue on *Hyatt International* and *Tiger Global* in support of a substance over form approach cannot be countenanced. Both the said judgments dealt with Double Taxation Avoidance Agreements and the General Anti-Avoidance Rules incorporated in that context, and cannot be applied out of context to this case.

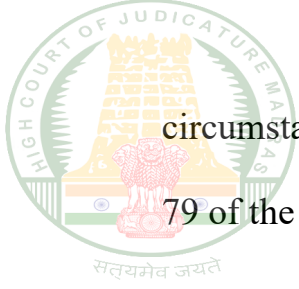


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16. On this aspect, it is instructive to recall the words of the Supreme Court in *AV Fernandez* enunciating the classical rule that “if, on the other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax may be imposed by inference or analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter.” Equally pertinent are the observations in *Murarilal Mahabir Prasad v. B R Vad*, (1975) 2 SCC 736, where the Supreme Court held as under:

“29. [...] There is no equity about a tax in the sense that a provision by which a tax is imposed has to be construed strictly, regardless of the hardship that such a construction may cause either to the treasury or to the taxpayer. If the subject falls squarely within the letter of law he must be taxed, howsoever inequitable the consequences may appear to the judicial mind. If the Revenue seeking to tax cannot bring the subject within the letter of law, the subject is free no matter that such a construction may cause serious prejudice to the Revenue. In other words, though what is called equitable construction may be admissible in relation to other statutes or other provisions of a taxing statute, such a construction is not admissible in the interpretation of a charging or taxing provision of a taxing statute.”

17. Whether such equalization levy may nonetheless be imposed by resorting to piercing or lifting the corporate veil remains to be considered. In *Vodafone International*, the Hon’ble Supreme Court considered the



circumstances in which the corporate veil may be pierced. Paragraphs 72 and 79 of the judgment are set out below:

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“72. The approach of both the corporate and tax laws, particularly in the matter of corporate taxation, generally is founded on the above mentioned separate entity principle i.e. treat a company as a separate person. The Income Tax Act, 1961, in the matter of corporate taxation, is founded on the principle of the independence of companies and other entities subject to income tax. Companies and other entities are viewed as economic entities with legal independence vis-à-vis their shareholders/participants. It is fairly well accepted that a subsidiary and its parent are totally distinct taxpayers. Consequently, the entities subject to income tax are taxed on profits derived by them on stand-alone basis, irrespective of their actual degree of economic independence and regardless of whether profits are reserved or distributed to the shareholders / participants. Furthermore, shareholders/participants that are subject to (personal or corporate) income tax are generally taxed on profits derived in consideration of their shareholding/participations, such as capital gains. Nowadays, it is fairly well settled that for tax treaty purposes a subsidiary and its parent are also totally separate and distinct taxpayers.

....

79. When it comes to taxation of a holding structure, at the threshold, the burden is on the Revenue to allege and establish abuse, in the sense of tax avoidance in the creation and/or use of such structure(s). In the application of a judicial anti-avoidance



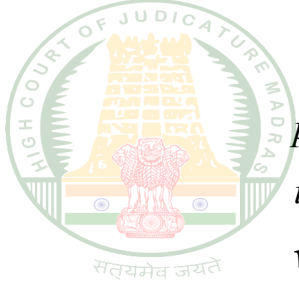
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rule, the Revenue may invoke the "substance over form" principle or "piercing the corporate veil" test only after it is able to establish on the basis of the facts and circumstances surrounding the transaction that the impugned transaction is a sham or tax avoidant. To give an example, if a structure is used for circular trading or round tripping or to pay bribes then such transactions, though having a legal form, should be discarded by applying the test of fiscal nullity. Similarly, in a case where the Revenue finds that in a holding structure an entity which has no commercial/business substance has been interposed only to avoid tax then in such cases applying the test of fiscal nullity it would be open to the Revenue to discard such interpositioning of that entity. However, this has to be done at the threshold."

18. Said doctrine was also considered in *Balwant Rai Saluja*, wherein it was held as under:

"70. The doctrine of "piercing the corporate veil" stands as an exception to the principle that a company is a legal entity separate and distinct from its shareholders with its own legal rights and obligations. It seeks to disregard the separate personality of the company and attribute the acts of the company to those who are allegedly in direct control of its operation. The starting point of this doctrine was discussed in the celebrated case of Salomon v. Salomon & Co. Ltd. Lord Halsbury LC, negating the applicability of this doctrine to the facts of the case, stated that: (AC pp. 30 & 31)

"[a company] must be treated like any other independent



person with its rights and liabilities [legally] appropriate to itself... whatever may have been the ideas or schemes of those who brought it into existence."

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Most of the cases subsequent to Salomon case, attributed the doctrine of piercing the veil to the fact that the company was a "sham" or a "façade". However, there was yet to be any clarity on applicability of the said doctrine.

71. In recent times, the law has been crystallised around the six principles formulated by Munby, J. in Ben Hashem v. All Shayif, The six principles, as found at paras 159-64 of the case are as follows:

- (i) Ownership and control of a company were not enough to justify piercing the corporate veil;*
- (ii) The court cannot pierce the corporate veil, even in the absence of third-party interests in the company, merely because it is thought to be necessary in the interests of justice;*
- (iii) The corporate veil can be pierced only if there is some impropriety;*
- (iv) The impropriety in question must be linked to the use of the company structure to avoid or conceal liability;*
- (v) To justify piercing the corporate veil, there must be both control of the company by the wrongdoer(s) and impropriety, that is use or misuse of the company by them as a device or facade to conceal their wrongdoing; and*
- (vi) The company may be a "façade" even though it was not originally incorporated with any deceptive intent, provided that it is being used for the purpose of deception at the time of the*



relevant transactions. The court would, however, pierce the corporate veil only so far as it was necessary in order to provide a remedy for the particular wrong which those controlling the company had done.”

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As can be seen from the principles set out at paragraph 71 of *Balwant Rai Saluja*, a precondition for piercing the corporate veil is impropriety, i.e the misuse of the company as a device or facade to conceal a wrongdoing.

19. In the case at hand, the documents on record evince that Zoho USA was in existence from at least July 2010 inasmuch as said entity entered into the Google advertising service agreement on July 23, 2010. The petitioner has placed on record invoices issued by Google from 2011 to 2016, evidence of payments made by Zoho USA and evidence of reimbursement by Zoho India to Zoho USA of such expenses in 2014, 2015 and 2016.

20. These documents clearly disclose that Google USA was providing services to Zoho USA much prior to the introduction of equalization levy. Upon providing such services, Google USA raised invoices on Zoho USA. Even in the period prior to the introduction of equalisation levy, after making payments to Google USA, Zoho USA requested for and received reimbursement from the petitioner / Zoho India. This practice was continued after the introduction of equalisation levy. This evidence clearly leads to the conclusion that Zoho USA was not set up for purposes of evading liability in relation to equalization levy.



Significantly, the above documents also establish that the petitioner was in the practice of reimbursing advertising expenses incurred by Zoho USA for the Google AdWords Program much prior to the introduction of equalization levy.

21. The rationale underlying the reimbursement by the petitioner of costs incurred by Zoho USA towards advertising services provided by Google USA is easy to discern. Zoho USA appears to be functioning as a re-seller of products developed by the petitioner in a particular geography. The US subsidiary markets such products in the geographical territory assigned to it and receives a sales margin as consideration/commission. Hence, all expenses incurred by it for marketing the products of the petitioner in the USA are reimbursed by the petitioner. In the facts and circumstances outlined above and corroborated by the documents on record, the methodology adopted by the petitioner cannot be construed as a device for purposes of evading equalization levy. Zoho USA cannot, consequently, be deemed as a facade for the commission of an impropriety. Consequently, the facts and circumstances do not justify piercing the corporate veil, as per principles formulated in this regard, and endorsed by the Hon'ble Supreme Court in *Vodafone International and Balwant Rai Saluja*.

22. The revenue relied on statements recorded in course of survey under Section 133A of the I-T Act. The Division Bench of this Court in *Khader Khan*



Son compared and contrasted the power under Section 132 (4) of the I-T Act with that under Section 133A. In relevant part, the following finding was entered:

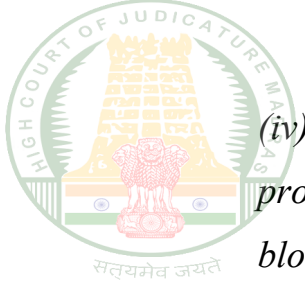
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“From the foregoing discussion, the following principles can be culled out:

(1) An admission is an extremely important piece of evidence but it cannot be said that it is conclusive and it is open to the person who made the admission to show that it is incorrect and that the assessee should be given a proper opportunity to show that the books of account do not correctly disclose the correct state of facts, vide decision of the apex court in Pulkngode Rubber Produce Co. Ltd. v. State of Kerala [1973] 91 ITR 18;

(ii) In contradistinction to the power under section 133A, section 132(4) of the Income-tax Act enables the authorised officer to examine a person on oath and any statement made by such person during such examination can also be used in evidence under the Income-tax Act. On the other hand whatever statement is recorded under section 133A of the Income-tax Act is not given any evidentiary value obviously for the reason that the officer is not authorised to administer oath and to take any sworn statement which alone has evidentiary value as contemplated under law, vide Paul Mathews and Sons CIT [2003] 263 ITR 101 (Ker);

(iii) The expression "such other materials or Information as are available with the Assessing Officer" contained in section 158BB of the Income-tax Act, 1961, would include the materials gathered during the survey operation under section 133A, vide CIT v. G. K. Senniappan (2006) 284 ITR 220 (Mad);



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(iv) *The material or information found in the course of survey proceeding could not be a basis for making any addition in the block assessment, vide decision of this court in T. C (A) No. 2620 of 2006 (between CIT v. S. Ajit Kumar (2008) 300 ITR 152 (Mad.).*

(v) *Finally, the word "may" used in section 133A(3)(iii) of the Act, viz., "record the statement of any person which may be useful for, or relevant to, any proceeding under this Act, as already extracted above, makes it clear that the materials collected and the statement recorded during the survey under section 133A are not conclusive piece of evidence by itself.*

For all these reasons, particularly, when the Commissioner and the Tribunal followed the circular of the Central Board of Direct Taxes dated March 10, 2003, extracted above, for arriving at the conclusion that the materials collected and the statement, obtained under section 133A would not automatically bind upon the assessees we do not see any reason to interfere with the order of the Tribunal."

Given the position of law, statements recorded in course of survey cannot be relied on to fix liability on the petitioner. In the impugned order, the Deputy Commissioner of Income-Tax relied on statements recorded in course of survey.

23. After relying on the survey, in relevant part, the following findings were recorded in the impugned order at paragraphs 6 and 7 thereof:

" 6. The most important part is the process of making the actual



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payment. After logging into the Zoho account on Google Adwords, one can go to the Billing and Payments section, wherein a month-wise invoice amount is uploaded by Google.

This invoice is also accessed by the Finance Team of ZCPL in India. Shri Krishna Prasad of the Finance Department submitted that once this invoice amount was determined, the payment was from Zoho US's bank accounts. However, the Survey Team found that these Bank accounts opened in the name of Zoho US, were accessed only by Krishna Prasad and his team members and remitted the payments to Google....

....

From the above details gathered during the Survey, it is clear that in substance, ZCPL was making all the payments to Google for its Adwords, thereby qualifying these payments as applicable for Equalisation Levy. Hence, from the above, it can be seen that the payments made by ZCPL to Zoho US for making payments to Google is squarely applicable for chargeability to tax as Services covered by Equalization Levy. But, ZCPL reiterated its representations that these payments were only reimbursements and Equalisation Levy was not applicable, whereas it was proven that these payments were actually made from India by ZCPL employees who had access to Zoho US Bank accounts. And, that is exactly, why ZCPL had computed the specified services chargeable as Equalisation Levy and paid the Equalisation Levy including interest and filed its statement of specified services in Form I on 02.11.2017. The assessee's claim that the impugned transaction relating to Google was not paid directly by it to Google and merely a reimbursement to Zoho US, is entirely contrary to the facts mentioned aforesaid.



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24. Apart from the legal position that statements recorded in a survey lack probative value as per judgments discussed earlier, it is noticeable that there is a factual finding that payments to Google USA were made from the bank accounts of Zoho USA, albeit operated by persons from Zoho India's office. This cannot be treated as payment by Zoho India and, as a corollary, would not qualify as payment made by a resident to a non-resident for a specified service as per Sections 164 and 165 of the Finance Act 2016. In other words, it supports the assertion of the petitioner that it was a reimbursement by Zoho India.

25. In the factual context of a reimbursement, under extant law, equalisation levy cannot be imposed unless the corporate veil of Zoho USA were to be pierced. The impugned order contains no discussion or finding thereon and, in any case, for reasons discussed earlier, the facts and circumstances outlined above do not justify piercing or lifting the veil. Even assuming that the survey evidence may be relied on, mere control and active involvement of the holding entity in the affairs of the subsidiary, in the absence of evidence of impropriety, are insufficient to justify piercing the corporate veil as per principles discussed above.

26. The conclusion that follows from the above discussion is that the impugned order cannot be sustained. In view of the finding that equalisation

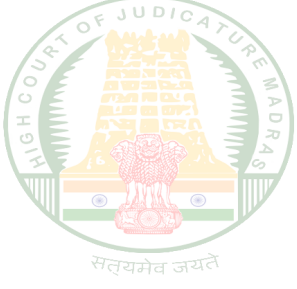


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levy cannot be imposed on the petitioner as per applicable law, the petitioner is entitled to refund of amounts deposited / paid as equalisation levy in the financial years 2016-17 and 2017-18. The petitioner sought refund of sums of Rs.20,17,02,840/- and Rs.36,93,98,921/- in respect of financial years 2016-17 and 2017-18, respectively. Notwithstanding the conclusion that equalisation levy is not payable in respect of reimbursement, the amounts claimed as refund by the petitioner should be verified. Hence, the writ petition is disposed of by setting aside the impugned order dated 12.10.2021 and directing reconsideration of the refund claim of the petitioner for financial years 2016-17 and 2017-18 in light of this order. After providing a reasonable opportunity to the petitioner, after verification, refund of the appropriate amount shall be made within three months from the date of receipt of a copy of this order. No costs.

01-06-2026

Neutral Citation: Yes/No
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SENTHILKUMAR RAMAMOORTHY, J.

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To

The Deputy commissioner of Income Tax
Circle 2 (2), International Taxation Room No.410,
4th floor, Tower- I, BSNL Building, No.16,
Greams Road, Chennai- 600 006.

Pre-delivery order made in

WP No. 6176 of 2022

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