

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No.3417/Del/2015
Assessment Year : 2006-07**

DCIT, Circle- 1(1)(1), New Delhi.	Vs.	Convergys Customer Management Group Inc., C/o. PricewaterhouseCoopers Pvt. Ltd., Building No.10, 17 th Floor, Tower- C, DLF Cyber City, Gurgaon.
		PAN : AACCC8989M
(Appellant)		(Respondent)

Department by : Shri Atiq Ahmad, Sr.DR
Assessee by : Shri Ravi Sharma, Adv. &
Shri Mudit Sharma

Date of hearing : 12-02-2018
Date of pronouncement : 23-02-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the Revenue is directed against the order dated 02.03.2015 of the CIT(A)- 42, New Delhi relating to assessment year 2006-07.

2. Deletion of penalty of Rs.23,90,093/- by the Id. CIT(A) which was levied by the Assessing Officer u/s 271(1)(c) of the I.T. Act, 1961 is the only issue raised by the Revenue in the grounds of appeal.

3. Ld. counsel for the assessee at the outset submitted that the ground raised by the revenue relates to the order of the Id. CIT(A) in quashing/deleting the penalty u/s 271(1)(c) and 271AA of the I.T. Act. He submitted that the Id.

CIT(A) has passed a consolidated order for deleting the penalties levied by the Assessing Officer u/s 271(1)(c) and 271AA of the I.T. Act. However, the Revenue has filed a separate appeal before the Tribunal vide ITA No.3529/Del/2015 challenging the deletion of penalty levied u/s 271AA. Therefore, this appeal should be confined to the deletion of penalty u/s 271(1)(c) of the I.T. Act.

4. Ld. counsel for the assessee at the outset submitted that the assessee filed its return of income for the assessment year 2006-07 showing income of Rs.40,006,350/-. The assessment order u/s 143(3) of the I.T. Act, 1961 was passed on 29.12.2008 at an income of Rs.2,944,673,964/-. The additions were made on account of profits attributable to PE Rs.2,844,567,544/-, Software (Taxable @ 15%) Rs.6,817,878/- and IPLC Charges (Taxable @ 10%) Rs.53,282,192/-.

5. The Tribunal decided the assessee's appeal vide order dated 10.05.2013 in ITA No.1443/Del/2012 and ITA No.1376/Del/2012 in which the Tribunal held that the assessee has a Permanent Establishment (PE) in India. This PE is in the form of fixed place PE. The Tribunal attributed 15% profits generated by the assessee to the India PE. On the issue of taxability of software (taxable @ 15%) the Tribunal held it to be not taxable in the hands of assessee. On the third issue of taxability of IPLC charges as Equipment Royalty the payment is considered not taxable in the hands of the assessee.

6. Referring to the appeal filed by the assessee before the Hon'ble High Court and vice-versa against the order of the Tribunal, he drew the attention of

the Bench to the following questions of law that have been admitted by the Hon'ble High Court :-

“The following questions of law arise in ITA Nos.3 and 4/2014:

(9) Whether, the Income Tax Appellate Tribunal was correct in law and on facts in holding that the assessee had a fixed place Permanent Establishment (PE) in terms of Article 5(1) of the Indo US Tax Treaty?

(10) Whether, in view of the nature of transaction which was procuring of computer software (IT enabled services) within the meaning of Section 10A of the Act from its Indian Subsidiary for the purposes of export, any income could accrue or arise in the hands of the assessee in India in view of clause (b) of Explanation 1 of Sub-Section (1) of Section 9 of the Act read with Article 7(4) of the Indo US Tax Treaty?

The following substantial questions of law arise in ITA Nos.679, 680 and 681/2014:

(13) Did the ITAT err in reducing the quantum of profit attributable to the Permanent Establishment (PE), in the circumstances of the case;

(14) Was the method of calculated profit adopted by the ITAT justified and correct;

(15) Whether the Revenue is correct in contending that the payments made on account of software expenses is royalty and whether the Revenue is justified in arguing that the findings of the ITAT of ? link charges? not being royalty are justified.
ADMIT

List for hearing on 29th April, 2015.”

7. Referring to the decision of the Hon'ble Delhi High Court in the case of CIT vs. Liquid Investment and Trading Co. vide ITA No.240/2009 dated 05.10.2010, he submitted that the Hon'ble High Court in the said decision has held that when substantial question of law is admitted by the Hon'ble High Court, the issue becomes debatable and, therefore, no penalty u/s 271(1)(c) is leviable. He accordingly submitted that in view of the above legal position penalty u/s 271(1)(c) cannot be levied.

8. Ld. DR on the other hand supported the order of the Assessing Officer.

9. After hearing both the sides, we find the Id. CIT(A) while deleting the penalty levied by the Assessing Officer u/s 271(1)(c) has observed that the Hon'ble High Court has admitted the substantial question of law. Therefore, it is clear that the issue is subject to different interpretation. We do not find any

infirmity in the order of the Id. CIT(A). As mentioned earlier, the Hon'ble High Court has already admitted the substantial question of law which has already been reproduced in the preceding paragraphs. Therefore, in view of the decision of the Hon'ble High Court in the case of Liquid Investment and Trading Co. (supra), according to which, penalty cannot be levied when substantial question of law has been framed and admitted, therefore, in absence of any contrary material brought to our notice, we do not find any infirmity in the order of the Id. CIT(A). Accordingly, the same is upheld and the grounds raised by the Revenue are dismissed.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on this 23rd February, 2018.

Sd/-
(BEENA A. PILLAI)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 23-02-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar
ITAT, New Delhi