आयकर अपीलीय अधिकरण, **"**डी**"** न्यायपीठ**,** चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.2700/Chny/2017
निर्धारण वर्ष/Assessment Year:2014-15

M/s. AVO Carbon Holding LLC, 25/A2, Dairy Plant Road, SIDCO Industrial Estate Ambattur, Chennai 600 098.	Vs.	The Deputy Commissioner of Income Tax, International Taxation -1, Aayakar Bhavan, 121, Nungambakkam High Road, Chennai 600 034.
[PAN: AAJCA5998D]		
(**अपीलार्थी /Appellant**)		(**प्रत्यर्थी/Respondent**)

अपीलार्थी की ओर से / Appellant by	:	Shri B. Ramana Kumar, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Shri Srinivasa Rao, CIT-DR
सुनवाई की तारीख/ Date of hearing	:	19.06.2018
घोषणा की तारीख /Date of Pronouncement	:	18.09.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals) 16, Chennai dated 01.08.2017 relevant to the assessment year 2014-15. The ground raised by the assessee is that the ld. CIT(A) has erred in confirming the assessment of treating the management fee of ₹.1,65,77,213/- as "fee for included services". Alternatively, the assessee has pleaded that the said payment do not fall within the definition of FIS and by virtue of section 90(2) of the Act, the same was not taxable in India.

2. Brief facts of the case are that the assessee the assessee filed its return of income on 29.11.2014 declaring NIL income. The Assessing Officer completed the assessment under section 143(3) r.w.s. 144C(4) of the Income Tax Act, 1961 ["Act" in short] by treating ₹.1,65,77,210/- as "fee for included services" and brought to tax.

3. The assessee carried the matter in appeal before the ld. CIT(A). After considering the submissions of the assessee, the ld. CIT(A) confirmed the addition.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The ld. Counsel for the assessee has submitted that the assessee has rendered only managerial services in assisting purchase and manufacturing and assistance on research and development. It was further submitted that the said services did not 'make available' the technical knowledge warranting it to be taxed under "fee for included services" and prayed for deleting the addition. The alternative prayer made by ld. Counsel is that the said payment do not fall within the definition of FIS and by virtue of section 90(2) of the Act, the same was not taxable in India. On the other hand, the ld. DR strongly supported the orders of authorities below.

5. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. The AVO Carbon group

company is engaged in the business of design, manufacturing and distribution of carbon brushes of brush assembly for the automotive and consumer goods. The non-resident company entered in to a service agreement with AVO Carbon India Pvt. Ltd., being its subsidiary. During the relevant assessment year, the group companies received an amount of ₹. 4,01,46,424/- as management fees from his subsidiary company in India AVO Carbon India Pvt. Ltd. and the same was claimed as exempt under the article 12 of DTAA between India and US. The Assessing Officer has examined the service agreement between the two companies, wherein, it was found that the company had made available technical knowledge, experience, skill, knowhow etc. The assessee company contended that the AVO Carbon group company operates worldwide through its network of subsidiaries which share its infrastructure to gain economize of scale, get better prices and reasonable cost between the group of entities. Though the assessee contends that it is a managerial service, but the authorities below have observed from the service agreement that the technical knowledge was made available to the holding company, which was used and utilized by the Indian Company for its benefit. Moreover, the advice and assistants on research and development clearly amounts to providing of make available technical knowledge. As per Article 12(4) of the DTAA, it is clear and absolute that the payment that the company has received was “fee for included services”. To claim that the said payment was a managerial service,

the assessee has not furnished any detailed, the nature of services that are included under managerial services along with details invoices. In view of the above and to give one more opportunity, we remit the matter back to the file of the Assessing Officer to consider the submissions, if any, and decide the issue in accordance with law after allowing an opportunity of being heard to the assessee.

6. Beyond the scope of Article 12 of the DTAA and in violation of the said article, in which taxing clauses were absolutely given, nothing is provided under section 90(2) of the Act to ignore the DTAA and consider to allow any claim of the assessee. Thus, the alternative plea raised by the assessee stands dismissed.

7. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 18th September, 2018 at Chennai.

Sd/-	Sd/-
(A. MOHAN ALANKAMONY)	(DUVVURU RL REDDY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 18.09.2018

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2.प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.