आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.650/PUN/2014
निर्धारण वर्ष / Assessment Year : 2009-10

Cummins Inc.,
C/o Cummins India Ltd.,
Kothrud, Pune-411038

PAN : AABCC6225D

.....अपीलार्थी / Appellant

बनाम / V/s.

Deputy Director of Income Tax
(International Taxation-I), Pune

.....प्रत्यर्थी / Respondent

Assessee by : S/Shri Rajan Vora & Rajendra Agiwal
Revenue by : Shri T. Vijay Bhaskar Reddy

सुनवाई की तारीख / Date of Hearing : 06-01-2020
घोषणा की तारीख / Date of Pronouncement : 14-01-2020

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee is against the order dated 28-01-2014 passed by the Assessing Officer (DDIT, International Taxation-I), Pune for assessment year 2009-10.

2. Ground No. 1 is against non-acceptance of revised return of income. Briefly stated, the facts of the case are that the assessee is non-resident company. It filed its return of income on 29-10-2009, inter-alia, declaring income from `Royalty for equipments use from KPIT Cummins' at Rs.2,96,80,716/-; `Royalty for equipments use from CRTI' at Rs.94,36,307/-; and `Royalty for equipment use from CGTI' at Rs.38,65,524/-. The return filed by the assessee was processed and intimation was issued on 14-03-2011. Before lapse of one year from the end of the relevant assessment year, the assessee filed its revised return on 31-03-2011 in which the above referred three amounts initially offered by the assessee were reduced from Rs.2,96,80,716/- to Rs.2,77,38,595/-, from Rs.94,36,307/- to Rs. Nil and from Rs.38,65,524/- to Rs. Nil. In other words, the assessee offered lower income in the revised return of income under the above three heads. The AO refused to accept the validity of revised return and proceeded with the determination of total income as if the amounts originally offered by the assessee were correct. The ld. CIT(A) did not bring any change to the fortune of assessee on this issue. The assessee is aggrieved by non-acceptance of revised return which was otherwise filed within the stipulated time.

3. We have heard both the sides and gone through the relevant material on record. It is an admitted position that the assessee filed revised return after the issuance of intimation but within the period prescribed for filing of the revised return. It is trite law that even if the AO does not accept a revised return claiming the downturn by the assessee in the income filed originally, it is always open to the assessee to assail the wrong inclusion of income, fully or partly, before the higher authorities. Without going into the

question as to whether the revised return filed by the assessee was valid or not, we do not find any hitch in the assessee claiming before the Tribunal that the excess income declared in the return in the above three heads be reduced. Since, the authorities below have not examined the merits of reduction in income in the above three heads, we set aside the impugned order and remit the matter to the file of AO for examining the correctness or otherwise of the claims made by the assessee in the revised return on the above three counts. Needless to say, the assessee will be allowed a reasonable opportunity of hearing in this regard.

4. The ground Nos. 2 and 3 are relating to taxability of services regarding user rights in off-the-shelf software and providing standard support services to an extent of Rs.9,96,00,728/- and Rs.1,52,43,952/-, respectively. Simultaneously, the ld. AR made a request for the withdrawal of Form No. 8 filed by the assessee for the year under consideration as required u/s. 158A of the Act. It was submitted that the Tribunal in assessee's own case for the A.Y. 2008-09 also permitted the withdrawal of Form No. 8 under similar circumstances as the subject matter became infructous because of the withdrawal of the appeal by the assessee for earlier year from the Hon'ble High Court and the Tribunal allowing the relief in the rectification proceedings.

5. Heard both parties and perused the material available on record. In view of the fact that the Tribunal in the proceedings for the earlier year has allowed the assessee to withdraw Form No. 8, following the same reasoning we also allow the assessee to withdraw Form No. 8 for the instant year.

6. On merits, the ld. AR placed on record a copy of the order dated 07-08-2019 passed in assessee's own case for the A.Y. 2008-09 deciding the issue in favour of the assessee by holding the amounts received on account of providing off-the-shelf software and support services to its associates in India is not in the nature of Royalty and hence not chargeable to tax in the hands of assessee.

7. Having heard both the sides and gone through the relevant material on record, it is observed that similar issue came up for consideration before the Tribunal in assessee's own case for earlier years. In its order dated 07-08-2019 for the assessment year 2008-09 (ITA No. 2506/PUN/2012), the Tribunal, following its earlier orders for the assessment years 2004-05 and 2006-07, has held that such amount cannot be treated as 'Royalty' chargeable to tax. A copy of such order has been placed on record. Relevant discussion has been made in para 17 of the Tribunal's order. Both the sides are in agreement that the facts and circumstances of the instant year are mutatis mutandis similar to those of the earlier year. Respectfully following the precedent, we delete the additions. Accordingly, ground Nos. 2 and 3 raised by the assessee are allowed.

8. The ground No. 4 raised by the assessee questioning the action of AO in treating the cost reimbursements as income under the head 'Fees for Included Services' as against the claim of reimbursement.

9. Heard both parties and perused the materials available on record. It is noted from the draft assessment order at para 18 of page 56, the

payments involving consultancy fee, training, software expenses and software subscription fee totaling to Rs.18,86,056/- held to be taxable in the hands of assessee in India. The assessee was asked to substantiate why the said receipts are not taxable in India. The assessee tendered some explanation which was not accepted by the AO, who eventually held the amount as chargeable to tax.

10. It is seen that the assessee's claim for non-taxability of Rs.18,86,056/- is in the nature of reimbursement of expenses. On a pertinent query, the ld. AR failed to furnish any evidence for substantiating this claim of reimbursement of expenses. In the absence of any such information/details put forth on behalf of the assessee proving the reimbursement of expenses, we hold that the amount in question is chargeable to tax. Thus, ground No. 4 is dismissed.

11. Ground No. 5 raised by the assessee challenging the action of AO in adding an amount of Rs.47,747/- in the facts and circumstances of the case.

12. Heard both parties and perused the materials available on record. It is noted from the draft assessment order in para 19 at page 57 that there was difference of amount of Rs.47,747/- between the TDS certificate issued by the KPIT Cummins and the amount actually reported by the assessee. We find that the assessee could not reconcile the same before the authorities below. The position continues to remain the same before the Tribunal as well in as much as the assessee has not offered any reconciliation of the two figures. In view of the fact that the assessee

offered lower amount of income vis-à-vis the amount shown by its Indian counterpart in its TDS Certificate, we hold that the addition has been rightly made by the AO. Resultantly, ground No. 5 raised by the assessee is dismissed.

13. Ground No. 6 raised by the assessee questioning the action of AO in adding an amount of Rs.1,93,894/- relating to foreign exchange difference between the amount credited to the account of the assessee and reported in Form No. 3CEB.

14. Heard both parties and perused the materials available on record. On perusal of the draft assessment order, we note that the assessee could not explain the difference of Rs.1,93,894/- but however the DRP remanded the matter to AO to verify claim made by the Cummins Inc. The AO rejected the same in final order. The ld. AR submitted that the assessee is ready to produce all the details relating to difference of amount in comparison to amount reported in TDS certificate and prayed to remand the issue to the file of AO for fresh consideration. The ld. DR reported no objection. Considering the same in the interest of justice we remand the issue raised in ground No. 6 to the file of AO for its fresh consideration. The AO shall decide the same by giving opportunity to the assessee. The assessee is liberty to file all the evidences relating to issue in hand. Accordingly, ground No. 6 raised by the assessee is allowed for statistical purpose.

15. In ground No. 7 the assessee has assailed initiation of penalty proceedings u/s. 271(1)(c) of the Act, it was agreed by the ld. AR that it is

the ground raised by the assessee is pre-mature at this stage. Hence, requires no adjudication, the same is dismissed.

16. In the result, the appeal of assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 14th January, 2020.

Sd/-	Sd/-
(R.S. Syal)	(S.S. Viswanethra Ravi)
VICE PRESIDENT	JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 14th January, 2020.
RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Dispute Resolution Panel, Pune
4. The DDIT (IT-II), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच, पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune