



**THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 29.09.2008

+ **ITA 734/2008**

**COMMISSIONER OF INCOME TAX  
DELHI – IV, NEW DELHI**

... Appellant

- versus -

**EDS ELECTRONICS DATA SYSTEMS  
(INDIA) PVT. LTD**

... Respondent

**Advocates who appeared in this case:**

For the Appellant : Ms Prem Lata Bansal

For the Respondent : Mr Aseem Mowar with Ms Mallika Poswal and  
Ms Sheena Piplani

**CORAM:-**

**HON'BLE MR JUSTICE BADAR DURREZ AHMED**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether the judgment should be reported in Digest ? Yes

**BADAR DURREZ AHMED, J (ORAL)**

1. This appeal under Section 260 A of the Income Tax Act, 1961 (hereinafter referred to as the "said Act") is directed against the Tribunal's order dated 10.03.2004 pertaining to the assessment year 2000-2001.

2. The learned counsel for the appellant/ revenue pressed two



expatriates in the sum of Rs 4,03,31,726/-. According to the revenue the said payment could not be treated as an accrued liability in the year in question because the Reserve Bank of India's permission for such remittances had been received in the subsequent year. The case of the revenue is that since the approval for remittances had been received in the subsequent year, there could not have been an accrued liability in the current year.

3. The other issue sought to be raised by the revenue pertains to the provision made for bad/ doubtful debts for the purposes of computing book profits under Section 115 JA of the said Act. The Assessing Officer made an addition on account of the provision which had been claimed by the assessee. The same had been deleted by the Income Tax Appellate Tribunal. We find that this issue is no longer debatable inasmuch as it stands settled by several decisions of this Court as well as the Supreme Court. The said decisions are:-

1. **CIT v. Eicher Ltd: 287 ITR 170;**
2. **CIT v. HCL Comnet Systems & Services Ltd: 292 ITR 299;**
3. **Commissioner of Income Tax-IV, New Delhi v. M/s HCL Comnet Systems & Services Ltd:** Civil Appeal No. 5800/2008 by a judgment and order dated 23.09.2008



The decision taken by the Tribunal in deleting the addition made by the Assessing Officer is in line with these decisions. Consequently, the question proposed on this issue by the revenue does not call for any further consideration by this Court.

4. Coming to the first issue sought to be raised by the revenue, we find that the same is also covered by the decision of this Court in the case of *Bhai Sunder Dass & Sons Co. P. Ltd v. CIT: 259 ITR 33.*

The factual background in respect of this issue is that the assessee entered into an agreement with EDS Global Services Inc., USA on 21.09.1999. Under the said agreement EDS Global Services Inc., USA provided the assessee with manpower for executing software projects. In consideration for services rendered, the assessee reimbursed the employment cost of the personnel, who were deputed for the purpose, to EDS Global Services Inc., USA, at the agreed rates. The assessee, therefore, made a provision of Rs 4,03,31,726/- in the year in question under the head “expatriate cost” for remuneration to be reimbursed to EDS Global Services Inc., USA. The provision had been made on the basis of invoices raised by EDS Global Services Inc., USA on the assessee. During the course of the assessment proceedings, the Assessing Officer had noticed that the assessee had filed an application with the Reserve Bank of India for approval of the agreement and



had been received after the expiry of the previous year relevant to the assessment year under consideration. The Assessing Officer disallowed the claim of the assessee on the premise that since the approval of the agreement had not been received during the year in question, no liability under a valid contract arose. Reliance had been placed on the decision of the Supreme Court in the case of *Nonsuch Tea Estate Ltd v. CIT: 98 ITR 189*. The learned counsel for the revenue also advanced the very same argument and placed reliance on the said decision of the Supreme Court.

5. We may note that the Commissioner of Income Tax (Appeals) had deleted the addition made by the Assessing officer after holding that the assessee was following the mercantile system of accounting and the liability had accrued although the same was to be discharged on a later date.

6. In the revenue's appeal before the Tribunal, the stand taken by the Assessing Officer was reiterated. However, after hearing the parties and after going through the material available on record, the Tribunal noted that the genuineness of the agreement between the assessee and EDS Global Services Inc., USA was not in doubt and that the assessee was following the mercantile system of accounting. The



because of the terms of the contract entered into between the parties. It is in this context that the Tribunal concluded that the approval of the Reserve Bank of India for remittance of the payment would not come in the way of accrual of liability under the mercantile system of accounting. The Tribunal examined the Supreme Court decision in the case of *Nonsuch Tea Estate Ltd (supra)* and noted that the said case was distinguishable because in that case the approval of the Central Government was a pre-condition before which commission could not be paid to managing agents. Since the approval of the Central Government had not been received during the relevant year, the Supreme Court arrived at the conclusion that the liability had not accrued in that year. The Tribunal noted, and in our view correctly, that the assessee's liability to pay the remuneration of the managing agents arose only when the government conveyed its approval and not prior to that date.

7. In the present case, the approval of the Reserve Bank of India was not a pre-condition for entering into an agreement between the assessee and EDS Global Services Inc., USA. The permission of the Reserve Bank of India was required only for the purpose of remitting the funds abroad as per the agreement. The Tribunal noted as a finding of fact that the liability accrued for the services rendered by



the case of the revenue that the approval of the Reserve Bank of India was required before hiring of the services of EDS Global Services Inc., USA. The Tribunal, therefore, concluded that the liability which accrued under the mercantile system of accounting would be deductible in the year of accrual itself. Consequently, the Tribunal confirmed the order passed by the Commissioner of Income Tax (Appeals) in deleting the addition made by the Assessing Officer.

8. We are of the view that the decision taken by the Tribunal is absolutely correct in law. In *Nonsuch Tea Estate Ltd (supra)* the Supreme Court had noted that there was an absolute bar on the commission being paid to the managing agents unless and until the Central Government had approved such appointments in terms of Section 326 of the Companies Act, 1956. In the present case, there is no such express bar. In fact, the entire argument before the authorities below has proceeded on the basis that the approval for remittances was granted by the Reserve Bank of India in the year subsequent to the year in question. As noted in the Tribunals' order it is not the case of the revenue that the approval of the Reserve Bank of India was required before hiring of the services of EDS Global Services Inc., USA, meaning thereby that entering into the agreement between the assessee and EDS Global Services Inc., USA was itself not in question. In



observations in an earlier case, namely, *CIT v. A. Gajapathy Naidu* : *53 ITR 114* wherein it had observed that the mercantile system of accountancy brings into credit what is due immediately it becomes legally due and before it is actually received; and it brings into debit expenditure of the amount for which a “legal” liability has been incurred before it is actually disbursed. It is in the context of the expression “legal liability” that the Supreme Court in the case of *Nonsuch Tea Estate Ltd (supra)* came to the conclusion that unless and until the approval of the Central Government was taken for the appointment of managing agents, the bar of Section 326 would operate and, therefore, any liability could not be considered to be a “legal” liability unless and until the approval of the Central Government was taken. In the present case, as we have already noted above, there was no legal bar to the assessee entering into the agreement with EDS Global Services Inc., USA. The only question was of seeking approval for remittances of the amounts outside India for which approval of the Reserve Bank of India was required. The fact that the liability had accrued as per the contract cannot be disputed. Once that is the case, then, where the assessee follows the mercantile system of accounting, it cannot be said that the liability had not accrued in terms of the contract.



*Estate Ltd (supra)*. There also this Court noted that in *Nonsuch Tea Estate Ltd (supra)* there was an absolute restriction against the appointment and re-appointment of managing agents without the approval of the Government and, therefore, till such approval had been obtained and granted there was no question of liability to pay the remuneration accruing, which was not the case in *Bhai Suder Dass (supra)*. In *Bhai Suder Dass (supra)* also there was absolutely no restriction on the assessee entering into an agreement with any person resident outside India for rendering of services and the restriction was only limited to the remittances of money abroad without the permission of the Reserve Bank of India. We find that the case of *Bhai Suder Dass (supra)* is squarely applicable to the facts of the present case. The Tribunal has correctly applied the law on the basis of the facts determined by it.

10. Therefore, on both the issues proposed by the revenue, we find that no substantial question of law arises for our consideration. The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**RAJIV SHAKDHER, J**

**September 29, 2008**