आयकरअपीलीयअधिकरण,'बी'न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

श्री जी मंजूनाथा ,लेखासदस्य,एवं श्री राहुल चौधरी, न्यायिक सदस्य के समक्ष
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER AND
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

आयकरअपीलसं./I.T.A No.:1839/CHNY/2019
निर्धारणवर्ष/Assessment Year: 2008 - 2009

M/s. Express Publications (Madurai) Limited,
C/o Shri T.N. Seetharaman, Advocate,
No.384 (Old No.196),
Lloyds Road,
Chennai – 600 086.
PAN : AAACI 0842D …………… अपीलार्थी/Appellant

Vs.

The Deputy Commissioner of Income Tax,
Company Circle – II(1),
(Now DCIT, Company Circle – 2(1),
Chennai – 600 034. …………… प्रत्यर्थी/Respondent

Appearances:

For the Appellant/Assessee	:	Mr. T.N. Seetharaman, Advocate
For the Respondent/Department	:	Ms. V. Sreedevi, JCIT

Date of conclusion of hearing	:	01.06.2022
Date of pronouncement of order	:	26.08.2022

आदेश /**O R D E R**

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Appellant/Assessee has challenged the order, dated 25.04.2019, passed by the Ld. Commissioner of Income Tax (Appeals) - 9, Chennai [hereinafter referred to as the 'the CIT(A)'] partly allowing the appeal against the Assessment Order, dated 31.12.2010, passed under Section 143(3) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act']

2. The brief facts of the case is that the Assessee filed his return of income for the Assessment Year 2008–2009 which was revised on 30.03.2009. In the revised return, the Appellant declared income of INR 23,42,74,203/- before claiming set off against the brought forward business losses and un-absorbed depreciation. The case of the Appellant was selected for scrutiny and vide order, dated 31.12.2010, assessment was framed on the Appellant under Section 143(3) of the Act at income of INR 27,47,09,434/- after making the following additions/disallowances:

S.No.	Particulars of additions	Amount
(i)	Payment made to foreign agencies disallowed u/s.40(a)(i)	14,39,555
(ii)	Claim of payment of Transshipment charges is disallowed u/s.40(a)(i)	48,86,730
(iii)	Claim of payment of incentive to distributors is disallowed	92,62,896
(iv)	Interest paid on the loan amount diverted to group companies disallowed u/s.36(1)(iii)	1,26,96,050
(v)	Common News Service Charges paid is disallowed u/s.40(a)(ia)	1,21,50,000
	TOTAL	4,04,35,231

3. Being aggrieved, the Appellant preferred an appeal before the CIT(A) which was partly allowed. The disallowance of INR 48,86,730/- made by the Assessing Officer u/s.40(a)(i) of the Act in relation to the transshipment charges was deleted by the CIT(A). Further, the Assessing Officer was directed to verify and allow the credit of the tax deducted at source amounting to INR 22,97,882/-.

4. Still being aggrieved, the Appellant preferred the present appeal before us.

5. The Appellant/Assessee raised the following eleven grounds in the appeal which are reproduced as under:

[1] *The order of the Commissioner of Income Tax (Appeals) is opposed to the facts and circumstances of the case and is bad in law.*

[2] *The Commissioner (Appeals) erred in mechanically reproducing the Grounds of Appeal / Assessment order and dismissing the grounds of appeal on most issues as covered by the decision of his predecessor for Assessment Year 2009-10 – vide order dated 30.11.2017 – without applying his own mind and deciding the issues independently.*

[3] *The Appellant submits that the Appellate order of the predecessor Commissioner (Appeals) in I.T.A. No.89/CIT(A)-6/2012-13 for the assessment year 2009-10 followed by the Commissioner (Appeals) was the subject matter of appeal before the Hon'ble Tribunal and the common issues involved in the appeal stand decided by the Hon'ble Tribunal 'C' Bench, Chennai by order dated 27.05.2019 in I.T.A. No.615/Chny/2018 in the following manner:*

[4] *The Commissioner (Appeals) erred in confirming the disallowance of Rs.14,39,555/- being payments made to Foreign Correspondents / News Agencies made by invoking Section 195 / 40(a)(i) of the Act referring to his predecessor's decision for the Assessment Year 2009-10 (paras 5.2. of the CIT(A)'s impugned order.*

[5] *The Appellant submits that in its appeal against the Predecessor CIT(A)'s order this Hon'ble Tribunal has been pleased to remit the issue to the Assessing Officer for fresh adjudication.*

[6] *The Commissioner (Appeals) erred in confirming the disallowance of bulk incentive of Rs.92,62,896/- to distributors treating the amount as commission and invoking Section 194H / 40(a)(i) referring to his predecessor's decision for the Assessment Year 2009-2010.*

[7] *The Appellant submits that by its order dated 27.05.2019 in I.T.A. No.615/Chny/2018 the Hon'ble Tribunal has been pleased to remand the issue to the file of the Assessing Officer for fresh adjudication.*

[8] *The Commissioner (Appeals) erred in confirming the disallowance of common News Service charges of Rs.1,21,50,000/- for alleged violation of Section 194J by invoking Section 40(a)(ia) of the Act.*

[9] *The Appellant submits that by its order dated 27.05.2019, the Hon'ble Tribunal has been pleased to remand the issue to the file of the Assessing Officer for fresh adjudication.*

[10] *The Commissioner (Appeals)erred in confirming the disallowance of Rs.126,96,050/- out of interest paid alleging diversion of borrowed funds to group companies following his predecessor's order for the assessment year 2009 – 10.*

[11] *The Appellant submits that the issue though originally deleted by its order dated 27.05.2019 in I.TA. No.615/Chny/2018 has been modified by the Hon'ble Tribunal by its order dated 16.12.2019 in M.P. No.146/Chny/2019 and the issue remanded back to the file of the AO for fresh adjudication in the limit of material placed before us.*

6. The Learned Authorized Representative of the Appellant appearing before us relied upon the concise grounds of appeal filed vide letter dated 30.06.2021. He submitted that the grounds raised in the appeal are covered in favour of the Appellant by the decision of the Tribunal in the case of the Assessee for the Assessment Year 2009 – 2010 in I.T.A. No.615 & 706/Chny/2018, dated 27.05.2019.

7. In response thereto, the Learned Departmental Representative submitted that the issues raised in the appeal have not been decided in favour of the Appellant but have been remanded back to the file of the Assessing Officer for fresh adjudication.

8. Thus, both the sides agreed that the matter could be remanded back to the file of the Assessing Officer or CIT(A), as the case may be, in view of the decision of the Tribunal in case of the Assessee for the Assessment Year 2009 – 2010 as identical grounds have been raised in the present appeal in similar facts and circumstances.

9. As regards Ground Nos. 4 & 5 raised in the present appeal pertaining to disallowance of payments to Foreign Correspondences/News Agencies by invoking Section 195/40(a)(i) of the Act, we note that the Co-ordinate Bench of the Tribunal in the case of the Assessee for the Assessment Year 2009 – 2010 [ITA No. 615 & 706/Chny/2018, decided on 27.05.2019] has held as under:

> *"11. Grounds 4 to 7 challenges disallowance of a sum of Rs. 26,31,000/- being paid to foreign correspondents and foreign news agencies for non-deduction of tax at source u/s.195 of the Act. The Assessing Officer disallowed the expenditure being the amount paid to foreign correspondents and foreign news agencies on the ground that no TDS was deducted on the said payments. On appeal before ld. Commissioner of Income Tax (Appeals), the addition was confirmed placing reliance on the decision of Hon'be Jurisdictional High Court in the case of M/s. Poompuhar Shipping Corporation Ltd. (supra). Being aggrieved, the assessee is in appeal before us in the present grounds of appeal.*

> *12. We heard the rival submissions and perused the material on record. The issue in the present grounds of appeal relates to the disallowance of sum of Rs. 26,31,000/- paid to the foreign correspondents and foreign news agencies, this sum was disallowed by the Assessing Officer invoking the provisions of Section 40(a)(i) of the Act for a reason that no TDS deduction was made by the assessee. From the perusal of the material on record, it is not clear whether services are rendered in abroad or rendered in India. Further, the Assessing Officer failed to examine whether the payments partakes the character of royalty or not. In the circumstances, we are of the considered opinion that the matter requires remission to the Assessing Officer for fresh adjudication in accordance with law. Accordingly, the grounds of appeal 4 to 7 filed by the assessee is partly allowed for statistical purpose." (Emphasis Supplied)*

In view of the above, the Ground Nos. 4 & 5 raised in the present appeal are also remitted back to the file of the Assessing Officer for fresh adjudication in terms of above.

10. As regards to Ground Nos. 6 & 7 pertaining to disallowance of bulk incentive allowed to distributors treating it as commission by invoking Section 194H / 40(a)(1a), the Co-ordinate Bench of the Tribunal in the case of the Assessee for the Assessment Year 2009 – 2010 [ITA No. 615 & 706/Chny/2018, decided on 27.05.2019] has held as under:

> *"15. During the course of assessment proceedings before ld. Commissioner of Income Tax (Appeals), the assessee filed additional evidence in the form of ledger copies before ld. Commissioner of Income Tax (Appeals). The ld. Commissioner of Income Tax (Appeals) had called for remand report from the Assessing Officer and the Assessing Officer observed that in the absence of bills and invoices copies, it cannot be said that it is an incentive payment but commission payment and the ld. Commissioner of Income Tax (Appeals) without expressing any independent view on this, simply confirmed the findings of the Assessing Officer. We are of the considered opinion that the issue*

whether it is an incentive or commission can be determined having regard to the terms and conditions between assessee and distributors. There is nothing on record to find out understanding between the parties and the ld. Commissioner of Income Tax (Appeals) simply confirmed the findings of the Assessing Officer without expressing any independent opinion of his own and therefore we remand this issue back to the file of the ld. Commissioner of Income Tax (Appeals) for fresh adjudication and verification of invoices and bills in accordance with law. Thus, the grounds of appeal 8 to 10 filed by the assessee are partly allowed for statistical purpose." (Emphasis Supplied)

In view of the above and respectfully following the above decision of the Co-ordinate Bench of the Tribunal, we remand this issue back to the file of the Learned CIT(A) for fresh adjudication and verification of invoices & bills in accordance with law.

11. As regards to the Ground Nos.8 & 9 relating to common news service charges disallowed for alleged violation of Section 194J by invoking Section 40(a)(ia) of the Act, the Co-ordinate Bench of the Tribunal in the case of the Assessee for the Assessment Year 2009 – 2010 [ITA No. 615 & 706/Chny/2018, decided on 27.05.2019] has held as under:

"16. Grounds 11 to 13 challenges disallowance of common news service charges payment of Rs.66,23,665/-. The Assessing Officer had disallowed the same by holding that news gathering for publication is a technical matter and therefore payment is subject to TDS provisions under the provisions of Section 194J of the Act. The amount was disallowed invoking the provisions of Section 40(a)(ia) of the Act. Even on appeal before ld. Commissioner of Income Tax (Appeals), the disallowance was confirmed by the ld. Commissioner of Income Tax (Appeals). Admittedly, the payment does not fall within the scope and ambit of professional charges but whether nature of services falls within the ambit of technical fees as defined under Explanation 2 to clause (vii) of sub-section (1) of Section 9 of the Act requires to be examined, however, there is no material on record. In the circumstances, we are of the considered opinion that

> *the matter requires remission to the Assessing Officer for fresh adjudication in accordance with law. Accordingly, the grounds of appeal 11 to 13 filed by the assessee are partly allowed for statistical purpose." (Emphasis Supplied)*

Respectfully following the above decision of the Coordinate Bench of the Tribunal, we remand this issue back to the file of the Assessing Officer for fresh adjudication in accordance with law.

12. As regards to the Ground Nos.10 & 11 relating to disallowance of interest paid on amount advanced to sister concerns, the Co-ordinate Bench of the Tribunal in the case of the Assessee for the Assessment Year 2009 – 2010 [ITA No. 615 & 706/Chny/2018, decided on 27.05.2019] has held as under:

> *"21. We heard the rival submissions and perused the material on record. The present grounds of appeal relate to disallowance of proportionate interest on amount advanced to sister companies. There can be no quarrel as to the proposition advanced that when the advances are made out of own funds, no disallowance or interest can be made. But it is a matter of facts which requires to be proved by submitting necessary evidence on record. The lower authorities had recorded categorical findings that no evidence was filed for proving that loans were made to sister companies out of own funds. Similarly, whether the advances were made for business purposes out of commercial expediency is a question of fact which requires to be proved by based on materials on record. Admittedly, assessee could not submit any materials to prove the commercial expediency in advancing the loans to the sister companies. Hence, grounds of appeal 14 & 15 filed by the assessee are dismissed." (Emphasis Supplied)*

However, the Tribunal has rectified the above paragraph vide order dated 16.12.2019 passed in M.P. No. 146/Chny/2019, holding as under:

> *"In Para 21, it may be read as "Grounds of Appeal 14 & 15 are remanded back to the file of the Assessing Officer for fresh consideration in the limit of material placed before us." (Emphasis Supplied)*

In view of the above, Ground No. 10 & 11 are remanded back to the file of the Assessing Officer for fresh adjudication as per law.

13. In view of the above directions contained in paragraph 9 to 12 above to remand the issue back to the file of Assessing Officer or CIT(A), as the case may be, the present appeal is disposed off.

14. In result, present appeal is allowed for statistical purposes.

Order pronounced in the court on 26.08.2022 at Chennai.

Sd/-
(जी मंजूनाथ)
(G. MANJUNATHA)
लेखासदस्य/ACCOUNTANT MEMBER

Sd/-
(राहुल चौधरी)
(RAHUL CHAUDHARY)
न्यायिकसदस्यएवं /JUDICIAL MEMBER

चेन्नई/Chennai,
दिनांक/Dated, the 26th August, 2022
Alindra, PS

आदेशकीप्रतिलिपिअग्रेषित/**Copy to:**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त (अपील)/CIT(A)
4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR
6. गार्डफाईल/GF