

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI PAWAN KUMAR GADALE, JM

ITA No. 350/MUM/2009

(Assessment Year 2005-06)

Techknowledgy Interactive
Partners P. Ltd.
403, Royal Plaza, Lokhandwala
Link Rd, Andheri (W)
Mumbai-400 053

Vs.

ITO 8(3)(3)
Mumbai

(Appellant)

(Respondent)

PAN No. AABCT9422B

Assessee by : Shri. Siddharth Srivastava
Revenue by : Shri. Sanjeev Kashyap, CIT DR

Date of hearing: 10.10.2022

Date of pronouncement : 09.01.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee for assessment year 2005-06 against the appellate order passed by the Commissioner of Income-tax (Appeals)-XXIX, Mumbai dated 29th September, 2008, wherein the learned CIT (A) has confirmed the disallowance under section 40 (a) (ia) of the Income-tax Act, 1961 (the Act) amounting to ₹60,000 and ₹14,71,752/-.
02. The brief facts of the case shows that the assessee is a private limited company engaged in the business of trading in software and software products. It filed its return of income on 31st October 2005, declaring total



income of ₹3,64,579/-. The case was selected for scrutiny and the assessment order under section 143 (3) of the Act was passed on 20th December, 2007, assessing the total income of the assessee at ₹19,16,750/-.

03. The learned assessing officer made disallowance on account of non-deduction of tax at source on
- i. payment of car hire charges which is reimbursed to the directors of the company amounting to ₹60,000/- ,
 - ii. software consultancy charges paid to Orbit Software amounting to ₹7,71,752/- and s
 - iii. Software consultancy charges paid to M/s Springfield Organics amounting to ₹7,00,000/-.

Accordingly, the addition of ₹1,531,752/- was made on account of non-deduction of tax at source on various payments under section 40 (a) (ia) of the Act.

04. The assessee being aggrieved with the order of the learned assessing officer preferred an appeal before the learned CIT (A), who confirmed the above-mentioned disallowance by passing an order dated 29th September, 2008. Therefore, the assessee is aggrieved and is in appeal before us.

05. The learned authorized representative submitted that
- i. with respect to the payment of ₹771,752 software consultancy charges paid to Orbit Software, the



assessee has made tax deduction at source on the above amount and despite this the learned assessing officer has made disallowance invoking the provisions of section 194J of the Act holding that tax is not deducted on consulting charges paid to the above company. The assessee also submitted before the learned CIT (A) that the tax has been deducted and the same should be allowed as a deduction. The learned CIT (A) has also categorically reproduced that the appellant has already deducted tax at source on an amount of ₹7,71,752/- but has not deducted tax at source only on payment of ₹7,00,000/- to Springfield Organics. Therefore, the addition on account of software consultancy charges paid to Orbit Software Company is not correct.

- ii. Disallowance of ₹7,00,000/- made on account of payment to M/s Springfield Organics is related to the purchase of software from that company. He submitted that as assessee is in the business of trading in software the above amount is traded goods for the assessee and therefore, no tax was required to be deducted. The software was also purchased and supplied to a USA based client of the appellant. The software was specifically made by the supplier on the direction of the appellant. The decision of Commissioner of sales tax Maharashtra in the case of Mastek Ltd. (DDQ 11-2001/ADM-5/83/D-7 dated 3rd August, 2004, clearly covers the issue that where software developed specifically for a



customer was held to be goods and since tax was levied thereon. If the sale tax was levied, it was sale of goods and no tax was required to be deducted therefore, there is no violation of the provisions of section 40(a)(ia) of the Act.

- iii. With respect to the disallowance of ₹60,000/- for non-deduction of tax, the assessee submitted that this payment was made as reimbursement of expenses to Mr. Pankaj Dalal, who is Director of the assessee company as car hire charges. During the course of appellate proceedings assessee also gave name of four different persons to whom the above payment of ₹60,000/- was made by Mr. Pankaj Dalal, and this amount was reimbursed. That entire payment of ₹60,000/- is nothing but payment made to Shri Pankaj Dalal, director in the nature of reimbursement towards car hire charges incurred by him from time to time which has not been disputed at all. Mr. Pankaj Dalal has given an evidence that he has made these payments to 4 different persons ranging from ₹12,000/- to ₹17,000/-. Therefore, on this sum the provisions of section 40(a)(ia) of the Act are not applicable.

Accordingly, the learned authorized representative submitted that the disallowance confirmed by the learned CIT (A) is not proper.

06. The learned departmental representative vehemently supported the order of the learned lower authorities.



07. We have carefully considered the rival contentions and perused the orders of the lower authorities.

- i. The first payment is a car hire charges reimbursement to the director of the company amounting to ₹60,000/- on which the learned assessing officer was of the view that tax is required to be deducted. Before us, the assessee has submitted that it is a reimbursement of expenditure to the director of the company who is undergoing frequent travel. These payments have been made by the director of the company to various taxi owners. The instances of four persons are mentioned wherein the payment made by the director to those persons are ₹12,000/- to ₹17,000/-. As the above payment is in the nature of reimbursement and paid to Mr. Pankaj Dalal, we find that no tax is required to be deducted at source on amount reimbursement to Mr. Pankaj Dalal. The addition therefore requires to be deleted to the extent of ₹60,000/-.
- ii. With respect to the software consultancy charges to Orbit Software paid of ₹771,752/-, it was pointed out that assessee has deducted tax at source on the above sum. This fact has also been recorded in the order of the learned CIT (A) at para number 3.4 that assessee has already deducted tax at source on sum of ₹7,71,752/- paid to Orbit Software. As the Id CIT (A) has also recorded the factum of payment on which tax is deducted, there is no reason to sustain



the disallowance. Accordingly, disallowance is not correct. It is also deleted.

- iii. The third payment is with respect to the software consultancy charges paid to Springfield organics. As the assessee has submitted that it is a trader in the software, the above software has been purchased as traded goods to be supplied to a USA client and not to be used by the assessee. Software is goods therefore, in the given instance; it cannot be subjected to tax deduction at source. However, this fact needs to be verified by the learned assessing officer. In view of this, we set-aside this ground of appeal to the file of the learned assessing officer for verification. If the purchases of software is traded goods and supplied to another client and not for the use of the assessee, no tax is required to be deducted at source.

08. In view of this appeal of the assessee is allowed with above direction.

09. In the result, the appeal of the assessee is allowed with above direction.

Order pronounced in the open court on 09.01.2023

Sd/-
(PAVAN KUMAR GADALE)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 09.01.2023



Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

True Copy//

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai