

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक
IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

आयकर अपील सं./ITA No.185/CTK/2015
(निर्धारण वर्ष / Assessment Year :2012-2013)

M/s OCL India Limited, Administrative building, AT/PO: Rajganpur, Dist: Sundergarh, Odisha	Vs.	DDIT (International Taxation), Bhubaneswar- 751007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACO 1354 J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Soumen Adak/
Ashish Poddar, AR
राजस्व की ओर से /Revenue by : Shri N.B.Som, Sr. DR
सुनवाई की तारीख / Date of Hearing : **29/06/2017**
घोषणा की तारीख/Date of Pronouncement **07/07/2017**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

The assessee has filed this appeal against the order of CIT(A)-1, Bhubaneswar, passed in IT.Appeal No.0262/2013-14, dated 27.01.2015, passed u/s.201(1)/201(1A) of the Income Tax Act.

2. The assessee has raised the sole substantive ground that the CIT(A) has erred in confirming the action of AO for treating the assessee in default u/s.201(1)/201(1A) of the Act in respect of payment of export commission of Rs.28,65,906/-.

3. Brief facts of the case are that the assessee is engaged in business of manufacturing of cement and refractory products and the AO found that the assessee paid an amount of Rs.28,65,906/- as commission on 26.9.2011 to M/s International Link Corporation, Iran, a company registered in Tehran without deducting the tax at source as per Section 195 of the Act, 1961. Subsequently notice u/s.201(1)/201(1A) of the Act

was issued to the assessee company and Id.AR of the assessee appeared and submitted the information. The explanations of Id. AR that the assessee has engaged one agent for sale of its cement outside India and carried out various functions and agreement was signed with the International Link Corporation Ltd. for a period of 5 years for promoting sales. As per agreement, the agent shall receive 12% of FOB of value of export of orders directly and indirectly after realisation of dues from the buyers, whereas the contention of Id. AR that there is no permanent establishment or business connection in India, therefore, any transaction made in out of the country. Further it was brought to the knowledge of the AO that there is no double taxation agreement between Indian and Iran and also Id. AO dealt on the provisions of Section 5(2)(b) & 9(1)(i) of the Act in respect of source of income in India. The AO found that the agent is engaged with business activity in India on receiving commission outside the country. Further, services are not in particular outside India but also in respect of services within India. Therefore, with this observation, the AO found that the commission is taxable u/s.5(2)(b) r.w.s.sec.9(1) of the Act and observed that the assessee is in default for not deducting tax u/s.195(1) amounting to Rs.11,46,362/- and interest payable u/s.201(1A) Rs.2,75,127/- and passed the order u/s.201(1) & 201(1A) of the Act, dated 30.09.2013.

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the CIT(A), Id. CIT(A) considered the grounds and the submissions of the assessee and findings of the AO and further at page 2 of the order

reflected the written submissions filed on 27.1.2015 and relied on the various judicial decisions and concluded that the AO has rightly made calculation of demand u/s.201(1)/201(1A) of the Act and dismissed the appeal.

5. Aggrieved by the order of CIT(A), the assessee has filed an appeal before the Tribunal.

6. In the appellate proceedings, the Id. AR argued that the agent receives income outside the country and there is no double taxation agreement between India and Iran. Id. AR further submitted that the services are not in the nature of fee for technical services and exclusively accrued and received outside India and supported his arguments with the copy of letter of appointment of agent and paper book with details and prayed for allowing the appeal.

7. Contra, Id. DR submitted that the assessee has entered into agreement with the Managing Director of the company and as per the appointment letter dated 21.11.2011, Mr. Jagdish Katara is treated as an agent and as per the instructions, the payments are made to different persons accounts. Further, Id. DR relied on the provisions of Section 9(1)(vii) in respect of fees for technical services and the decision of Hon'ble Delhi High Court where the concept of income accrued and payment has been dealt exhaustively and opposed the grounds.

8. We heard the rival submissions and perused the orders of lower authorities material on record and judicial decisions cited. Prima facie, the assessee company is a manufacturer of cement and refractory products

and for sale of cement it has engaged an agent outside the country for its sales. Ld. AR's contention that since the payments are made outside the country and it is not taxable in India and therefore no TDS is made. Ld. DR's contention that the no application is made by the assessee with assessing authority for non-deduction of TDS or lower deduction of TDS. The fact remains as per the appointment letter dated 21.11.2011, the agent shall render the services as mentioned at page 1 of the letter. On a query from the bench to produce the agreement, Id. AR was not in a position to submit the information and further the contents of the letter relied by the Id. AR could not give the complete picture of rendering services as per clause 2 of the appointment letter the agent shall also perform such duties from time to time in regard to collection of the market intelligence agents report, generating enquiries and activities relating to the execution of the order. Ld. AR explained that it is only a general clause and the agent is exclusively works for executing the order, and selling and further the commission is paid after realisation of the amounts from the buyer. The Id. AR's submissions are not convincing though the Id. AR explain that the agent is not connected with the Indian business operations and there is no business establishment in India and no permanent establishment but it is difficult to understand when the assessee entered into agreement and has residual clause mentioned at para 2 of the letter dated 21.11.2011 where various other services are being rendered by the agent, which requires some technical expertise. Further, Id. AR could not satisfy with explanation on agents exclusive

services of rendering outside India and also agent is not connected in respect of manufacturing or any other activity in India. Further, we support our view relying on the decision of the Hon'ble Delhi High Court in the case of Havells India Ltd., 352 ITR 376 (DelhiHC), where it was held that the export activity having taken place or having been fulfilled in India, the source of income was located in India and not outside. Mere fact that the export proceeds emanated from persons situated outside India did not constitute them as the source of income. In the present case, the exports are from India and exports proceeds are received from foreign country after realisation from buyers and agent is paid commission on fixed percentage. Accordingly, considering the apparent facts, material on record and the judicial decisions, we are not inclined to interfere with the order of CIT(A) and upheld the same.

9. In the result, appeal of the assessee is dismissed.

Order pronounced in the open court on this 06/07/2017.

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 06/07/2017

प्र. कु. मि / PKM, Senior Private Secretary

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
M/s OCL India Limited,
Administrative building,
AT/PO: Rajganpur,
Dist: Sundergarh, Odisha
2. प्रत्यर्थी / The Respondent- DDIT(IT), Bhubaneswar
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

आदेशानुसार / BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack