

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI
BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

**ITA No.485/Chny/2020
Assessment Year: 2005-06**

M/s.RKKR Holdings Pvt. Ltd.,
No.6/13, North Avenue,
Kesavaperumalpuram,
Chennai-600 028.
[**PAN:** AACCR 2912 F]
(Appellant)

v. The Income Tax Officer,
Central Circle-2(3),
Chennai.

(Respondent)

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| Appellant by | : | Mr.B.Ramakrishnan, FCA |
| Respondent by | : | Ms.Helen Ruby Jesindha, JCIT |
| Date of Hearing | : | 12.04.2022 |
| Date of Pronouncement | : | 22.04.2022 |

ORDER

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-18, Chennai, dated 26.12.2019 and pertains to assessment year 2005-06.

2. The assessee has raised the following grounds of appeal:

1. *For that the of the exparte order of the Learned Commissioner of Income Tax (Appeals) - 19, Chennai u/s.250 of the Income Tax Act, 1961 is opposed to law, facts and circumstances of the case and the principles of natural justice.*
2. *For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of Rs.96,460/- u/s.40(a)(ia) of the Act (Tax effect: Rs.20,592/-)*
 - 2.1. *For that the Learned Commissioner of Income Tax (Appeals) failed to appreciate the fact that the said sum was paid to a non-resident who does not have a PE in India and as per the India-USA DTAA the same is not taxable in India and thus TDS was not deducted.*

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2.2. *For that the Learned Commissioner of Income Tax (Appeals) failed to appreciate the sum paid to the non-resident Mr. Arun Jain was only Rs.80,101/- as against Rs.96,460/- alleged in the assessment order.*

3. *For that the Learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance of foreign travel expenditure amounting to Rs.4,35,267/-. (Tax effect: Rs.92,919/-)*

3.1. *For that the Learned Commissioner of Income Tax (Appeals) ought to have appreciated the fact that the foreign travel expenditure was incurred by the Directors of the company for increasing the business.*

3.2. *For that the Learned Commissioner of Income Tax (Appeals) ought to have appreciated the co-relation between the incurrence of expenditure and increase in income of the appellant.*

4. *For that the appellant objects the levy of interest u/s.234B of the Act amounting to Rs.37,455/-*

5. *For that the appellant objects the levy of interest u/s.234C of the Act amounting to Rs.2,735/-*

For these grounds and such other grounds that may be adduced before or during the hearing of the appeal, it is most humbly and respectfully prayed that the Hon'ble Tribunal may be pleased to delete the disallowances confirmed by the Commissioner of Income Tax (Appeals) and /or pass such other orders as this Hon'ble Tribunal may deem fit.

3. The brief facts of the case are that the assessee company is engaged in the business of providing management services, filed its return of income for the AY 2005-06 on 14.10.2005 admitting total loss of Rs.2,21,522/-. The assessment has been completed u/s.143(3) of the Act on 28.12.2007 and determined total income at Rs.3,10,210/- by making addition towards disallowance of foreign travel expenses amounting to Rs.4,35,627/- and disallowance of consultancy services paid to non-residents u/s.40(a)(i) of the Act, for non-deduction of TDS u/s.195 of the Act, amounting to Rs.96,460/-. The assessee carried the matter before the First Appellate Authority, but could not succeed. The Ld.CIT(A) for the reasons stated in his appellate order dated 26.12.2019, sustained additions made by the AO towards disallowance u/s.40(a)(i) of the Act and disallowance of foreign

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travel expenditure. Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

4. The first issue that came up for our consideration from Ground No.2 to 2.2 of the assessee's appeal is disallowance of payment made to Mr.Arun Jain, USA, towards consultancy and reimbursement of expenses u/s.40(a)(i) of the Act, for non-deduction of TDS u/s.195 of the Act. The Ld.AR for the assessee submitted that there is a difference in amount added by the AO in as much as the expenditure incurred by the assessee without deduction of TDS, was at Rs.46,460/-, whereas, the AO has made addition of Rs.96,460/-. The Ld.AR further submitted that payment made to non-residents is not liable for TDS u/s.195 of the Act, because payment made is not in the nature of royalty or fees for technical services and thus, in the absence of Permanent Establishment in India, the same cannot be disallowed u/s.40(a)(i) of the Act, for non-deduction of TDS u/s.195 of the Act.

4.1 The Ld.DR, on the other hand, supporting the order of the Ld.CIT(A), submitted that the assessee could not furnish necessary evidences to prove that payment made by the assessee to non-residents for rendering services is outside the scope of Sec.195 of the Act and consequently, the amount cannot be disallowed u/s.40(a)(i) of the Act and hence, the AO and the Ld.CIT(A) have rightly disallowed and their orders should be upheld.

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4.2 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. As per the provisions of Sec.195(1) of the Act, when a person makes a payment to non-residents, the same needs to be subject to TDS as applicable under the Act. In case, the assessee claims that impugned payments are outside the scope of provisions of Sec.195 of the Act, then it is for the assessee to prove its claim with necessary evidences. In this case, the assessee neither furnished any evidences to prove that the impugned payments are not liable to tax in India in the hands of non-residents and consequently, the assessee is not required to deduct TDS. Therefore, we are of the considered view that there is no error in the reasons given by the AO as well as the Ld.CIT(A) to sustain additions towards disallowance u/s.40(a)(i) of the Act and thus, we are inclined to uphold the findings of the Ld.CIT(A) and reject the ground taken by the assessee.

5. The next issue that came up for our consideration from Ground No.3 of the assessee's appeal is disallowance of foreign travel expenditure. The AO has disallowed foreign travel expenditure incurred by the assessee towards air ticket purchased for Director to travel to USA, London and also to Singapore on the ground that the assessee could not establish expenditure incurred towards foreign travel and business exigency. It was the explanation of the assessee that Directors have travelled to foreign countries in connection with business, which resulted in increase in turnover for the impugned assessment year.

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5.1 We have heard both the parties, perused the materials available on record and gone through orders of the authorities below. There is no dispute with regard to the fact that two Directors of the assessee company have travelled to USA, London and Singapore. Although, there is no direct nexus between the foreign travel expenses incurred by the assessee and business receipts from those destinations, but fact remains that there is an increase in turnover when compare to previous financial years. Therefore, it can be safely concluded that there is a business exigency in incurring foreign travel expenses by the assessee company. But, fact remains that there is no correlation between huge expenditure incurred for foreign travel and increase in volume of the business of the assessee. Therefore, considering the facts and circumstances of the case, we are of the considered view that a reasonable amount should be disallowed from the foreign travel expenditure incurred by the assessee and thus, we direct the AO to restrict the disallowance of foreign travel expenses to the extent of 50% of actual expenses incurred by the assessee.

6. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on the 22nd day of April, 2022, in Chennai.

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

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Chennai,
Dated: 22nd April, 2022.