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

% **DECIDED ON: 06.05.2014**

+ ITA 29/2014
CM APPL.1598-1600/2014

**CHEIL INDIA PRIVATE LIMITED (FORMERLY KNOWN AS
CHEIL COMMUNICATIONS INDIA PRIVATE LIMITED)**

..... Appellant

Through: Mr. Salil Kapoor with Mr. Vikas Jain,
Mr. Sanat Kapoor and Mr. Ankit Gupta,
Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX Respondent

Through: Mr. Kamal Sawhney, Sr. Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE VIBHU BAKHRU

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

1. The following question of law arises for consideration: -
“Whether the Tribunal fell into error in holding that the sum of ₹1,66,99,360/- had to be treated as income and, therefore, brought to tax.”
2. With consent of the counsel for the parties, matter was heard finally.
3. The appellant showed that, during the period relevant to AY 2008-09, it had received ₹1,66,99,360/- from two parties, i.e., Samsung India Electronics Pvt. Ltd. and a Samsung



Telecommunication India Pvt. Ltd. The AO by issuing show cause asked: “why the amount should not be treated as income during the relevant year”. The assessee claimed that in terms of the provisions of the Income Tax Act, 1961 the tax had to be deducted from the payer which was done. The appellant also stated that the amounts were treated as an advance, given the nature of its business which was to book and publish advertisements on behalf of its clients. It was submitted that the amount continued to be treated as an advance and were appropriated towards the expenses actually incurred and thereafter reflected as such. It was further urged that the commission payable to the assessee was deducted from the advance so received and disclosed as the income. Upon a reference to the Dispute Resolution Panel (DRP) on the basis of draft assessment order, the panel directed as follows: -

“4.6 Out directions on this issue:

We have considered the facts of the case. It is noticed that AO has clearly brought on record the discrepancy. The amount under reference is received by the assessee. The payer has already treated this amount as expenditure during the year. If the revenue is recognized in the case of the assessee during this year itself it will lead to anomaly. Therefore, we do not find any infirmity in the proposed action of the AO. An alternate arguments has been raised by the assessee of not giving credit of pass through cost in case the amount is being treated as revenue. The same also could not have been entertained by AO as no detail has been provided by the assessee as how much is pass through cost incurred during the year relating to these receipts and confirmation thereof, if any. Therefore alternate objection of the assessee also cannot be entertained and therefore rejected.”



4. The assessee's appealed to the ITAT. The Tribunal in its order after recording the submissions, directed a limited remission in the following terms: -

“13. We have heard the rival contentions in light of the material produced and precedent relied upon. We find that the parties who have paid the said advance has clearly informed that the amount in question has been treated as expenses incurred by them during the year. Hence, the plea of the assessee to treat the amount received as advance is not very cogent. However, we find that there is considerable cogency in the assessee's submissions that proper credit of pass through cost should be taken, if the amount is being treated as revenue receipt. Since we have already remitted the first issue in this case to the file of the Assessing Officer. We find that interest of justice will be served, if this issue is also remitted to the file of the Assessing Officer. The Assessing Officer will examine the assessee's submission in this regard regarding the pass through cost in this case. We hold and direct accordingly.”

5. The assessee relies upon paragraph 12 of Accounting Standard No.9 which reads as follows: -

“12. In a transaction involving the rendering of services, performance should be measured either under the completed service contract method or under the proportionate completion method, whichever relates the revenue to the work accomplished. Such performance should be regarded as being achieved when no significant uncertainty exists regarding the amount of the consideration that will be derived from rendering the service.”

6. It also relies upon the other relevant portion of the Accounting Standard No.9 pertaining to advertising and insurance agency



commission, which reads as follows: -

“2. Advertising and insurance agency commissions

Revenue should be recognised when the service is completed. For advertising agencies, media commissions will normally be recognised when the related advertisement or commercial appears before the public and the necessary intimation is received by the agency, as opposed to production commission, which will be recognised when the project is completed. Insurance agency commissions should be recognised on the effective commencement or renewal dates of the related policies.”

7. It is argued that in the light of the above provisions, the books of accounts and other documents maintained by the assessee consistently showed that the amounts were treated as advance and the actual expenditure was appropriated as and when the occasion arose. The learned counsel submitted that for the succeeding assessment year, the revenue was recognized in the books of accounts and taxes were paid, accordingly.

8. We have considered the submissions of the parties. Even though the DRP and the Tribunal appear to have accepted the merit of the assessee's contention, they have not fully endorsed the position, consistently projected by it, that the amounts received were not in the nature of income. As to the exact arrangement that existed between the assessee and its customers, i.e., Samsung India Electronics Pvt. Ltd. and Samsung Telecommunication India Pvt. Ltd. who used to remit the amounts towards the expenditure to be incurred by them, has not been discussed. Counsel for the assessee had relied upon a tabular statement, the 18 invoices raised and the net income reported.



This Court is of the opinion that in the absence of any investigation by the lower authority as to the contractual arrangement that existed between the assessee and its customers, the AO had to necessarily carry out the necessary enquiry or investigation to see the amounts received and how they were expended. For these reasons, the matter is remitted to the AO for consideration on all aspects and not merely on the questions indicated by the Tribunal. In case, it is held that the amount is income, the consequential benefit is to be given to the assessee for the subsequent years.

9. The appeal is partly allowed in the above terms. All the pending applications also stands disposed of.

**S. RAVINDRA BHAT
(JUDGE)**

**VIBHU BAKHRU
(JUDGE)**

MAY 06, 2014
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