



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

+ **ITA No.411 of 2011**

% Reserved on: 16th September, 2011.
Pronounced on: 18th November, 2011.

HINDOE TECHNOLOGIES PVT. LTD. . . . APPELLANT

Through: Mr. R.M. Mehta, Advocate.

VERSUS

DEPUTY COMMISSIONER OF INCOME TAX . . .RESPONDENT

Through: Mr. N.P. Sahni, Sr. Standing
 Counsel.

CORAM :-

HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. The present appeal seeks to challenge the order dated 30.4.2010 passed by the Income Tax Appellate Tribunal (hereinafter referred to as 'the Tribunal') for the assessment year 2006-07. Briefly stated, the appellant/assessee is into the business of providing CAE/design services to various customers in Indian and abroad. It is the case of the assessee that the assessee company was started by four



- persons, who were also its Directors, viz., (i) Mr. Ambuj Sharma, who has a Master's degree in Mechanical Engineering from IIT Roorkee; (ii) Mr. R. Srinivasan, who has a Bachelors Degree in Production Engineering from Bharathiar university, Coimbatore; (iii) Mr. S. Nakkeeran, who has a Master's degree in Mechanical Engineering in Designs from Anna University, Tamil Nadu and (iv) Mr. B. Sridhar, who has a Bachelor degree in Electricals and Electronics from BITS, Pilani (Rajasthan).
2. Vide Board's resolution dated 21.3.2005, the following remuneration was fixed by the appellant as payable to its Directors for Financial Year 2005-06 (relevant to the Assessment Year 2006-07):
- (i) Mr. Ambuj Sharma @ ₹60,000/- per month.
 - (ii) Mr. R. Srinivasan @ ₹40,000/- per month.
 - (iii) Mr. S. Nakkeeran @ ₹60,000/- per month
 - (iv) Mr. B. Sridhar @ ₹60,000/- per month.
3. It was also decided by the assessee company that while the remuneration payable to Mr. Ambuj Sharma, Mr. S. Nakkeeran and Mr. B. Sridhar would be payable as 'consultation fee', the remuneration payable to Mr. R. Srinivasan would be payable as 'salary'.



4. The Assessing Officer (AO) in his assessment order, made an *ad hoc* disallowance of ₹14,50,000/- out of the consultancy fees of ₹22,37,850/- paid to the three Directors under Section 40A(2)(b) of the Income Tax Act ('the Act' for brevity). Out of the aforesaid total disallowance of ₹14,50,000/-, an *ad hoc* disallowance of ₹12,50,000/- was made out of total consultancy fee of ₹13,56,425/- paid to the two Directors, viz., Mr. B. Sridhar and Mr. S. Nakkeeran whereas the remaining disallowance of ₹2,00,000/- was made out of the consultancy fee of ₹8,81,425/- paid to another Director, Mr. Ambuj Sharma.
5. The disallowance of ₹12,50,000/- out of the consultancy fee paid to Mr. B. Sridhar and Mr. S. Nakkeeran, was made by the AO on two grounds:
- (i) That a salary of ₹4,80,000/- paid to the said two Directors (Mr. B. Sridhar and Mr. S. Nakkeran) was in addition to the consultancy fee; and
 - (ii) That the assessee failed to produce professional degrees and income tax returns (ITRs) of the aforesaid two Directors, viz., Mr. S. Nakkeeran and Mr. B. Sridhar.

Whereas the disallowance of ₹2,00,000/- out of the consultancy fee paid to Mr. Ambuj Sharma, was made by the



AO on the ground that the said Director had claimed expenses against the consultancy fee in his return of income tax.

6. The appellant/assessee filed appeal against the aforesaid order before the CIT (A). It was argued that the AO failed to appreciate that the assessee had paid salary and consultancy fees to different Directors. It was submitted that the assessee had paid ₹2,00,000/- to one Director, viz., Mr. R. Srinivasan whereas consultation fee was paid to the remaining three Directors, viz., Mr. Ambuj Sharma, Mr. S. Nakkeeran and Mr. B. Sridhar. It was also submitted that this fact was duly brought to the notice of the AO from the profit and loss account along with the relevant schedule containing the details of salary and the consultancy fee paid to the Directors. It was, thus, submitted that the observation of the AO that the said two Directors were paid consultation fee along with salary is wrong, perverse and against the record.
7. In respect of the second ground, the assessee submitted that the AO was duly informed about the professional qualifications of Mr. S. Nakkeeran and Mr. B. Sridhar. However, as the said two Directors had already left the assessee company, the assessee could not provide the



degrees and the copies of ITRs of the said Directors, but to assist the AO, the assessee vide its letter dated 26.8.2008, along with the proof of resignation of the said two Directors, also provided the Permanent Account Number and residential address of the said two Directors and requested the AO to call for the information directly from the said two Directors. But, the AO failed to make any enquiries in this behalf and made the disallowance without any basis whatsoever.

8. Before the CIT (A), the assessee had also produced degrees of both the aforesaid Directors and also placed copy of ITR of Mr. B. Sridhar, as the assessee had received the same by that time from the respective universities from where the Directors had passed out. Besides, the assessee also submitted that all the Directors were earlier working with the blue chip companies like, NIIT, Hero Honda, Mechanical Dynamics (USA) before joining hands and starting the assessee company on their own. It was also assessed that if they had not formed this company and were doing a job, each of them could fetch a salary of more than ₹1 lac per month, while the assessee company was paying them much lesser. It was further submitted that similar remuneration



was paid to all the Directors in the earlier years also and were never disallowed. It was further submitted that the entire business of the assessee company right from the marketing to the project execution was done by all the Directors themselves and no other highly qualified person was employed in the company. The assessee also highlighted that there had been an increase in business from the previous year, and the company had executed orders worth ₹101.47 lacs, which was due to the personal contacts, experience and professional competence of the Directors and in this regard copy of profit and loss account was also provided to the AO. A profile of the assessee company was also provided to the AO to show the nature of the business of the assessee company and the involvement of the Directors in the same.

9. However, the CIT (A) did not accept the case of the appellant and maintaining the order of the AO, dismissed the appeal. The assessee filed further appeal before the Tribunal, which has met with the same fate. It is under these circumstances, the instant appeal is filed under Section 260A of the Act.



10. Though number of substantial questions are raised, for our purpose, question of law No. (a) would suffice, as it covers all the aspect. It reads as under:

“Whether the Tribunal was correct in law and on facts in upholding the order of the CIT (A) and the AO and confirming the disallowance of ₹14,50,000/- of consultancy fees paid to the Directors under Section 40A(2)(b) of the Income Tax Act, 1961 on the ground that payment of consultancy fee was in addition to the payment of salary to the Directors when, in reality, only consultation fee was paid to the three Directors?”

11. When this matter came up for hearing on 24.2.2011, submission for the learned counsel for the appellant was that the Tribunal had not considered various pertinent aspects and had also proceeded on wrong presumption. His entire thrust, therefore, was that the matter be remitted back to the Tribunal for afresh consideration in view of the judgment of this Court in **Mayur Recreational Dev Services Ltd. Vs. CIT**, 313 ITR 190. Learned counsel reiterated the submissions were where advanced before the Authorities below and noted above. He referred to the Board’s resolution for remuneration and salary to be paid to the Directors and submitted that there were following factual inaccuracy in the order of the Tribunal:

- (1) The Tribunal has noted that “we find that this is an admitted position that this payment of



consultancy fees to these Directors are paid in addition to payment of remuneration to them.”

It is argued that this observation is wrong as the assessee had paid the salary and consultancy fee to the different Directors. The assessee paid ₹4.82 lacs to Mr. R. Srinivasan, whereas consultancy fee was paid to the remaining three Directors.

(2) In Para 6, the Tribunal has observed:

“Neither any Board resolution is made available nor any agreement is brought on record with regard to payment of consultancy fees.”

It is submitted that this observation is erroneous, since the powers were duly covered by the Board’s resolution, which was placed on record before all the Authorities below and even CIT (A) recorded this fact in its order.

12. We are in agreement with the submission of the learned counsel for the appellant that these are factual errors committed by the Tribunal, which have influenced its decision. That apart, the learned counsel has referred to certain other evidence placed on record, which is not considered by the Tribunal. In these circumstances, we



accept the contention of the learned counsel for the appellant that it is a fit case to be remitted back to the Tribunal for afresh adjudication. The impugned order is accordingly set aside. We may clarify that we have not made any observations on the merits of this case. It would be for the Tribunal to take a view, afresh, after hearing the counsel for the parties and taking into consideration the correct factual position.

13. This appeal is disposed of in the aforesaid terms.

(A.K. SIKRI)
JUDGE

(SIDDHARTH MRIDUL)
JUDGE

NOVEMBER 18, 2011

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