IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "B", BANGALORE

BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER
AND
SMT.BEENA PILLAI, JUDICIAL MEMBER

ITA No.2882(Bang)/2018
(Assessment year : 2014-15)

The Asst. Commissioner of Income tax,
(International Taxation),
Room No.430, 4th Floor, BMTC Building,
Koramangala,
Bangalore — Appellant

Vs

M/s Vihan Direct Selling (India) Pvt.Ltd.,
Level-7, Mfar Greenheart,
Manyata Tech Park, Hebbal,
Outer Ring Road,
Bangalore-560 001.
Pan No.AADCV8173F — Respondent

Revenue by : Dr.Palani Kumar, Addl.CIT
Appellant by : Shri R.E.Balasuramanyam, CA

Date of hearing : 10-10-2019
Date of pronouncement :

O R D E R

PER BEENA PILLAI, JUDICIAL MEMBER :

Present appeal has been filed by revenue against order dated 17/08/18 passed by Ld. CIT (A)-12, Bangalore for assessment year 2014-15 on following grounds of appeal:

"1.The order of the Ld.CIT(A)-12, Bangalore is contrary to law and the facts of the case.

2. The Ld.CIT(A)-12, Bangalore has erred in allowing relief to the assessee through the payments made were in the nature of fees for technical service chargeable to tax in India under section 9(1)(vii) of the Income Tax Act.

3. The Ld.CIT(A)-12, Bangalore has failed to appreciate the fact that the payments to the non-resident so made by the assessee company gave enduring benefit to the assessee company in so far as the company representative received training which helped them increase the company sales.

2. **Brief facts of the case are as under:**

Assessee is an Indian franchise of Hongkong based MLM firm Q Net Ltd. Survey under section 133A was conducted at premises of assessee, during which it was found that assessee made payment of Rs.1,80,51,900/- as infrastructure fee and Rs.1,92,55,551/-, as registration fee to V Group International Pte. Ltd, Singapore, on which no TDS was deducted under section 195 of the Act. Subsequently, notice under section 201(1) and 201(1A) of the Act was issued to assessee, calling upon explanation as to why no TDS was deducted on the said payments.

2.1 Before Ld.AO assessee claimed that payments made to V Group International Pte.Ltd., were covered under the term business profits, and that, income neither accrued nor arose to non-resident in India within the meaning of section 9 of the Act. Accordingly, assessee claimed that it was not under any obligation to deduct tax under section 195 of the Act.

2.2 Ld.AO upon analyzing agreement entered into by assessee with V Group International Ltd., and invoices raised by V Group International Pte. Ltd., came to conclusion that services received by independent representatives under assessee provided enduring benefits to assessee's business which was also supported by statement recorded by Ld.AO of Manager of Finance and Taxation, reproduced in assessment order. Ld.AO thus held that services rendered by V Group International PTE Ltd to assessee company through independent representatives are in the nature of managerial and consultancy services which are FTS, both as per Income ax Act under section 9 (1) (vii), as well as India-Singapore DTAA due to presence of 'make available' clause. And as assessee failed to deduct TDS on such amount paid to V Group International PTE Ltd., under section 195 of the Act, assessee was held to be assessee in default for non-compliance of TDS provisions and was held liable under section 201 and 201 (1A) with respect to such payment.

2.3 Ld. AO thus, computed liability under section 201 and 201(1A) at 20% by applying rates specified under section 206AA of the Act.

3. Aggrieved by order of Ld. AO assessee preferred appeal before Ld. CIT (A) deleted the addition.

4. Aggrieved by order of Ld.CIT (A), revenue is in appeal before us now.

4.1 Only issue raised by revenue in grounds of appeal filed before us is regarding addition deleted by Ld. CIT (A) by holding that non-resident entity did not have permanent establishment in India, any receipt thereby will not be taxable, and therefore there was no

obligation on part of assessee to deduct tax under section 195 of the Act.

4.2 Ld.Sr.DR submitted that independent representatives to whom training was imparted by non-resident forms integral part of assessee's business and therefore were sponsored by assessee. He submitted that these independent representatives provide support for growth of assessee and therefore training received by such independent representatives gave enduring benefits to assessee. Ld.Sr.Dr submitted that, services received by these independent representatives from non-resident were in the nature of technical assistance as defined under section 9(1)(vii) of the Act and therefore assessee should have deducted TDS under section 195 of the Act.

On the contrary, Ld.AR placed reliance upon the specific findings given by Ld. CIT (A).

5. We have perused submissions advanced by both sides in the light of the records placed before us.

5.1 Ld. CIT (A) decided the issue by observing as under:

> *"9. I have given my careful consideration to the arguments of the appellant and the contentions of the AO.*
>
> *9.1. The consideration and the payment clause of the Agreement is as under;*
>
> *'In the return of the services provided by the Service Provider, the company shall pay and provide the Service Provider the following consideration.*
>
> *a) Registration fee of Rs.24,260/- (Rs.Twenty four thousand two hundred sixty only) per participant would be collected from Feb.2013 to May 2013 by the*

company from participants who wish to enroll themselves (or the VCON 2013 event and remitted to the service provider in full for the services rendered.

b) Infrastructure fees would be paid USD 3,00,000/- towards provision of infrastructure for the three booths/stalls and other facilities specified in the Annexure at the VCON 2013 events."

a) <u>Regarding the amount of Rs.1,92,55,551/- paid as registration fee</u>

During the course of the appellate proceedings, the AR was requested to furnish the list of IRS from whom the registration fees of Rs.24,260/- (per person) was claimed to be collected.

The AR in the written submission dated 13.08.2018 furnished the same and also submitted copies of ledger extract to evidence that assessee company had collected the amount and handed over the V Group International and that the assessee has neither taken it as income nor debited as expenditure.

Considering the above facts, in my view, the payment of Rs.1,92,55,551/- collected from IRS towards registration fee and remitted to the organizers cannot be treated as fee for technical services. The assessee gets relief on this amount.

b) <u>Regarding the payment of Rs.1,80,57,900/-</u>

The assessee has claimed that this amount was paid as rent for hiring space and putting up stalls while the AO contends that the same as was for

managerial/consultancy services rendered by the organizers for the IRs.

There is no doubt that if the IRs are not employees of the assessee company nor has the larger sponsored the IRs to attend the conference. The AO has neither alleged nor brought on record anything to suggest that the employees of the assessee company attended the conference. The payments made for hiring the stalls is business income of the non-resident which can be taxable in India only if the payee had a permanent establishment in India within the meaning of DTAA. Since the non-resident entity did not have a PF, such receipts are not taxable in its hands. Accordingly, it is held that there was no obligation on the part of the assessee to deduct tax at source u/s 195.

To conclude, the appeal is allowed".

It is observed that assessee is in the business of direct selling and multilevel marketing of different products through multiple layers of independent representatives appointed under it. Admittedly, profits of assessee depends upon sales made by independent representatives appointed in the scheme of MLM. In the written submissions filed by assessee in paper book, it is observed that alleged payments have been made to two different non-residents, one being resident of Singapore and the other being resident of Hong Kong, and India do not have double taxation avoidance agreement with Hong Kong. Therefore, considering payment made to non-resident of Hong Kong to be FTS does not arise. Further, it is very much necessary to establish that payment made by assessee

to nonresidents either deemed to or, have accrued or arisen in India. It is not the case of Ld.AO that non-resident had permanent establishment in India in any manner whatsoever, and therefore business receipts being registration fee and infrastructure fees cannot be held to be taxable in India.

6. Further it has been observed from Ledger extract of assessee that assessee collected the amounts from independent representatives and handed over to the respective non-residents. Further, revenue has brought nothing on record to establish that the independent representatives who attended conference were employees of assessee.

6.1 Under such circumstances, we do not find any reason to deviate from the view adopted by Ld.CIT (A) and the same is upheld.

Accordingly grounds raised by revenue stands dismissed.

In the result appeal filed by revenue stands dismissed.

Order pronounced in the open court on

(A.K.GARODIA) **(BEENA PILLAI)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

Dated:
***am**
Copy of the Order forwarded to:
1.Appellant;
2.Respondent;
3.CIT;
4.CIT(A);
5. DR
6. ITO (TDS)
7.Guard File

By Order
Asst. Registrar