

IN THE INCOME TAX APPELLATE TRIBUNAL

“C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos. 97 & 98/Bang/2018
Assessment Years : 2013-14 & 2014-15

M/s. Indfrag Ltd., 15, Service Road, HAL II Stage, Bangalore – 560 008. PAN: AAACI0929H	Vs.	The Assistant Commissioner of Income Tax, Circle 3 (1) (1), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri S. Ramasubramanian, CA
Revenue by	:	Dr. P.V. Pradeep Kumar, Addl. CIT (DR)
Date of hearing	:	11.07.2019
Date of Pronouncement	:	31.07.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

These two appeals are filed by the assessee and these are directed against two separate orders of Id. CIT(A)-3, Bangalore dated 09.11.2017 for Assessment Year 2013-14 and dated 22.11.2017 for Assessment Year 2014-15. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds raised by the assessee for Assessment Year 2013-14 in ITA No. 97/Bang/2018 are as under.

“1. That the order passed by the learned Commissioner of Income-Tax in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.

2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the appellant is required to deduct tax at source u/s 195 of the Act on the payments made to non-resident professionals and since the tax has not been deducted at source, the same has to be disallowed u/s 40(a)(i) of the Act.

3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the appellant is required to deduct tax at source u/s 195 of the Act on payments made to non-resident commission agents and since the tax has not been deducted at source the same has

to be disallowed u/s 40(a)(i) of the Act.

Each of the above grounds is without prejudice to one another and the appellant craves leave of the Hon'ble Income Tax Appellate Tribunal to add, delete, amend or otherwise modify one or more of the above grounds either before or at the time of hearing of this appeal.”

3. Similarly, the grounds raised by the assessee for Assessment Year 2014-15 in ITA No. 98/Bang/2018 are as under.

“1. That the order passed by the learned Commissioner of Income-Tax in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.

2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the appellant is required to deduct tax at source u/s 195 of the Act on the payments made to non-resident professionals and since the tax has not been deducted at source the same has to be disallowed u/s 40(a)(i) of the Act.

3. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in restricting the deduction u/s 35(2AB) of the Act to the amount mentioned in Form 3CL instead of allowing the full expenditure incurred by the appellant as mandated u/s 35(2AB) of the Act.

4. That the learned Commissioner of Income Tax (Appeals) ought to have allowed a deduction of Rs. 5,21,40,716 u/s 35(2AB) of the Act.

Each of the above grounds is without prejudice to one another and the appellant craves leave of the Hon'ble Income Tax Appellate Tribunal to add, delete, amend or otherwise modify one or more of the above grounds either before or at the time of hearing of this appeal.”

4. It is submitted by Id. AR of assessee that in para 4.3 of his order for Assessment Year 2013-14, it is noted by Id. CIT(A) that the submissions of the assessee have duly been considered. He submitted that in the same para, it is observed by Id. CIT(A) that since the nature of these payments being FTS/FIS has been disputed by the assessee, this issue does not require any further discussion. He further submitted that this is also noted by Id. CIT(A) in same para that this is not disputed that these services make available the technical knowledge to assessee in India. He submitted that proper submission could not be made before the AO and Id. CIT(A). He submitted a request for filing additional evidence being confirmation letter and invoice copies of M/s. Angeli Law Group LLC, confirmation letter and invoice copies of M/s. Akin Gump Strauss Hauer and Feld LLP, confirmation letter from Mr. M David Loic, invoice copy from M/s. BCCC, Avocats and Attorneys-

At-Law and invoice copy from M/s. Dan Tan Law, International Litigation and Arbitration. It is also submitted in the said application for granting leave for filing additional evidence that the fees in question was paid to these legal firms for providing legal services to assessee outside India and also for commission outside India. It was submitted that the additional evidence should be admitted and the matter may be restored back to the file of Id. CIT(A) for a fresh decision after considering the addition evidence and if required, the Id. CIT(A) may obtain remand report from the AO. The Id. DR of revenue supported the orders of authorities below.

5. We have considered the rival submissions. We reproduce para 4.3 from the order of Id. CIT(A) for Assessment Year 2013-14.

“4.3 The submissions of the appellant have duly been considered. As per the invoices produced by the appellant, the payments of Rs 3,02,73,698/- have been made for certain professional services and legal services provided by non-residents situated in USA. In /all addition payments of Rs 37,98,022/- have been made on account of certain sales commission. to non-residents situated in France. Since the nature of these payments being FTS/FIS has not been disputed by the appellant, so this issue does not require any further discussion. This is also not disputed that these services make available the technical knowledge to appellant in India. So the only issue which is required to be adjudicated is whether tax at source was required to be deducted under section 195 in relation to payments for FTS/FIS or not.”

6. From the above para of the order of Id. CIT(A), it comes out that he has given a finding that the payment in question were for FTS/FIS and this is not disputed by the assessee. This is also a finding given by Id. CIT(A) in this para that assessee has not disputed that these services make available the technical knowledge to assessee in India. Now as per the additional evidence filed before us, it is seen that these invoices are in respect of rendering of services to the assessee in respect of certain legal cases filed against the assessee in USA. If that is so then how it can be said that by rendering these services, the concerned parties had made available technical knowledge to assessee in India. As per the invoices of M/s. Angeli Law Group LLC, the invoice is for professional charges for the month of March to October 2012, April 2013 and May 2013 in addition to that, there is commission payment. In our considered opinion, in the facts of present case and in the interest of justice, additional evidence should be admitted and hence, we are admitting

the same and restore the entire matter back in both years to the file of Id. CIT(A) for fresh decision after considering the additional evidence. In view of this decision, no adjudication on merit is called for at the present stage. We do not make any comment on the merit of the assessee's case.

7. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 31st July, 2019.
/MS/

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| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.