

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'I-1', NEW DELHI**

**Before Sh. N. K. Saini, Hon'ble Vice President
and**

Smt. Beena A. Pillai, Judicial Member

ITA No. 379/Chd./2014 : Asstt. Year : 2009-10

Fidelity Information Services India Pvt. Ltd., Plot No. 52, Industrial Area Phase-II, Chandigarh-160002	Vs	Deputy Commissioner of Income Tax, Circle-1(1), Chandigarh
(APPELLANT)		(RESPONDENT)
PAN No. AAGCS0395D		

**Assessee by : Sh. S. D. Kapila, Adv. &
Sh. R. R. Maurya, Adv.
Revenue by : Sh. Sandeep Kr. Mishra, Sr. DR**

Date of Hearing : 12.12.2018	Date of Pronouncement : 13.12.2018
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ORDER

Per N. K. Saini, Vice President:

This is an appeal by the assessee against the order dated 01.02.2014 passed by the AO u/s 144C(13) r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

2. Following grounds have been raised in this appeal:

"1. That on facts and in law the order/directions passed by the Ld. Assessing Officer ("Ld. AO")/ Dispute Resolution Panel ("Ld. DRP") are bad in law and void ab-initio.

2. On the facts and circumstances of the case, the Ld. AO has erred both on facts and in law in disallowing the expenditure on account of foreign travelling amounting

to Rs. 3,44,47,773 and the Ld. DRP has erred in declining to interfere in the action taken by the Ld. AO.

3. On the facts and circumstances of the case, the Ld. AO has erred both on facts and in law in initiating penalty proceedings under section 271(1)(c) of the Act and the Ld. DRP has erred in not issuing any directions on the issue of initiation of the penalty proceedings by the Ld. AO.

The above grounds of appeal are mutually exclusive and without prejudice to each other.

The Appellant craves leave to add, amend, alter, delete, rescind, forgo or withdraw any of the above grounds of appeal either before or during the course of the proceedings before the Hon'ble Tribunal."

3. During the course of hearing, the Id. Counsel for the assessee submitted that the only issue involved in this appeal relates to the disallowance of the expenditure on account of foreign travelling. It was further submitted that an identical issue was a subject matter of the assessee's appeal in ITA No. 1150/Del/2010 for the assessment year 2006-07 wherein vide order dated 30.05.2016, this issue was set aside to the file of the Id. DRP to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard (copy of the said order was furnished which is placed on record). It was further submitted that the effect is required to be given by the AO and in the present case there was a fresh agreement. Therefore, this issue may be set aside to the file of the AO to be adjudicated afresh in accordance with law.

4. In his rival submissions, the Id. Sr. DR submitted that since the issue was set aside to the file of the Id. DRP in the earlier year, the same course may be adopted for the year under consideration.

5. We have considered the submissions of both the parties and perused the material available on the record. It is noticed that an identical issue having similar facts was a subject matter of the assessee's appeal for the assessment year 2006-07 where in the relevant findings have been given in paras 12 to 17 of the order dated 30.05.2016 and the issue was set aside to the file of the Id. DRP. The said findings read as under:

“12. Ground Nos. 8 & 9 relate to the disallowance made by the AO on account of foreign travelling expenses and the deduction u/s 10B of the Act not allowed on the enhanced income pursuant to the disallowance made in respect of foreign travelling expenses.

13. Facts of the case in brief are that the AO during the course of assessment proceedings noticed that the assessee debited Rs.34,80,858/- to the profit and loss account on account of foreign travelling expenses and as per the terms of agreement, the assessee has to provide the service of development of computer software and allied products for specific orders and specifications provided from time to time by M/s SF Inc., USA who was to provide technical support to the assessee and that the assessee was to develop specific software as per the direction of the company M/s SF Inc., USA. The AO held that the assessee was engaged only for development of computer software and allied products and as per the terms of agreement, servicing of clients of M/s SF Inc., USA and visiting the foreign client on behalf of the said AE was the responsibility of the assessee, therefore, the expenditure incurred on foreign travelling amounting to

Rs.34,80,858/- was the expenditure pertaining to the AE. The submissions of the assessee before the AO were as under:

“The amount of Rs.34,80,858/- was incurred by the assessee company on foreign travelling of the employees of the assessee company for business purposes. The employees travel to various client places for the purpose of providing services relating to the software provided to them by the assessee company. The details of the foreign travelling expenditure incurred by the assessee company along with the employee name, project name and place of travelling are enclosed herewith as Annexure 6.”

14. The assessee also raised the objections before the DRP who did not find merit in the submissions of the assessee by observing as under:

“3. The assessee has objected to the addition made by the AO in the draft order amounting to Rs.34,80,858/- being the foreign travel expenditure claimed by the assessee. The claimed of the assessee was not accepted by the AO who after considering the agreement between the assessee and M/s Second Foundation Inc.USA (SF I, USA), concluded that servicing of clients of M/s SF I, USA and visiting foreign clients was not the responsibility of the assessee as its role was only to develop software on behalf of the foreign company.

3.1 The DRP has considered the matter including the submissions of the assessee and find that assessee has not really been able to proved that the expenditure is wholly and exclusively for the purpose of business and hence no interference is called for on this issue.”

Accordingly, on the direction of the DRP, the AO disallowed Rs.34,80,858/- and made the addition to the income of the assessee.

15. Now the assessee is in appeal. The ld. Counsel for the assessee submitted that the employees of the assessee visited the foreign clients and the impugned expenses were incurred for the business purposes on account of visit of the employees to various client places for providing the services relating to the software developed by the assessee. A reference was made to page no. 893 of the assessee's paper book which is the copy of confirmation issued by the authorized signatory of the assessee and the Director of the AEs confirming therein that as per the agreement dated 15.04.2002, the employees of the assessee under took foreign travelling outside India during the financial year 2005-06 and visited clients/customer of SF, USA, wherever required due to business exigency or due to client/customer called, on the instructions of the AE's. On the basis of the said confirmation, the ld. Counsel for the assessee submitted that neither the DRP nor the AO appreciated the facts in right prospective. Therefore, the addition made by the AO was not justified.

16. In his rival submissions the ld. DR supported the impugned order passed by the AO.

17. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the objections raised by the assessee for the present issue have not been properly considered by the DRP and even the agreement between the assessee and AE's was not examined while taking the decision. In the instant case, it is not clear as to whether the employees of the assessee visited the places of the clients in foreign countries and incurred the travelling expenses and it was the responsibility of the assessee to provide the services for the software developed by it. In the absence of the clear facts on record, we deem it appropriate to set aside this issue also back to the file of the DRP to be adjudicated in accordance with law after providing due

and reasonable opportunity of being heard to the assessee.”

6. Since, the facts for the year under consideration are similar to the facts involved in the assessment year 2006-07 in ITA No. 1150/Del/2010, so respectfully following the aforesaid order dated 30.05.2016, the issue under consideration is restored back to the file of the Id. DRP/AO to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

7. In the result, the appeal of the assessee is allowed for statistical purposes.
(Order Pronounced in the Court on 13/12/2018)

Sd/-
(Beena A. Pillai)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
VICE PRESIDENT

Dated: 13/12/2018

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR