

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

**BEFORE SHRI S.K.YADAV, JUDICIAL MEMBER  
AND  
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

**IT (IT) A No.183 (Bang) 2015  
(Assessment year : 2011-12)**

M/s Fosbel Incorporated  
C/o Walker Chandiook & Co.LLP  
Wings, First Floor,  
16/1, Cambridge Road, Ulsoor,  
Bangalore -560 008

**PAN No.AABCF6056H**

Appellant

**Vs**

The Asst. Director of Income Tax,  
Circle-1(1), Intl. Taxation,  
Bangalore

Respondent

**Assesee by : Shri Farrokh V.Irani, CA  
Revenue by : Shri M.K.Biju, JCIT**

**Date of hearing : 06-12-2016  
Date of pronouncement : 16-12-2016**

**ORDER**

**PER A. K. GARODIA, A. M :**

This is assessee's appeal directed against the order of Id. CIT (A)-  
12, Bangalore dated 19-12-2014 for assessment year 2011-12.

2. The assessee has raised the following grounds:

*"1. The income in consideration cannot be categorized as fee for included services under the India-US Double Taxation Avoidance Agreement (The DTAA).*

*1.1. That on the facts and in the circumstances of the case, the CIT(A) erred in treating the service receipts of INR24,117,667 s income accrued or arised in India under fee for technical services Further, the ld. CIT(A) erred in treating the mentioned service receipts as fee for included services under the DTAA, irrespective of the fact that the appellatant did not make available any technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design as per Article-12(4) of the DTAA”.*

3. It was submitted by the ld.AR of the assessee that in the present case, the dispute is this as to whether the assessee has made available the technical know-how to its customers in India because as per Article-12(4) of the DTAA between India and US, if the technology is not made available then this cannot be considered as income in the hands of the entity who have received consideration for supplying the technical know-how or technical services. In support of this contention, he placed reliance on a judgment of the Hon’ble Karnataka High Court rendered in the case of CIT Vs De Beers India Minerals Pvt.Ltd., 346 ITR 467(Kar.) He also placed reliance on the Tribunal order rendered in the case of ABB Inc. Vs DDIT International Taxation, Circle-1(1), Bangalore. Regarding this allegation of the AO and the ld. CIT(A) that he required details were not made available, he submitted that all the details were made available before both the authorities and in support of his contention, he has drawn our attention to letter dated 24-02-2014

submitted to the AO along with the Annexure and details mentioned therein copy of which is available on pages 1 to 16 of the paper book. In particular, our attention was drawn to page-4 of the paper book which is an invoice raised by the assessee company on Gujarat Guardian Limited, as per which the invoice is raised for services rendered by foreign technicians for carrying out ceramic welding repairs in the furnace of the customer and for Pot floor pouring. He also submitted that all other invoices are also for similar services in connection with ceramic welding repairs of the furnace of various customers and no technical know-how was made available by the assessee company to any of the customers and therefore, as per this Article-12(4) of India US DTAA, the receipt of the assessee company on account of service charges is not liable to tax in India. He further submitted that copy of one more letter submitted to the AO on 06-03-2014 is available on pages 17 – 30 of the paper book which includes job assignment chart for Andre Weary for various parties and from the same, it cannot be said that any technical know-how was made available by the assessee company to any of its customers.

4. As against this, the ld. DR of the revenue supported the order of the ld.CIT(A) and in particular our attention was drawn to para-6 of the order of the ld. CIT(A) as available on pages 37 to 40 of his order.

5. We have considered the rival submissions. We find that it is noted by the ld. CIT(A) in para-6 of his order that the assessee could not provide exhaustive details before the AO with respect to determining the

nature of services rendered to the utilizers in India. Before us also the ld AR of the assessee has submitted some invoices and there is a service order available on page-11 of the paper book which says that welding has to be done as per scope of work as agreed as per the quotation of the assessee. The Bench asked the ld. AR of the assessee to produce copy of quotation given by the assessee to its customers to find out the scope of work. In reply, it was submitted by the ld. AR of the assessee that the same is not readily available. Under these facts, we feel it proper that the matter should go back to the file of the ld. CIT(A) for a fresh decision because complete documents are not made available before us also and this is a finding of the ld. CIT(A) that details were not made available before him or before the AO.

6. Regarding the judgment cited by the ld.AR of the assessee, we would like to observe that if on fact, it is found that technical know-how is not made available to its customers in India by the present assessee then the technical charges received by the assessee cannot be taxed in India but this factual aspect has to be examined as to whether the technical know-how was made available by the assessee to its customers in India. Since required materials including Quotation etc. are not available to examine and decide the factual aspect, we set aside the order of the ld.CIT(A) and restore the matter back to the file of the AO for fresh decision in the light of the above discussion after providing adequate opportunity of being heard to the assessee. The assessee is directed to bring all the details and evidences before the A. O. so that he

can examine and decide the factual aspect as to whether the technical know-how was made available by the assessee to its customers in India or not. After examining the factual aspect, he should consider the applicability of various judgments cited before us or which may be cited before him and then pass necessary orders as per law.

7. In the result, the appeal of the assessee stands allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

**Sd/-**  
**(SUNIL KUMAR YADAV)**  
**JUDICIAL MEMBER**

Place: Bangalore:  
D a t e d : 16.12.2016  
**am\***

**Sd/-**  
**(A.K. GARODIA)**  
**ACCOUNTANT MEMBER**

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A)-II Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order, AR, ITAT, Bangalore

1. श्रुतलेख की तारीख.....  
DATE OF DICTATION.....
2. तारीख, जिस पर टाइप किया हुआ मसौदे, संबंधित सदस्य के सामने रखा गया है  
DATE ON WHICH TYPED DRAFT IS PLACED BEFORE THE DICTATING  
MEMBER.....
3. तारीख जिस पर अनुमोदित मसौदे व. निजी सचिव/निजी सचिव के पास वापस आए  
DATE ON WHICH THE APPROVED DRAFT COMES TO THE PS/Sr.PS.....
4. घोषणा के लिए आदेश संबंधित सदस्य के सामने रखने की तिथि  
DATE ON WHICH THE ORDER IS PLACED BEFORE THE DICTATING MEMBER  
FOR PRONOUNCEMENT.....
5. आदेश नि.सचिव/व.नि.सचिव के पास वापस आने की तिथि  
DATE ON WHICH THE ORDER COMES BACK TO THE PS/Sr.PS.....
- 6 आदेश अपलोड करने की तिथि  
DATE OF UPLOADING THE ORDER ON WEBSITE.....
7. अगर अपलोड नहीं किया तो, उसका कारण  
IF NOT UPLOADED, FURNISH THE REASON FOR DOING SO.....
8. बेंच लिपिक के पास फाइल जाने की तिथि  
DATE ON WHICH THE FILE GOES TO THE BENCH CLERK.....
9. आदेश ज़ेरोक्स/पृष्ठांकन के लिए भेजने की तिथि  
DATE ON WHICH ORDER GOES FOR XEROX & ENDORSEMENT.....
10. फाइल मुख्य लिपिक के पास जाने की तिथि  
DATE ON WHICH THE FILE GOES TO THE HEAD CLERK.....
11. आदेश पर हस्ताक्षर के लिए फाइल सहायक रजिस्ट्रार के पास जाने की तिथि  
THE DATE ON WHICH THE FILE GOES TO THE ASSISTANT REGISTRAR FOR  
SIGNATURE ON THE ORDER.....
12. अधिकरण आदेश के प्रेषण के लिए फाइल प्रेषण विभाग में जाने की तिथि  
THE DATE ON WHICH THE FILE GOES TO DESPATCH SECTION FOR DESPATCH  
OF THE TRIBUNAL ORDER.....
13. आदेश की प्रेषण की तिथि  
DATE OF DESPATCH OF ORDER.....