

IN THE INCOME TAX APPELLATE TRIBUNAL
"I" Bench, Mumbai
Before S/Shri B.R.Baskaran (AM) & Amarjit Singh (JM)
I.T.A. No. 6351/Mum/2016 (Assessment Year 2015-16)

ITO (IT)-1(1)(2) Room No. 113 1 st Floor Sciendia House N.M. Road Ballard Estate Mumbai-400 038.	Vs.	M/s. Accenture Services Pvt. Ltd. (Now succeeded by "Accenture Solutions P. Ltd.) Plot No. 3, Godrej & Boyce Complex, Pirojshah Nagar Off. LBS Marg, Vilhroli West Mumbai-400 079. PAN : AACCA8997K
(Appellant)		(Respondent)

Assessee by	Shri M.P. Lohia & Shri Nikhil Tiwari
Department by	Shri Saurabh Deshpande
Date of Hearing	1.5.2018
Date of Pronouncement	7.5.2018

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the revenue is directed against the order dated 15-07-2016 passed by Ld CIT(A)-55, Mumbai and it relates to the assessment year 2015-16 relevant to the Financial year 2014-15.

2. The controversy arising in this appeal relates to the rate at which the assessee should have deducted tax at source from the payments made by it to foreign companies towards royalties/fee for technical services.

3. The assessee company made payments towards royalties and fee for technical services during the year under consideration to foreign companies and deducted tax at source @ 20%. The claim of the assessee was that it was required to deduct tax at source as per the provisions of DTAA entered between India and respective Countries. Since the non-resident recipients do

not have PAN number, the assessee deducted tax at source @ 20% as per the provisions of sec. 206AA.

4. The AO took the view that the assessee is required to be deducted tax at source from the payments made to non-residents and since the non-residents do not have PAN number, the provisions of sec. 206AA would be applicable. The provisions of sec. 206AA r.w.s. 115A provide for deduction of tax at source @ 25% from the payments made towards royalties and fee for technical services to the non-residents. Since the assessee has deducted tax at source @ 20%, the AO treated the assessee as an assessee in default u/s 201(1) of the Act for short deduction of tax at source and raised a demand of Rs.34,18,897/- for the F.Y 2014-15 relevant to the AY 2015-16.

5. The Ld CIT(A) however accepted the contentions of the assessee that the provisions of DTAA would override the provisions of Income tax Act. In this regard, the Ld CIT(A) took support of the decision rendered by Pune bench of Tribunal in the case of DDIT Vs. Serum Institute of India P Ltd (2015)(56 Taxmann.com 1). Accordingly he cancelled the demand raised by the AO for the year under consideration. The revenue is aggrieved by the said decision of Ld CIT(A).

6. The contention of the revenue is that the decision rendered by Bangalore bench of Tribunal in the case of Bosch Ltd Vs. ITO (2012)(ITA No.552 to 558 of Bang., 2011) is in favour of the revenue and the Ld CIT(A) has ignored the same. It is also contested that the provisions of sec. 115A requiring tax deduction at 25% from the payments made towards royalties and fees for technical services have been ignored by Ld CIT(A).

7. The case of the assessee is that the Hyderabad Special bench of Tribunal has settled the present controversy by holding that the provisions of DTAA shall override the provisions of the Income tax Act in the case of Nagarjuna Fertilisers and Chemicals Ltd (ITA 1187 & 1188/Hyd/2014 dated 13-02-2017). Accordingly it was submitted that the decision of Special Bench should be

preferred over the decision rendered by the Division bench. The Ld A.R submitted that the Hon'ble Delhi High court has expressed identical view in the case of Danisco India P Ltd Vs Union of India & Ors (2018)(101 CCH 0050). The Ld A.R also furnished a statement showing the rate of tax at which the withholding tax is required to be deducted under various treaties. Referring to the same, the Ld A.R submitted that most of the payments attract a rate of 15% and some payments attract a rate of 20%. However the assessee has deducted tax at source at uniform rate of 20%. Accordingly he submitted that there is no violation of the provisions of TDS and accordingly submitted that the order passed by Ld CIT(A) does not call for any interference.

8. Having heard rival submissions, we find merit in the submissions of the assessee in view of the decision rendered by the Hyderabad Special Bench of ITAT in the case of Nagarjuna Fertilisers and Chemicals Ltd (supra). As rightly pointed out by Ld A.R, the decision rendered by the Special Bench of Tribunal is required to be preferred over the decision rendered by the Division Bench. We notice that Ld CIT(A) has followed the decision rendered by Pune bench of Tribunal in the case of Serum Institute of India P Ltd (supra). We notice that the Special bench has considered the decision rendered by the Pune bench in the case of Serum Institute of India as well as the decision rendered by the Bangalore bench in the case of Bosch Ltd. The Special bench has concurred with the view expressed by the Pune bench. Hence the decision rendered by Ld CIT(A), in principle, does not call for any interference.

9. However we notice that neither the Ld CIT(A) nor the AO examined the rate specified in the relevant DTAA, i.e. rate at which tax is required to be deducted at source as per DTAA. The assessee has furnished a statement before us showing that the applicable rates are 15% and 20%. Hence for the limited purpose of verifying the said statement with regard to applicable rates and for ensuring that the rate of 20% (at which tax has been deducted by the assessee) is equal or more than the rate specified in the relevant DTAA, we restore this issue to the file of the AO with the direction to verify the statement

so furnished by the assessee and drop the demand, if the tax deducted by the assessee is equal to or more than the required amount.

10. In the result, the appeal of the revenue is treated as partly allowed.
Order has been pronounced in the Court on 7.5.2018.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 7/5/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,
(Senior Private Secretary)
ITAT, Mumbai