

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
&
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

I.T.A. No.77/DEL/2017
Assessment Year 2012-13

| | | |
|--|----|-----------------------------------|
| Smt. Ruchi Gupta, Prop M/s. Jainsons Exports, Unit-1, Barsat Road, Panipat. | v. | ACIT, Panipat Circle, Panipat. |
| TAN/PAN: ABAPG 8629H | | |
| (Appellant) | | (Respondent) |

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|------------------------|----------------------------|----|------|
| Appellant by: | None | | |
| Respondent by: | Shri Surender Pal, Sr.D.R. | | |
| Date of hearing: | 17 | 10 | 2019 |
| Date of pronouncement: | 14 | 01 | 2020 |

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the Assessee against the impugned order dated 21.10.2016 passed by Id. CIT (Appeals), Karnal for the quantum of assessment passed u/s.143(3) for the Assessment Year 2012-13. In various grounds of appeal, the assessee has challenged the disallowance u/s. 40(a)(i) on account of payment made to non-resident for travelling, professional/managerial services amounting to Rs.12,62,632/- and that the Ld. CIT(A) has erred on facts in not allowing telescoping of the addition of Rs.11 lacs offered and added back in respect of manufacturing and other expenses.

2. The facts in brief qua the issue of disallowance u/s. 40(i)(a) are that, the assessee is engaged in the business of manufacturing and exporting of carpet, bath mat, durries, etc. as sole proprietor of M/s. Jainsons Export Unit-1. The assessee has declared profit of Rs.6,48,85,332/- on total turnover of Rs.50,31,33,325/-, showing GP rate of 12.90%. The Assessing Officer on perusal of the expenses claimed under the head 'Trade Fair and Exhibition' to the tune of Rs.1,15,72,071/-, required the assessee to furnish details and justify the expenses. In response to the show cause notice, the details of expenses were filed by the assessee and submitted that she has participated in Domotex and Helmtex Fairs held in Germany which organizes textile fairs in Germany every year wherein buyers from all across the world attend and assessee has a great opportunity to showcase the product and procure orders. The details of expenses were as under:

| Sr. No. | Particulars | Purpose | Amount |
|---------|----------------------------------|---|-----------|
| 1. | Messee Frankfurt Exhibition GMBH | Fair fee for Heimtextil Fair held in Germany | 9,61,810 |
| 2. | Deutshee Messe Hannover, Germany | Hall space fees for domotex fair held in Germany | 13,78,284 |
| 3. | Design 4U | Professional advice for Heimtextil fair held in Germany | 36,88,075 |
| 4. | Design 4U | Professional advice for Domoex fair held in Germany | 35,78,366 |
| 5. | Messe Frankfurt Exhibition GMBH | Fair fees for fair held in Germany | 1,26,914 |
| 6. | Messe Frankfurt Exhibition GMBH | Fair fees for fair held in Germany | 39,288 |
| 7. | Storacon Storage and Handling | For Transportation | 1,34,078 |
| 8. | Space Travel and Cargo | For Transportation | 51,729 |
| 9. | Messee Frankfurt Exhibition GMBH | Fair fees for fair held in Germany | 51,444 |
| 10. | Storacon Storage and Handling | For Transportation | 1,33,222 |

| | | | |
|-----|---------------------------------|---|-------------|
| 11. | Messe Frankfurt Exhibition GMBH | Fair fees for fair held in Germany | 1,47,066 |
| 12. | Hotel Central | Hotel Bill & Other Charges. Hannover | 1,62,881 |
| 13. | Best Roadways | For Transportation | 38,000 |
| 14. | Loading Services UG | For Transportation | 56,414 |
| 15. | Forex | Foreign Currency | 10,24,500 |
| | | Total | 1,15,72,071 |

3. The Assessing Officer observed that assessee has not deducted TDS on the payment made to non-resident parties and after detail observation and finding he held that assessee was liable to deduct TDS u/s.195(2) and thereby made disallowance of Rs.78,41,993/-. The details of expenses allowed and disallowed by the Assessing Officer u/s. 40(a)(i) are as under:

| Sr. No. | Particulars | Total Amount Paid | Allowed by Assessing Officer | Disallowed by Assessing Officer |
|---------|---|-------------------|------------------------------|---------------------------------|
| 1. | Messee Frankfurt Exhibition GMBH, Germany | 961810.00 | 921070.00 | 40740.00 |
| 2. | Domotex Deutsche Messee Hannover, Germany | 1378284.00 | 1208184.00 | 170100.00 |
| 3. | Design 4U SRL Italy | 7266441.00 | 0 | 7266441.00 |
| 4. | Messee Frankfurt Exhibition GMBH, Germany | 126914.00 | 0.00 | 126914.00 |
| 5. | Messee Frankfurt Exhibition GMBH, Germany | 39288.00 | 0.00 | 39288.00 |
| 6. | Starcon Storage & Handling | 134078.00 | 134078.00 | 0.00 |
| 7. | Space Travel & cargo | 5172.00 | 51729.00 | 0.00 |
| 8. | Messee Frankfurt Exhibition GMBH, | 51444.00 | 0.00 | 51444.00 |
| 9. | Storacori Storage & Handling | 133222.00 | 133222.00 | 0.00 |
| 10. | Messee Frankfurt Exhibition GMBH, Germany | 147066.00 | 0.00 | 147066.00 |

| | | | | |
|-----|----------------------------|--------------------|-------------------|-------------------|
| 11. | <i>Hotel Central</i> | <i>162881.00</i> | <i>162881.00</i> | <i>0.00</i> |
| 12. | <i>Best Roadways</i> | <i>38000.00</i> | <i>38000.00</i> | <i>0.00</i> |
| 13. | <i>Loading Services UG</i> | <i>56414.00</i> | <i>56414.00</i> | <i>0.00</i> |
| 14. | <i>Forex</i> | <i>1024500.00</i> | <i>1024500.00</i> | <i>0.00</i> |
| | <i>Total</i> | <i>11572071.00</i> | <i>3730078.00</i> | <i>7841993.00</i> |

4. Before the Ld. CIT (A), the assessee has given the break-up of various payments for the exhibition which has been disallowed by the Assessing Officer and submitted that none of these expenses are in the nature of 'fee for technical services' and at the most these were the payments made to the entities for them it was business income and none of entities had any PE in India, therefore, no income of the non-residents were taxable in India. Hence, there was no scope of any deduction of TDS. In sums and substance, the contention of the assessee which has been summarized before the Ld. CIT (A) reads as under:

"a) The AR has argued that the nature of payments made towards the fair at Domotex and Messe Frankfurt were organizing authority for fair held in Germany every year and the composite payments made to these parties included charges for lightning, water electricity, neon boards pamphlets and booklets which were not in any payment for technical services.

b) It was further submitted by the AR that the payments made to Desgn4U was also a composite payment for services including construction of stand, music system, transportation of material, assembling and dis-assembling of stand as well as coffee machine, tea machine, vacuum clean etc.

The AR emphasized that merely by writing "professional advice on the invoices should not be considered to be any indication of these payments to be considered as fees for technical services.

c) The AR further argued that the AO had not considered the details as per the agreements as well as the nature of services for which these payments had been made. It was emphasized by the AR that the AO had totally ignored the fact that the payment for composite exhibition expenses could not be in the nature of technical services and therefore provisions of Section 195 and 40(a)(ia) were not attracted.

d) The AR has also highlighted that the facts of the case were similar to the decision of the IT AT, Delhi in the case of Brahmos Aerospace Pvt. Ltd. (supra) and therefore this addition made by the AO was not justified. In this regard, it was also highlighted that the AO had himself excluded the rent portion paid by the assessee which indicates that the observation of the AO regarding the composite payment towards exhibition expenses included multiple items and were not covered under fees for technical services.”

5. Ld. CIT (A) after detailed discussion held that looking to the nature of services, he observed it was a consolidated payment towards exhibition expenses and most of these cannot be held to be technical services. However, with regard to the Project of the stand inclusive of plan, prospective, frontal/lateral prospectus and sections and construction of the stand, he held that there could be some element of technical input and held that 15% disallowance should be

made on *ad hoc* basis. Accordingly, he confirmed the disallowance of Rs.10,89,966/-.

6. Apart from that, with regard to payment to one party, Messe Frankfurt. The details of disallowance made by the Assessing Officer are as under:-

- “1. Messe Frankfurt Exhibition Rs.40,740/- (for media package)*
- 2. Domotex Deutsche Hanover, Germany Rs.1,70,100/- (for marketing fees)*
- 3. Messe Frankfurt Exhibition Rs.1,47,066/- (for other services)*
- 4. Messe Frankfurt Exhibition Rs.51,444/- (for other services)*
- 5. Messe Frankfurt Exhibition Rs.39,288/- (for other services)*
- 6. Messe Frankfurt Exhibition Rs.1,26,914/- (for other services)”*

7. Out of which ld. CIT(A) has held that 30% of these expenses are being estimated for technical services and accordingly, he disallowed sum of Rs.1,72,666/-. Hence, over all disallowance was restricted to Rs.12,62,632/-.

8. None appeared on behalf of the assessee despite service of notice, and therefore, the appeal is being decided on the basis of material placed on record and after considering the submissions made by the DR, who has mainly supported the findings of the ld. CIT (A).

9. After considering the relevant findings given in the impugned orders as well as the submission of the assessee as incorporated in the order of the Ld. CIT (A), we find that it is

not in dispute that the payment has been made by the assessee to non-resident entities based in Germany in connection with r exhibition purposes, trade and fair expenses, for media package and other marketing fees. Another admitted fact that none of these non-resident entities have any business connection in India, and therefore, even if it is a business income for the non-residents, then same is not taxable in India u/s.9(1)(i) r.w.s. 5 of the Act. Further, from the perusal of the nature of services, we find that none of these services are in the nature of managerial, technical and consultancy services as defined in Section 9(1)(vii) nor even under Article 12 of India-Germany DTAA. Even with regard to payment made to Domotex and Helmtex for fairs held in Germany, the nature of services is purely for fair paid charges and for other services like electrical power, marketing, electrical services, internet services, water, etc. None of these services can be held to be in the nature of FTS. In so far as professional advice as mentioned in Design 4U expenses, includes project of the stand, construction of the stand, transport of all materials to the fair, assembling of the stand before the opening of fair and disassembling of the stand after the fair closure. Even the Ld. CIT (A) has found that most of these services are not in the nature of fee for technical services. However on adhoc basis, he has held that 15% of the payment can be held to be fee for technical services on account of payment made for technical components in the construction of the stand and in the

prospective of the construction and strategies and he has also made adhoc disallowance of 30% on other various expenses incorporated above. First of all, none of these services falls within the ambit and scope of fee for technical services as defined in Article 12 of India-Germany DTAA and secondly, such presumption without any basis and in adhoc manner cannot be upheld. Such adhoc disallowance cannot be subjected to disallowance u/s 40(a)(i). Accordingly, the disallowances as confirmed by the Ld. CIT (A) are deleted.

10. In the result, the appeal of the assessee is allowed.

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

Sd/-
[G.S. PANNU]
VICE PRESIDENT

DATED: 14th January, 2020

PKK:

Sd/-
[AMIT SHUKLA]
JUDICIAL MEMBER