

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'I' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)
And Pawan Singh (Judicial Member)]**

ITA No. 5717/Mum/2017
Assessment year: 2014-15

Income Tax Officer (IT) TDS-3(2) (2) Respondent
Mumbai
Vs

M/s. Omya India Pvt. Ltd., Appellant
*Plot No. 18, MIDC, Industrial
Area, Taloja, Navi Mumbai,
Raigad 410208
[PAN: AAACO7164N]*

Appearances by

V. Sreekar for the respondent
K.K Ved for the appellant

Date of concluding the hearing: September 11th, 2019
Date of pronouncement : December 10th, 2019

ORDER

Per Pramod Kumar, VP:

1. By way of this appeal, the Assessing Officer appellant has challenged correctness of the order dated 27th June 2017, passed by the CIT(A) in the matter of rectification under section 154 r.w.s 200A of the Income Tax Act 1961, for the assessment year 2014-15 (second quarter).

2. In Ground no. 1 the Assessing Officer has raised the following grievance:-

1. Whether in the fact and circumstances of the case and in law the Ld. CIT(A) is correct in giving relief to the assessee without verifying whether the recipient of the fee for technical services was beneficial owner as required under the Double Taxation Avoidance Agreement (DATT) .

3. Briefly stated the relevant material facts are like this in the course of processing under section 200A. The assessee was held to be an assessee in the fault for short deduction tax at source from payment made to various non-resident entities account of fees for technical services. While as per the stand taken in the said processing the assessee was liable to deduct tax at source at the rate of 25.75%, the stand of the assessee was that in terms of India South Korea Double Taxation Agreement and India Switzerland Double Taxation Avoidance Agreement the correct rate of tax deduction at source was 15% and 10% respectively. This plea was eventually upheld by the CIT(A) and the resultant short deduction of tax at source demand was quashed. The Assessing Officer is now agreed of the relief so granted by the CIT(A) but on a all together different ground, i.e. beneficial ownership of the fees for technical services, which was not before any of the authorities below.

4. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicably legal position.

5. We find that it was, at no stage, case of the Assessing Officer that the recipient of the fees for technical services was not the beneficial owner of the said fees for technical services. In any case the demand impugned before us is a demand raised under section 154 r.w.s 200A which cannot, by

the inherent limitations of the scope of the said statutory provision, deal with such issues. Grievance of the Assessing Officer is thus wholly unsustainable in law. We therefore reject the grievance raised by the Assessing Officer and declined to interfere in the matter.

6. In the result, the appeal is dismissed. Pronounced in the open court today on the 10th of December, 2019

Sd/-

Pawan Singh
(Judicial Member)

Sd/-

Pramod Kumar
(Vice President)

Mumbai, dated the 10th of December, 2019

Nishant Verma Sr.PS

Copies to: (1) The appellant (2) The respondent
 (3) CIT (4) CIT(A)
 (5) DR (6) Guard File

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai*