

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER**

**ITA No. 5662/Del/2015
Assessment Year: 2012-13**

Poddar Pigments Ltd. A-283, Ground Floor, Okhla Industrial Area, Phase-1, New Delhi. PAN No. AAACP1125E	vs	ACIT Circle 20(1) New Delhi.
APPELLANT		RESPONDENT

Assessee by	Sh. P.C. Parwal, FCA
Revenue by	Ms. Rinku Singh, Sr. DR

Date of Hearing	20.03.2019
Date of Pronouncement	01.04.2019

ORDER

PER SHRI BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of Ld.CIT(Appeals)-7, New Delhi dated 6th August, 2015 for AY 2012-13 on the following ground:

1. *"The Ld. Commissioner of Income Tax (Appeals) has erred on facts and in law in confirming the action of the AO in making disallowance of Rs. 18,36,101/- u/s 40(a)(i) by holding that payment made to Dr. Werner Sitbal is a payment towards 'fees for technical services' as per Explanation 2 to section 9(1)(vii) and thus liable for deduction of tax at source u/s 195. He has further erred in not accepting the*

contention of the assessee that payment is for 'independent scientific activity' covered by the Article 14 of the DTAA with Switzerland and thus not liable for deduction of tax at source u/s 195."

2. The Assessing Officer on the above issue following his order for AY 2007-08 made the disallowance. The AO also noted that similar disallowances have been made in AYs 2008-09 to 2011-12 and the CIT(A) has dismissed the appeal of the assessee by holding that the payment falls under the category "fee for technical services". The AO, accordingly, made addition of Rs. 18,36,101/- u/s 40(a)(i) of the I.T. Act. The Ld. CIT(A) followed his order for AY 2011-12 on the identical facts and dismissed the appeal of assessee.

3. Ld. Counsel for assessee, at the outset, submitted that identical issues have been decided by ITAT 'F' Bench in the case of the same assessee for AYs 2008-09 to 2011-12, vide order dated 23rd August, 2018. Copy of the order is placed on record. He has submitted that in AY 2009-10 in ITA No. 5084/2014 the Tribunal has considered the identical issue and in para 28 allowed the appeal of the assessee. Para 28 of the Appellate Order dated 23rd August, 2018 (supra) is reproduced as under:

"28. *There are also similar condition in Indo Swiss DTAA in Article 12(5)(b) excluding professional services under Article 14 and 15 of that DTAA. Therefore, it is apparent that the services are covered under Article 14 of the DTAA and not under Article 12 of DTAA. Further it is not the case of the Revenue that the services provided by the Swiss resident is not professional services as defined under Article 14(2) of DTAA. Further, it is not the case of*

the Revenue that such services are provided by him from its fixed base in India or he has stayed for more than 183 days in India. Therefore, we hold that no tax is required to be deducted on payment made to Dr. Werner Stibal who is a resident of Swiss Confederation and rendered the professional services with respect to the similar services as provided by Dr. U Thiele, therefore, those services are independent, personal services in the nature of independent scientific services which shall be taxable only in Swiss confederation. Hence, no tax is required to be deducted on sum paid by the assessee to Dr. Werner Stibal u/s 195 of the Act. In view of this ground no. 1 of the appeal of the assessee is allowed.”

4. Ld. DR ongoing through this order accepted that issue is covered in favour of the assessee.
5. After considering the submissions of both the parties, we are of the view that issue is covered in favour of the assessee by order of ITAT ‘F’ Bench in the case of assessee itself in which the appeal of assessee has been allowed in several years on the same issue from AYs 2008-09 to 2011-12. Following the reasons for decision of the Tribunal dated 23rd August, 2018 (supra), we set aside the orders of the authorities below and delete the addition.
6. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 01/04/2019

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 01.04.2019

*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	27/03/2019
Date on which the typed draft is placed before the dictating Member	28/03/2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	01 /04/19
Date on which the fair order comes back to the Sr. PS/PS	01 /04/19
Date on which the final order is uploaded on the website of ITAT	01/04/19
Date on which the file goes to the Bench Clerk	01/04/19
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	