

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

IT(IT)A Nos.1178 to 1191/Bang/2017
(Assessment Years : 2015-16 & 2016-17)

M/s. Edgeverve Systems Limited,
Electronic City, Hosur Road,
Bangalore-560 100
PAN AADCE6300K

....Appellant

Vs.

Dy. Asst. Commissioner of Income Tax,
(International Transaction), Circle 1(1),
Bangalore.

.....Respondent.

Assessee By:	Shri Padamchand Khincha, C.A.
Revenue By:	Shri Sunil Kumar Agarwal, Addl. CIT (D.R)

Date of Hearing :	05.12.2019
Date of Pronouncement :	06.12.2019

ORDER

PER BENCH :

These are the appeals filed by the assessee against different orders of Commissioner of Income Tax (Appeals)-2, Bangalore passed u/s 248 and 250 of the Income Tax Act, 1961 (the Act) for the Asst. Years 2015-16 and 2016-17.

Since the issues in all these appeals are identical and similar, they are clubbed and heard together and common order is passed. For the sake of convenience, we shall take up the assessee's appeal in IT(IT)A No.1178/Bang/2017, the assessee has raised the grounds of appeal as under :

1.0 Exception to section 9(1)(vi)(b) / 9(1)(vii)(b) not examined by CIT(A)

1.1 The learned CIT(A) 12, Bangalore has erred in not appreciating that the payments to non residents were in respect of right, property or information used or services utilized in a business or profession carried on by the appellant outside India or for the purposes of making or earning any income from any source outside India.

1.2 The learned CIT(A) 12, Bangalore has erred in not appreciating that the payments to non residents were not deemed to accrue to arise in India u/s 9(1)(vi)/(vii) in view of the above exception and consequently not liable for TDS u/s 195.

2.0 Payments to non residents were not chargeable to tax under the DTAA

2.1 The learned CIT(A) 12, Bangalore has erred in not appreciating that the payments to non residents were not chargeable to tax under the DTAA and consequently not liable for TDS u/s 195.

3.0 . Rate of 20% u/s 206AA is not applicable for grossing up u/s 195A

3.1 The learned CIT(A) 12, Bangalore has erred in not appreciating that the rate of 20% as per section 206AA is not applicable for the purposes of grossing up of income and payment of TDS under section 195A.

3.2 The learned CIT(A) 12, Bangalore has erred in not appreciating that the grossing up under section 195A is required to be made at 'rates in force' and not at the rate of 20% as per section 206AA.

3.3 The learned CIT(A) 12, Bangalore has erred in not appreciating that section 206AA is not applicable in the context of section 195A as grossing up u/s 195A does not involve deduction of tax at source from the amount payable to the payer.

4.0 Grant of interest on refund

4.1 The learned CIT(A) 12, Bangalore has erred in not allowing interest on refund of TDS paid by the appellant out of its own funds.

4.2 The learned CIT (Appeals) 12, Bangalore has erred in not appreciating that interest on refund of TDS is to be allowed as per CBDT Circular No.11 of 2016 dated 26.4.2016 read with the decision of the Supreme Court in the case of UOI V Tata Chemicals Ltd. (2014) 43 taxmann.com 240 (SC)."

2. The Brief facts of the case are that the assessee is an Indian Company engaged in the business of development and export of computer software. In the F.Y. 2014-15, in particular for Jan., 2015 to 31.1.2015, the assessee has made

payments to non-residents after grossing up the invoice amount and deducted tax at source as per provisions of Section 195A of the Act whereas the assessee made payment of TDS after grossing up out of own funds under protest and no TDS Certificate was issued and assessee has filed an appeal with CIT (Appeals) under Section 248 of the Act for the declaration that payment made to non-residents as per the details enclosed as Annexure I to Form 35 are not chargeable as per provisions of Income Tax Act, 1961 and Double Taxation Avoidance Agreement (DTAA) and hence no tax was deductible under the provisions of Section 195 of the Act. The payments are made to non-residents and the assessee seeks declaration under Section 248 of the Act under the provisions of Section 206AA of the Act, the rate of 25% is not applicable to assessee for the purpose of grossing up under Section 195A of the Act. Therefore the assessee has requested for declaration under Section 248 that the assessee is entitled for a refund of TDS paid out of own funds after grossing up along with interest under Section 244A of the Act. In the appellate proceedings, the CIT (Appeals) considered the grounds of appeal and the written submissions filed by the assessee and has dealt on issues related to DTAA relied on judicial decisions and partly allowed the appeal. Aggrieved by the CIT (Appeals) order, the assessee has filed an appeal with the Tribunal.

3. At the time of hearing, the learned Authorised Representative submitted that the CIT (Appeals) has erred in treating the payment to non-resident as royalty and further CIT (Appeals) has not considered the exception to Section 9(1)(vi)(b) and 9(1)(vii)(b) of the Income Tax Act. The learned Authorised Representative also referred to the observations of the CIT (Appeals) and in particular the chart at para 4 of CIT (Appeals) order where the assessee has incurred expenses in respect of Web Hosting Services, Cloud Hosting Services, Cloud Space rentals and argued that the payments made to non-residents are not chargeable to tax under DTAA and filed Paper Book and judicial decisions to substantiate the case. Contra, the learned Departmental Representative supported the orders of CIT (Appeals).

4. We heard the rival submissions and perused the material on record. Prima facie, the learned Authorised Representative made arguments on first ground of appeal emphasizing that the CIT (Appeals) has not considered the exceptions to Section 9(1)(vii)(a) and 9(1)(vii)(b) of the Act and payments to non-residents are not deemed to accrue or arise in India. We found strength in the submissions of the learned Authorised Representative. On perusal of the order of CIT (Appeals), we find the CIT (Appeals) has dealt on the other grounds of appeal raised before him but there was no specific observation in particular to provisions and Section as envisaged by the learned Authorised Representative. We are of the substantive opinion that there is no finding on this disputed issue as submitted by the learned

Authorised Representative by appellate authority. Therefore we considering the submissions of the learned Authorised Representative and findings of the CIT (Appeals) order, consider it appropriate to restore all the disputed issues raised by the assessee in the grounds of appeal to the file of CIT (Appeals) and decided against the assessee, to adjudicate afresh and the assessee should be provided adequate opportunity of hearing to substantiate the case with evidence and shall co-operate in submitting the information for early disposal of appeal and allow the grounds of appeal of assessee for statistical purposes.

5. Similarly, the assessee filed appeals in IT(IT)A Nos. 1179 to 1191/Bang/2017 and the decision in the case of IT(IT)A No.1178/Bang/2017 is applied to these appeals also and are restored to the file of CIT (Appeals) with the above direction for fresh adjudication and allow the grounds of appeal of assessee for statistical purposes.

6. In the result, the assessee's appeals in IT(IT)A Nos. 1178 to 1191/Bang/2017 are allowed for statistical purposes.

Order pronounced in the open court on 6th Dec., 2019.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 06.12.2019.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore