

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'C', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA Nos. 1820 & 1821/Del/2018
Assessment Years: 2012-13 & 2013-14**

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| ACIT, Circle 10(2), New Delhi. (Appellant) | vs. | Graziano Transmission India Pvt. Ltd., 510-511, 5 th Floor, DLF Tower-B, Jasola, New Delhi. (PAN- AAACG 4258M). (Respondent) |
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| Appellant by | Sh. Amit Katoch, Sr. DR |
| Respondent by | Sh. Rishabh Malhotra, Advocate |

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| Date of Hearing | 06.03.2019 |
| Date of Pronouncement | 06.03.2019 |

ORDER

Per L.P. Sahu, A.M.:

These two appeals are filed by the Revenue against separate orders of ld. CIT(A)-35, New Delhi for the assessment years 2012-13 and 2013-14 respectively. In both these appeals the grounds raised by Revenue are common barring the amount of disallowance. Hence, both the appeals, having common issue, were heard together and are being disposed of by this consolidated order. The solitary ground raised in appeal for A.Y. 2012-13 read as under :

"1. Whether on the facts and circumstances of the case in law ld. CIT(A) is correct in deleting the disallowance of Rs.1,47,04,728/- made on account of non-deduction of TDS on the payment made to M/s. Graziano

Transmission North America USA and Oerlikon Graziano Spa, Italy (SPA) holding the same as commission ignoring the fact that the payment is actually in the nature of fee for technical services and the assessee only named the same as commission.”

2. In view of aforesaid ground raised by the Revenue, the only issue which needs adjudication at this stage is whether the Id. CIT(A) was justified in deleting the additions of Rs.1,47,04,728/- in A.Y. 2012-13 and Rs.2,54,24,667/- (wrongly noted as Rs.1,47,04,728/- in the grounds of appeal) in A.Y. 2013-14, made on account of non-deduction of TDS on payment made to foreign entity and whether such payments made was in the nature of commission or fee for technical services.

3. During the course of hearing, the Id. DR, though relied on the orders of the Assessing Officer, but did not object to the contention of the learned AR that the issue involved in both these appeals are squarely covered by the decision of Co-ordinate Bench in assessee's own case for A.Y. 2010-11 (ITA No. 2575/Del/2016), whereby in the identical facts of the case, the payments made to the same agents have been treated as commission and not as fee for technical services. Relevant facts and findings of the ITAT, Delhi Bench in the aforesaid case read as under :

Facts:

“Further, AO observed that the assessee company had paid an amount of Rs. 88,91,816/- to M/s Graziano Trasmissioni North America USA and the assessee was asked to explain as to why the payment made to M/s Graziano Trasmissioni North America USA be not treated as royalty / fees for technical services in light of the services offered by the said company. The assessee company was further asked to explain as to why no TDS was deducted on the payment made to the said company. In compliance

thereto the assessee company did not file any reply. Therefore, as per the provisions of the Act and in accordance with judicial pronouncement on the issue in dispute, the AO observed that assessee was liable to deduct TDS on export commission of Rs. 89,91,816 paid to non-resident / outsiders. Since assessee did not deduct the TDS as per provision of the section 195 of the Act, therefore, total deduction of expenditure of Rs. 88,91,816/- on export commission, as claimed by assessee, was disallowed and added back to the taxable income of the assessee for the AY 2010-11. Accordingly, the AO assessed the income of the assessee at Rs. 22,10,20,170/- u/s.143(3) of the Act dated 28.2.2014. Against the assessment order, assessee appealed before the Ld. CIT(A), who vide his impugned order dated 04.2.2016 has allowed the appeal of the assessee. Aggrieved with the impugned order, Revenue is in appeal before the Tribunal.”

Findings:

“5.2 As regards ground no. 2 relating to disallowance of Rs. 88,91,816/- is concerned, after perusing the duties and obligations as mentioned at page no. 44 to 46 of the impugned order, we find that the agent is not providing any technical services to the assessee. The agent is acting only commission agent and procuring the orders for the assessee and to inform the assessee for any infringement of rights. Even if the same is considered as business income of the commission agent same is not taxable in India as the foreign entity does not have any PE or BC in India. The commission is being entertained in the foreign company in the foreign country. No part of its income accrue or arise in India. Nor it is making available any technical knowledge, experience, skill, knowhow etc. to the assessee. Hence, Ld. CIT(A) has rightly held that the case of the assessee is identical to the decision of the Hon’ble Delhi High Court in the case of DIT vs. Guy Carpenter and Company Ltd. (ITA No. 202/2012)- Hon’ble Delhi High Court and the ITAT, Hyderabad and deleted the addition of Rs. 88,91,816/- . In view of above, we are of the considered view that Ld. CIT(A) has passed a well reasoned order which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 2 raised by the Revenue.”

4. Having considered the rival submissions and gone through the material available on record and respectfully following the decision of co-ordinate Bench of Tribunal, we find no justification to interfere with the orders of the Id. CIT(A) on the issue under consideration. Accordingly, the grounds raised by the Revenue in both the appeals deserve to be rejected.

5. In the result, both the appeals of the Revenue are dismissed.

Order pronounced in the open court on 06.03.2019.

Sd/-

(H.S. Sidhu)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 06.03.2019

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Copy of order forwarded to:

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| <i>(1) The appellant</i> | <i>(2) The respondent</i> |
| <i>(3) Commissioner</i> | <i>(4) CIT(A)</i> |
| <i>(5) Departmental Representative</i> | <i>(6) Guard File</i> |

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*