IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'C'

BEFORE SMT. P MADHAVI DEVI, JUDICIAL MEMBER AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.1260/Bang/2011 &
ITA No.712 & 713/Bang/2012
(Asst. Year - 2011-12)

M/s Bosch Ltd.,
Hosur Road, Adugodi,
Bangalore-560 030. . Appellant

PAN No.AAACM 9840 P.

Vs.

The Income-tax Officer,
International Taxation, Ward-1(1),
Bangalore. . Respondent

Appellant by : Shri S Anantha, C.A

Respondent by : Shri Etwa Munda, CIT

Date of Hearing : 08-11-2012

Date of Pronouncement : -11-2012

O R D E R

PER P MADHAVI DEVI, JUDICIAL MEMBER :

All these three appeals are filed by the assessee. The relevant assessment year is 2011-12. The appeals are directed against the order of the Commissioner of Income-tax - (Appeals) IV at

Bangalore dated 14.10.2011 in confirming the order of the DIT, International Taxation, Bangalore holding the assessee to be liable to deduct tax at source u/s 195 of the Income-tax Act. The appeals arises out of the assessment competed u/s 248 of the I.T Act.

2. At the time of hearing, the learned counsel for the assessee has filed its chart to show how the grounds are covered in favour or against the assessee by the decision of this Tribunal in the assessee's own case in ITA Nos.556, 557 and 558 of 2011 dated 11.10.2012. Going by the said chart, we find that as regards the issue of the application of the provision of sec. 206AA, the non resident who is required to obtain PAN as per sec. 139A(8)(d) read with Rule 114C(b) of the Income-tax Act, we find that the Tribunal at para 21 has held as under :

> *"21. As regards these appeals, we find that the services of repairs by the non-residents rendered include its assistance in analyzing and solving technical problem and disfunctions by locating and mending the cause of the disfunction by providing telephonic advice, analysis and assistance to the operator and for preventive maintenance. These services clearly fall within the purview of definition of 'fees for technical services'. In*

these cases, the services are not mere repairs but are towards preventive maintenance which clearly show that the recipients are providing technical assistantce and services to the assessee in India. Therefore the assessee is liable to withhold tax from the payment of fees for technical services. In view of explanation 2 to clause (vii) of sec. 9(1), the 'fees for technical services' is chargeable to tax in India and the assessee is liable to deduct tax at source.

Now, having held that the services rendered by the non-residents are technical services, we will have to examine the applicability of sec. 206AA of the Income-tax Act. The assessee's contention has been that the assessee being a non resident is not required to apply for and obtain PAN No. by virtue of Rule 114(C)(b) of Income-tax Rules read with sec. 139A(8)(d) of the Income-tax Act. We cannot agree with this contention of the assessee. The provisions of sec. 206AA clearly overrides the other provisions of the Act. Therefore, a non resident whose income is chargeable to tax in India has to obtain PAN No. and provide the same to the assessee deductor. The only exemption given is that non-resident whose income is not chargeable to tax in India are not required to apply and obtain PAN No. However, where the income is chargeable to tax irrespective of the residential status of the receipeints, every assessee is required to obtain the PAN No. and this provision is

brought in to ensure that there is no evasion of tax by the foreign entities. The assessee's reliance upon the decision of the Hon'ble Karnataka High Court in the case of Kowsalyabai (cited Supra), in our opinion, is misplaced and distinguishable on facts from the facts of the case before us. In the case of Kowsalyabai and others, the recipients of the interest were residents of India and their total income was less than the taxable limit prescribed by the relevant Finance Act. It was in these facats and circumstances that the Hon'ble High Court has held that where the recipients of the 'interest income' were not having income exceeding taxable limits, it was not required to obtain the PAN No. But in the case before us, the assessee's are non-residents and admittedly the income exceeds the taxable limit prescribed by the relevant Finance Act. In the circumstances, the recipients are bound and are under an obligation to obtain the PAN No. and furnish the same to the assessee. For failure to do so, the assessee is liable to withhold tax at the higher of rates prescribed u/s 206AA of the Income-tax Act i.e 20% and the CIT(A) has rightly held that the provision of sec. 206AA are applicable to the assessee.

3. Respectfully following the same, this ground of appeal is rejected.

4. As regards the ground relating to grossing-up u/s 195A of the Income-tax Act to be done at 20% at rates in force i.e 10% in the instant case, we find that this issue is covered in favour of the assessee by holding as under :

> *"22. As regards the grossing up u/s 195A of the Income-tax Act is concerned, we find that the provision reads as under :*
>
> *"[In a case other than that referred to in sub-section (1A) of sec. 192, where under an agreement] or other arrangement, the tax chargeable on any income referred to in the foregoing provisions of this Chapter is to be borne by the person by whom the income is payable, then, for the purposes of deduction of tax under those provisions such income shall be increased to such amount as would, after deduction of tax thereon at the rates in force for the financial year in which such income is payable, be equal to the net amount payable under such agreement or arrangement."*
>
> *23. Thus, it can be seen that the income shall be increased to such amount as would after deduction of tax thereto at the rate in force for the financial year in which such income is payable, be equal to the net amount payable under such agreement or arrangement. A literal*

reading of sec. implies that the income should be increased at the rates in force for the financial years and not the rates at which the tax is to be withheld by the assessee. The Hon'ble Apex Court in the case of GE In dia Technology (cited Supra) has held that the meaning and effect has to be given to the expression used in the section and while interpreting a section, one has to give weightage to every word used in that section. In view of the same, we are of the opinion that the grossing up of the amount is to be done at the rates in force for the financial year in which such income is payable and not at 20% as specified u/s 206AA of the Act.

5. Respectfully following the same, we hold that we allow this ground of appeal.

6. As regards ground No.4, the maintainability of the appeal before the CIT(A) u/s 248 of the Income-tax Act, we find that this issue is covered in favour of the assessee by the decision of the Jurisdictional High Court dated 24.9.2009 in ITA No.2808 of 2005, wherein it was held at para 87 and 88 as under :

"88. The statutory provisions in the section is very clear on this aspect and the Tribunal is correct in holding that the appeals were maintainable and could

not have been disposed of at the threshold and the CIT(A) could not have disposed of the appeals at the threshold, as not maintainable.

89. However, insofar as the scope of examination of an appeal u/s 248 is concerned and in the light of the view, that we have expressed in the other appeals, that view equally applies to the present appeals also and while the remand order passed by the Tribunal is left undisturbed and the appeals of the Revenue are dismissed, the observations and the interpretation of law that we have placed on the provisions of sec. 195 of the Act, as above necessarily governs the examination of the appeal u/s 248 of the Act, when the CIT(A), takes up the appeals for disposal on the merits of the matter. For statistical purpose, these appeals are dismissed."

7. Respectfully following the same, we hold that the appeals of the assessee against the order of the AO and before the CIT(A) are maintainable even if the assessee has deducted tax at source u/s 198 of the Income-tax Act and remitted the same on Government account. This ground is accordingly allowed.

8. In the result the appeals filed by the assessee are partly allo

wed.

Order pronounced in the open court on **30th Nov, 2012.**

Sd/-	**Sd/-**
(JASON P BOAZ)	**(MADHAVI DEVI)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Vms.

Bangalore
Dated : 30/11/2012

Copy to :

1. The Assessee
2. The Revenue
3. The CIT concerned.
4. The CIT(A) concerned.
5. DR
6. GF

By order

Sr. Private Secretary, ITAT, Bangalore.