

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "A", BANGALORE**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT
AND
SHRI B.R.BASKARAN, ACCOUNTANT MEMBER**

**ITA Nos.2270 to 2278(Bang)/2019
(Assessment Years : 2011-12, 2012-13 & 2013-14)**

M/s Arvind Lifestyles Brands Limited
8h Floor, DUPARC,
Trinity, No.17, MG Road,
Bangalore-560 001
PANNo.AAACH7252A

Appellant

Vs

The Asst. Commissioner of Income tax,
CPC, TDS, Sector-3, Vaishali,
Ghaziabad,
Uttar Pradesh-201 010

Respondent

**Appellant by : Shri Biren V Shah, CA
Revenue by : Shri Praveen Karanth, Addl.CIT**

**Date of hearing : 30-01-2020
Date of pronouncement : 06-02-2020**

ORDER

PER BENCH:

These are appeals filed by the assessee against two set of orders CIT(A)-10, Bangalore, both dated 27-08-2019 relating to assessment years 2011-12, 2012-13 & 2013-14 respectively.

2. ITA Nos.2270-2272(B)/2019 are appeals against the order dated 27-08-2019 of CIT(A)-10, Bangalore in which dispute relates to the demand for short deduction of tax made by the AO relating to Tax Deduction at Source

(TDS) returns relating to (Q=Quarter)Q-2, Q-3 & Q-4 of FY 2010-11. ITA Nos.2273 to 2278(B)/2019 are appeals against common order dated 27-08-2019 of CIT(A)-10, Bangalore and these appeals arise out of the demand for short deduction of tax at source in relation to return of Tax Deduction at Source (TDS) in relation to Q-1, to 3 of Assessment Year 2012-13 and Q-1 & Q-2 and Q-4 of Assessment Year 2013-14.

3. As far as ITA No.2270 to 2272 (B)/2019 the facts are that the assessee filed return of income TDS for Q-2 to Q-4 of FY 2010-11 (AY:2011-12) on 06-06-2011. The TDS return were in respect of TDS payment made to non-resident. Admittedly, the Assessee did not furnish Permanent Account Number (PAN) of non-resident with the Income Tax Department, Government of India, to whom the payments were made. As per the provisions of sec.206AA of the Income Tax Act, 1961 (Act), if the PAN of the non-resident is not mentioned in the TDS return and the payee is a non-resident then the rate at which the TDS is to be effected is 20%, as against the lesser/normal rate of TDS as per the provisions of the DTAA between India and the country of which the recipient of the payments are tax residents. While processing the TDS returns electronically, the ACIT, CPC-TDS, Centralized Processing Cell (CPC) did not apply the higher rate of tax as per the provisions of Sec.206-AA of the Act. However by orders passed u/s.154 of the Act dated 11-03-2018 for Q3 & Q4 of AY:2011-12 and 22.03.2018 for Q2 of AY: 2011-12, the ACIT, CPC-TDS applied higher rate of tax as he found that the tax deducted by the assessee at source was at a lesser rate as per DTAA whereas the rate of tax that ought to have been applied was the higher rate of tax in terms of Sec.206AA of the Act. Therefore, the demand to the extent of short deduction was raised by the CPC-TDS by the intimation u/s.154 of the Act dated 22.3.2018.

4. The Assessee was aggrieved by the aforesaid demand for short deduction of tax at source raised by the CPC. The Assessee found from the Justification Report for raising the aforesaid demand that because the

Assessee did not furnish Permanent Account Number (PAN) of non-resident with the Income Tax Department, Government of India, to whom the payments were made, the ACIT-CPC, TDS applied the provisions of sec.206AA of the Income Tax Act, 1961 (Act) which provides that if the PAN of the non-resident is not mentioned in the TDS return and the payee is a non-resident then the rate at which the TDS is to be effected is 20%, as against the lesser/normal rate of TDS as per the provisions of the DTAA between India and the country of which the recipient of the payments are tax residents and hence the demand for short deduction of tax at source.

5. The assessee filed appeal against the intimation u/s 154 of the Act dated 11-03-2018 for Q-3 & 4 of AY 2011-12 and order dated 22-03-2018 for Q-2 of AY 2011-12 on 07-04-2018. It was the case of assessee that it had deducted tax at source on the payments made to non-resident as per the rates prescribed by the DTAA and that the provision of sec.206AA of the Act prescribing a higher rate of tax at source is not valid as against the provisions of DTAA. According to the assessee as per the provisions of sec.90(2) of the Act, if there is a conflict between the DTAA and the Act, provisions of DTAA will prevail and therefore, the higher rate of TDS demanded by the CPC is contrary to the provisions of section 90(2) of the Act and DTAA and therefore, should be cancelled.

6. The CIT(A) dismissed the appeal of the Assessee holding that the issue whether the provisions of the Act i.e., Sec.206AA of the Act would prevail over the DTAA was a debatable issue and hence cannot be decided in an application u/s.154 of the Act. Secondly, he held that the demand for short deduction of tax at source was in relation to AY 2011-12 and therefore any rectification u/s.154 of the Act cannot be done after a period of 4 years from the end of the financial year in which the order sought to be amended was passed as is laid down in the provisions of Sec.154(7) of the Act.

7. As far as ITA No.2273 to 2278(B)/2019 are concerned, the facts with regard to filing of TDS return by the assessee for various quarters involved in these appeals are as follows:

Q-1 of AY 2012-13	Date of filing return of TDS:	22.12.2011
Q-2 of AY 2012-13	- do-	: 22.12.2011
Q-3 of AY 2012-13	- do-	: 16.02.2012
Q-1 of AY 2013-14	-do-	: 25.02.2013
Q-2 of AY 2013-14	-do-	: 25.02.2013
Q-4 of AY 2013-14	-do-	: 25.02.2013

8. While processing the TDS returns electronically, the ACIT, CPC-TDS, Centralized Processing Cell (CPC) did not apply the higher rate of tax as per the provisions of Sec.206-AA of the Act. However by orders passed u/s.154 of the Act dated 11.3.2018 for Q1 to Q-3 of AY 2012-13 and order dated 15.03.2018 and 10.3.2018 and 10.3.2018 respectively for Q-1, Q-2 and Q-4 of AY 2013-14, the ACIT, CPC-TDS applied higher rate of tax as he found that the tax deducted by the assessee at source was at a lesser rate as per DTAA whereas the rate of tax that ought to have been applied was the higher rate of tax in terms of Sec.206AA of the Act. Therefore, the demand to the extent of short deduction and interest on short deduction of tax at source was raised by the CPC-TDS by the intimations u/s.154 of the Act for the various quarters of AY 2012-13 & 2013-14.

9. The assessee filed appeal against the intimations u/s 154 of the Act for Q-1 to Q-3 of AY 2012-13 and Q-1, Q-2 and Q-4 of AY 2013-14. It was the case of assessee that it had deducted tax at source on the payments made to non-resident as per the rates prescribed by the DTAA and that the provision of sec.206AA of the Act prescribing a higher rate of tax at source is not valid

as against the provisions of DTAA. According to the assessee as per the provisions of sec.90(2) of the Act, if there is a conflict between the DTAA and the Act, provisions of DTAA will prevail and therefore, the higher rate of TDS demanded by the CPC is contrary to the provisions of section 90(2) of the Act and DTAA and therefore, should be cancelled.

10. The CIT(A) dismissed the appeals of the Assessee holding that the issue whether the provisions of the Act i.e., Sec.206AA of the Act would prevail over the DTAA was a debatable issue and hence cannot be decided in an application u/s.154 of the Act.

11. Aggrieved by the aforesaid two set of orders passed by the CIT(A) the Assessee has filed the present appeals before the Tribunal. The grievance projected in the grounds of appeal are common and that is:

(i) While processing the return of TDS u/s 200A of the Act the CPC cannot make any additions on issues which are debatable and the CPC can only correct errors which are apparent from the records and therefore, the CPC were not justified in holding that the rates prescribed u/s 206AA of the Act should be applied.

(ii) The Beneficial provisions of DTAA will prevail over the provisions of sec.206AA of the Act.

12. The learned counsel for the Assessee reiterated the stand of the Assessee as put forth before the revenue authorities. The Id.DR relied on the orders of Id.CIT(A).

13. We have carefully considered the rival stand of the Assessee and the revenue on the issue in the appeal. We find that the CIT(A) has rejected the appeals of the assessee on the ground that the issue whether DTAA will prevail over the provisions of sec.206AA of the Act is a debatable issue. On

this issue, we find that the law as it evolved is that the Special Bench of the ITAT, Hyderabad in the case of Nagarjuna Fertilizers and Chemicals Ltd. vs ACIT(2017) 78 Taxman.com 264 has held that DTAA will prevail over the provisions of sec.206AA of the Act. Therefore, the TDS done as per the DTAA is correct. Similar view has been taken by the Hon'ble Delhi High Court in the case of Danisco India (P)Ltd.vs Union of India others in W.P.No.(C)5908/15) dated 05-02-2018. It was the ACIT-CPC-TDS who passed the order u/s.154 of the Act and therefore if the CIT(A) is of the view that the issue was debatable then the order u/s.154 of the Act should have been cancelled by him. He dismissed the appeals of the Assessee without realizing that the order u/s.154 of the Act was passed by the ACIT-CPC-TDS and not on any application filed by the Assessee. Again the question of limitation will also go against the revenue and not against the Assessee because it was the revenue i.e., the ACIT-CPC-TDS, who passed the order u/s.154 of the Act. The law as interpreted by the judicial forums by the Hon'ble Delhi High Court on 5.2.2018 prior to the order u/s.154 of the Act passed by the ACIT-CPC-TDS supports the plea of the Assessee. In the given and facts and circumstances of the case and the legal position on the issue, we are of the view that the orders u/s.154 of the Act raising demand for short deduction of tax at source and interest thereon cannot be sustained and the same is directed to be cancelled. The appeals of the Assessee are accordingly allowed.

14. In the result, all these appeals are allowed.

Order pronounced in the open court on 5th February, 2020.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER
Dated: 05-02-2020
*am

Sd/-
(N.V.VASUDEVAN)
VICE PRESIDENT

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

By Order

Asst.Registrar