

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 2424/Del/2018 : Asstt. Year : 2011-12

Maharashtra Seamless Ltd., Plot No. 5, 2 nd Floor, Pusa Road, New Delhi-110005	Vs	DCIT, Circle-6(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AAACM0511B		

Assessee by : Sh. Ved Jain, Adv.

Revenue by : Sh. B. M. Singh, Sr. DR

Date of Hearing: 09.11.2021

Date of Pronouncement: 14.02.2022
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-20, New Delhi dated 06.03.2018.

2. Following grounds have been raised by the assessee:

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.

2(i) On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the addition of Rs.8,49,814/- made by the Ld. AO on account of legal and professional charges under section 40(a)(i) of the Act.

(ii) That the disallowance has been confirmed holding the payment to be fee for technical services,

misinterpreting the provision of section 9 as well as that of the DTAA between India and USA.

3. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the disallowance of an amount of Rs.9,59,430/- made by the AO by invoking the provision of Rule 8D under section 14A of the Act.

4. That the disallowance has been confirmed despite the fact that own funds of the assessee are more than the investment made.

5. On the facts and circumstances of the case, learned CIT(A) has erred both on facts and in law in confirming the disallowance despite the fact that no expenditure has been incurred by the assessee in relation to the exempt income earned.”

3. The assessee filed return of income on 20.09.2011 declaring income of Rs.446,16,34,115/-. The assessee company is engaged in the business of manufacturing of Seamless, ERW Pipes & Tubes and Wind Power Generation and trading of Pipes & Tubes.

Legal and Professional Charges:

4. The AO observed that the assessee has not deducted TDS on the payments made in foreign currency to the entities namely, Asian Metals Ltd., China and SM International Germany. The AO held that the payments for the “services” are in the nature of managerial and technical services covered under provisions of Section 9(1)(vii) of the Income Tax Act, 1961. It was submitted before us that these payments are not chargeable to tax and filed all the supporting evidences with respect to such payments before the AO and the same are also placed in the paper book. Copy of certificate given by a

Chartered Accountant in form no. 15CB along with the information by the assessee in form no. 15CA as required to be filed before making any foreign currency remittance were furnished before the Assessing Officer and are also placed in the paper book. It was submitted that one payment of Rs.52,560/- has been made to subscribe for information online for Iron & Steel prices from China. The subscription was paid earlier for two years. It is a renewal of subscription and claimed in the A.Y. 2009-10 and A.Y. 2010-11 which was accepted by the revenue. The copy of the party's invoice and payment advice of HDFC bank have been perused. On examination of the facts and evidences before us, we hold that this cannot be treated u/s 40(a)(ia).

5. With regard to reimbursement of travelling expenses from the Germany based company, the accounts have been reimbursed by the vendor in connection with the visit of the employees with regard to examination of the shipment consisting of rolled coils, non-alloy steel rolls at supplier's premises.

6. The Id. CIT(A) held that the amounts have been reimbursed in connection with examination of quality, quantity and weight whether in conformity with the contract or invoice and held that such inspection and examination services are technical services provided. The total amount thus reimbursed was Rs.7.63 lacs. We find that the inspection and examination of the goods before shipment is a common practice and it cannot be treated as a technical service. The inspection with regard to quality, quantity and weight of the product pre-

shipment of rolling coils, non-alloy steel rolls cannot be treated as technical and managerial services as per the provisions of the DTAA and Section 9(1) of the I.T. Act.

7. Keeping in view, the entire peculiar facts of the instant case, we hold that decision of the Id. CIT(A) cannot be affirmed on this ground.

Disallowance u/s 14A:

8. The assessee company has not earned any exempt income during the year under reference hence keeping in view the judgment in the case Cheminvest Ltd. Vs. ITO (Delhi HC), no disallowance is called for u/s 14A of the Income Tax Act, 1961.

9. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 14/02/2022.

Sd/-

(Amit Shukla)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 14/02/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR