

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं श्री एस. जयरामन, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.100, 101 & 103/chny/2018

निर्धारण वर्ष /Assessment Years : 2012-13, 2013-14 & 2014-15

M/s Schawk India Pvt. Ltd.,
RMZ Millenia Business Park
Campus-2, 5th floor,
No.143, Dr. M.G.R. Road,
Kandanchavadi, Chennai - 600 096.

v. The Deputy Commissioner of
Income Tax,
Corporate Circle – 6(1),
Chennai - 600 034.

PAN : AAICS 2922 G

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri Sriram Seshadri, CA

प्रत्यर्थी की ओर से / Respondent by : Shri AR.V. Sreenivasan, JCIT

सुनवाई की तारीख / Date of Hearing : 09.10.2019

घोषणा की तारीख / Date of Pronouncement : 29.11.2019

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

All the three appeals of the assessee are directed against the common order passed by the Commissioner of Income Tax (Appeals) -15, Chennai, dated 29.09.2017, for assessment years 2012-13, 2013-14 and 2014-15. Since common issue arises for

consideration in these appeals, we heard these appeals together and disposing the same by this common order.

2. Shri Sriram Seshadri, the Ld. representative for the assessee, submitted that the assessee-company is engaged itself in the business of art designing. According to the Ld. representative, the assessee has paid ₹1,83,83,820/- for the assessment year 2012-13 as administrative expenses to its parent company at Singapore. Similarly during other assessment years also, the administrative expenses were paid to the parent company at Singapore. According to the Ld. representative, the Assessing Officer disallowed the payments on the ground that tax was not deducted as required under Section 195 of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. representative, by virtue of Singapore and India Double Taxation Avoidance Agreement, unless the technology was made available to the assessee, it cannot be said that technology was provided by the parent company. Therefore, according to the Ld. representative, the assessee is not liable to deduct tax under Section 195 of the Act. Moreover, for assessment years 2016-17 and 2017-18, by order dated 25.10.2016 and 09.03.2018, the Assessing Officer

himself issued certificates to the assessee to make the payment without deducting tax. The Ld. representative has also placed his reliance on the judgment of Karnataka High Court in CIT v. De Beers India Minerals (P.) Ltd. (2012) 346 ITR 467 and submitted that on identical circumstance, the Karnataka High Court held that when the technology was not made available to the recipient in India, there is no need for deduction of tax under Section 195 of the Act. The Ld. representative has also placed reliance on the decision of Mumbai Bench of this Tribunal in DCIT v. Boston Consulting Group Pte. Ltd. (2005) 94 ITD 31 and submitted that the Mumbai Bench has specifically considered the Singapore-India Double Taxation Avoidance Agreement and found that tax should not be deducted unless the technology was made available to the assessee. The Ld. representative has also placed his reliance on the order of this Bench of the Tribunal in DCIT v. Ford India Ltd. (2017) 78 taxmann.com 5 and also decision of the Special Bench of this Tribunal at Mumbai in Mahindra & Mahindra Ltd. v. DCIT (2009) 30 SOT 374. The Ld. representative has also placed reliance on the judgment of Delhi High Court in DIT v. Guy Carpenter & Co. Ltd. (2012) 346 ITR 504.

3. We heard Shri AR.V. Sreenivasan, the Ld. Departmental Representative also. The Ld. D.R. submitted that he is placing reliance on the observation made by the Assessing Officer as well as the CIT(Appeals).

4. We have considered the rival submissions on either side and perused the relevant material available on record. We have carefully gone through the orders of both the authorities below. It is not the case of the Revenue that the technology was made available to the assessee-company by the parent company at Singapore. The services, namely, management and administrative decisions were taken at Singapore and it was communicated to the assessee. The technology was not made available to the assessee so that they can conduct the business on their own. It is not in dispute that the assessee is a subsidiary company of Singapore company. In fact, entire decisions were taken at Singapore. Therefore, this Tribunal is of the considered opinion that unless the technology was made available to the assessee-company, the assessee is not liable to deduct tax in view of the Double Taxation Avoidance Agreement between India and Singapore. Similar view

was taken by the Mumbai Bench of this Tribunal in Boston Consulting Group Pte. Ltd. (supra). Moreover, this Tribunal has also taken a similar view in Ford India Ltd. (supra). These decisions of the Tribunal are fortified by the judgments of Karnataka High Court and Delhi High Court referred by the Ld. representative for the assessee.

5. Moreover, the assessee has filed copies of certificates issued by the Assessing Officer for non-deduction of tax under Section 195 of the Act. When the Assessing Officer himself issued certificates saying that the assessee is not required to deduct tax under Section 195 of the Act, this Tribunal is of the considered opinion that there is no justification for making any disallowance during the years under consideration. The copies of certificates are available at pages 319 and 320 of the paper-book filed by the assessee. In view of the above, this Tribunal is unable to uphold the orders of both the authorities below. Accordingly, orders of both the authorities below are set aside and the disallowance made by the Assessing Officer is deleted.

6. In the result, all the three appeals filed by the assessee stand allowed.

Order pronounced in the court on 29th November, 2019 at Chennai.

sd/-

(एस. जयरामन)

(S. Jayaraman)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 29th November, 2019.

Kri.

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-15, Chennai-34
4. Principal CIT-6, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.