

**IN THE INCOME TAX APPELLATE TRIBUNAL "G"
BENCH, MUMBAI**

**BEFORE SHRI S. RIFAUR RAHMAN, AM &
SHRI RAM LAL NEGI, JM**

आयकरअपीलसं./ I.T.A. No. 3244 & 3245/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2013-14 & 2014-15)

DCIT (LTU)-1, World Trade Centre, Centre No. 1, 29 th floor, Cuffe Parade, Mumbai-400 005	बनाम/ Vs.	M/s Sonata Information Technology Ltd. 208, T. V. Industrial Esate, S K Ahire Marg, Worli, Mumbai-400 025
स्थायीलेखासं ./जीआइआरसं ./PAN No. AAEC8734J		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Anand Mohan, DR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri Vijay Mehta, AR

सुनवाईकीतारीख/ Date of Hearing	:	03.11.2020
घोषणाकीतारीख / Date of Pronouncement	:	08.12.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present two appeals have been filed by the revenue against the order of Ld. Commissioner of Income Tax (Appeals)-1, Mumbai, in short 'Ld. CIT(A)' dated 02.02.2018 for AY 2013-14 & 2014-15 respectively.

2. Since the issues raised in both the appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed off by this consolidated order. First of all, we are taking ITA No. 3244/Mum/2018 for Assessment Year 2013-14.

3. The brief facts of the case are, assessee is fully owned subsidiary of Sonata Software Ltd, engaged in the business of various kinds of software related business. The return of income was filed by the assessee on 29.11.13 declaring total income of Rs. 8,76,20,880/- under regular provision of Act and book profit of Rs. 9,29,50,624/- u/s 115JB of the Act. Subsequently, assessee filed the revised return of income on 31.03.15 with total income of Rs. 91,14,860 under regular provisions of the Act and book profit of Rs. 9,29,50,624/- u/s 115JB of the Act. The return was processed u/s 143(1) of the Act and subsequently, the case was selected for scrutiny and notices u/s 143(2) and 142(1) were issued and served on the assessee. In response, AR of the assessee filed the relevant information as called for.

4. During the year, the assessee has claimed expenditure of Rs. 12,48,02,571/- on account of service charges paid and Rs.

67,46,028/- on account of reimbursement of other charges to M/s Sonata Software Ltd (SSL). The expenditure is claimed to be in accordance with the agreement dated 28.09.2000 entered into by the assessee with SSL, which was further revised on various dates and as per the said agreement, it was agreed that assessee was to pay service charges to SSL for rendering the services.

5. During the course of assessment proceedings, AO asked the assessee to furnish the necessary documents to show that the services stated in the said agreement were rendered by SSL. In response, assessee furnished its detailed submission vide letter dated 03.03.2016.

6. After considering the detailed submission of assessee, AO passed assessment order u/s 143(3) of the Act treating the total taxable income of Rs. 48,60,32,330/- by making following disallowances on account of service charges at Rs. 12,48,02,571/-, other charges of Rs. 67,45,028/- and deputation charges at Rs. 24,03,81,125/- and also made disallowance of Rs. 2,45,55,504/- u/s 40(a)(ia) of the Act.

7. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of assessee, partly allowed the appeal of the assessee by respectfully following the decision of Co-ordinate Bench in assessee's own case for earlier assessment years.

8. Now before us, the revenue has preferred the appeal challenging the order of Ld. CIT(A) on the grounds mentioned below:-

1. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the disallowances made by the Assessing Officer of Rs. 12,48,02,571/-, claimed by the assessee, as an expenditure for services, without receiving any services, from its holding company, M/s. Sonata Software Ltd, and the claim of such expenditure was only to reduce the income of the assessee company and increase the deduction u/s 10A availed of by Sonata Software Ltd, the holding company."

2. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing an amount of Rs.24,03,81,125/- being deputation charges paid by the assessee to the holding company Sonata Software

Ltd. (SSL) in respect of personnel allegedly deputed by SSL to the assessee, without proving the genuineness of the expenses claimed and how the same is not included in the service charge."

3. "On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in allowing an amount of Rs.67,45,028/- being the reimbursement of various expenses without proving the genuineness of the same, allegedly incurred by the holding company Sonata Software Ltd on behalf of the assessee."

4. (a) " On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in directing the assessing officer to delete the disallowance made u/s 40(a)(ia) of the Act, after making the verification of the fact of deduction of TDS and reversal of entries, especially when it is admitted fact that in respect to the claim of provision for expenses ofRs.2,45,55,504/-, no TDS was deducted in the financial year under consideration."

(b) "Without prejudice to the above, the Id. CTT(A) erred in not upholding the disallowance of Rs. 2,45,55,504/- u/s 37 of the Act, having categorically held that the same is not ascertained liability in the assessment year under consideration."

5. The appellant prays that the order of the Id. CIT(A) on the above grounds be set aside and that of the Assessing officer restored.

Each of the above grounds of appeal is without prejudice to the others. The appellant craves to add, omit or alter grounds of appeal before or during the hearing of the appeal.

9. At the outset, Ld. AR appearing on behalf of the assessee submitted that the grounds 1, 2 & 3 raised by the revenue are squarely covered by the series of the orders of Coordinate Bench of ITAT in ITA No. 4446/Mum/2011 for Assessment Year 2007-08, ITA No. 4334/Mum/2015 for Assessment Year 2011-12 and 1360/Mum/2017 for Assessment Year 2012-13 in assessee's own case on merits, wherein the Coordinate Bench of ITAT has decided these issue in favour of the assessee.

10. On the other hand, Ld. DR supported the orders passed by the revenue authorities, however he conceded these grounds are covered by the order of Coordinate Bench of ITAT.

11. Considered the rival submissions and material placed in record. We find that the identical grounds raised in the present

appeal has already been decided by the Coordinate Bench of ITAT in ITA Nos. 4446/Mum/2011 for Assessment Year 2007-08, ITA No. 4334/Mum/2015 for Assessment Year 2011-12 and 1360/Mum/2017 for Assessment Year 2012-13 in assessee's own case on merit. For the sake of clarity, order of Coordinate Bench of ITAT in ITA No. 4446/Mum/2011 for Assessment Year 2007-08 is reproduced below:-

With regard to Ground No. 1.

10. At the time of hearing it was agreed by the parties that similar issue had come for consideration in assessee's own case in A.Y 2001-02 in ITA No.3702/M/04 and this Tribunal on identical issue held as follows:

"7. The next issue arising from the appeal of assessee relates to the disallowance of Rs.6,55,88,590/- on account of service charges paid to Sonata Software Ltd. (SSL). Brief facts giving rise to this appeal are these: The assessee is 100% subsidiary of SSL. It came into existence in the year under consideration with the object to carry out one of the activities of SSL which was not eligible for exemption u/s.10A. Prior to the year under consideration, SSL was carrying out two independent activities i.e. (i) activity eligible for exemption u/s. 10A and (ii) the activity not eligible for exemption u/s. 10A .

Separate accounts were maintained by SSL for these activities. Direct expenses relating to these activities were accounted for in the separate accounts respectively. However, service charges were common and later on allocated to these activities on the basis of turnover. The assessee, after its incorporation, took over the activity of SSL, which was not eligible for exemption u/s. 10A on 1.7.2000. However, an agreement was entered into between assessee and SSL to the effect that SSL would continue to incur expenses in the nature of service charges on behalf of assessee as before and the same would be reimbursed by the assessee. The assessee paid the sum of Rs.6,55,80,590/- as service charges for the year under consideration and claimed the same as business expenditure.

8. The Assessing Officer disallowed the entire expenditure by observing as under:

"(i) The following tabulation gives details of the sales, expenditures claimed of the nature "Legal & Professional expenses" and of the nature "Recruitment & Training" in the separate Profit & Loss Accounts prepared for the non-IOA activity of SSL in the A. Yrs. 1998-99, 1999-00 and 2000-01 and in the case of the assessee company for the A. Yrs. 2001-02 and 2002-03.

I.T.A. No. 3244 & 3245/Mum/2018
M/s Sonata Information Technology Ltd.

		Sonata Software Ltd.		Sonata Information Technology Ltd.	
Asst. Yr.	1998-99	1999-00	2000-01	2001-02	2002-03
		Non-10 activity		New ompany	
(Rs. In lakhs)					
Trading sale of software	4980.00	6305.60	9184.80	9694.00	12378.80
Legal & Professional	18.25	23.68	39.50	655.88 (Service Charges)	910.27 (Service charges)
Recruitment & Training	9.59		

From the above, it is observed that the expenditure in SSL under the heads "Legal and Professional" and "Recruitment and Training" for the A. Yrs. 1998-99 to 2000-01 increased in proportion to the turnover from Rs. 18.25 lakhs to Rs.49.09 lakhs (Rs.39.5 lakhs + Rs.9.5 lakhs). However, in comparison to this, the expenditure on account of "Service charges" (which encompasses the expenditures claimed under the said two heads) in the assessee company for A. Yrs. 2001-02 and 2002-03 has been claimed at an abnormally high amount of Rs.655.88 lakhs and Rs.910.27 lakhs respectively, disproportionate to the turnover of the assessee.

(ii) It has been stated in the said agreement of SSL with the assessee company that all out of pocket expenses including travel, conveyance etc. are to be billed separately by SSL and shall be reimbursed bit the assessee. However, rather than separately billing for

these out of pocket expenses, SSL is raising periodic lump sum credit notes by apportioning the expenditure incurred by SSL on account of insurance, salaries and allowances, directors remuneration, electricity and water charges, printing and stationery, professional charges, repairs and maintenance, rent for offices and also depreciation. The assessee was categorically asked to furnish supporting evidences to show that the said services stated at (a) to (d), above were rendered by SSL. However, the assessee has not furnished the same till the finalization of the assessment. The only evidences submitted are the debit/credit notes raised on the assessee by SSL according to which the expenses incurred in SSL have been apportioned to the assessee on the basis of turnover of the assessee and SSL. Payment of service charges from SITL to SSL is mere diversion of income without services rendered by SSL. Mens rea for this claim is to reduce taxable profit and claim more 10-A profit in SSL.

(iii) The receipts on account of Service Charges in the hands of SSL have not been credited separately as the income of its non-10A activity. However, these receipts have been reduced from the expenditure claimed of 10A activity of SSL. The net implication of this is that the profits of the 10A activity of SSL have increased and on which no tax has been paid. Whereas in fact,

these receipts are clearly pertaining to the non-IOA activity of SSL and therefore such receipts should have been offered for tax.

iv) The assessee has contended that the said agreement has been in the best interest of the business between two independent corporate entities. It has also been contended that the same has been incurred out of commercial expediency. It has further been submitted that it is the prerogative of the businessman as to how to run its business and the Department should not prescribe the quantum of expenditure etc. These contentions of the assessee would have been acceptable if this agreement was entered into between two independent entities not under the common management and control. In the instant case, the assessee is a 100% subsidiary of SSL. The implication of this agreement is that the taxable profits of the assessee have been reduced and at the same time increasing the non-taxable profits of its holding company-SSL.

v) On perusal of the Balance Sheet of the assessee company, it is observed that out of the total service charges of Rs. 655 88 lakhs payable to SSL for the relevant year, an amount of Rs.522.57 lakhs is outstanding as on 31.03.2001. This further indicates

that the basic purpose of this agreement is to reduce the tax liability in the hands of the assessee and increase the non-taxable profits of SSL"

In Para 4.4 of his order, the Assessing Officer also observed that entire exercise was a colourable device to reduce its tax liability and to increase non-taxable profits of SL.

9. The matter was carried in appeal before the CIT(A) before whom it was submitted that:

"Before me in the appeal proceedings, it was explained on behalf of the assessee that Assessing Officer has misled himself in presuming that the agreement for services covers only the legal and professional charges and recruitment and training expenses, ft was explained that the area of services covered under the agreement is very broad and that the expenditure has been claimed on the basis of actual expenditure incurred on the basis of debit notes received from SSL and that f the expenditure in question was not incurred the assessee would not have been able to carry on its business, ft was further submitted that the debit notes issued by SSL and the details given to the Assessing Officer in support of the expenditure included in the debit notes show that not only legal and other specified services were the subject in the agreement but also

other services which are not specifically stated in the agreement were also included."

10. The CIT(A) examined the details of the expenditure which had been allocated on the basis of respective turnover which was given along with debit notes. It has been made clear that such details were also furnished before Assessing Officer. (See page 23-24 of the order). It was noted by CIT(A) that entire expenditure was incurred commonly for SSL and assessee and was allocated on the basis of turnover. According to him, business activities of SSL was much more expenditure oriented than business activity of assessee. Hence, in his opinion, the expenditure on support services to the assessee in the ratio of turnover was patently wrong. After going through the agreement, it was also held that SSL was required to advise the assessee in the matters of finance, accounts, taxation, legal, administration, HRD etc. and proper maintenance of record, compliance under various laws and training of employees. He also noted that assessee itself had incurred operational expenses of Rs.835.76 lacs which shows that assessee itself maintaining a large force of its employees. Such expenses amounted to 8.31% of total in finance, accounts, taxation, legal, administration, HRD, education and research and training deptt. could be allocated. He then estimated the sum of Rs.50 lacs towards the services of SSL rendered from assessee and

held the same to be allowable. Rest of the expenditure was held to be disallowable. Aggrieved by the same, the assessee is in appeal before the Tribunal.

11. We have heard both the parties in the light of the materials placed before us. We find that the issue regarding the allocation of expenses in respect of service charges arose in the case of SSL. In that case, the Assessing Officer was of the view that allocation of expenses for Non-IOA unit (not eligible for exemption) was excessive as exempted unit was much more expenditure oriented. The matter ultimately reached the Tribunal which accepted the case of assessee that allocation of support services expenses on the basis of turnover was justified. The Tribunal, vide para 34 of its order dated 17.03.2003 in ITA No. 495/496/M/02, held as under:

"We have considered the submissions and we have perused the various records placed in the Paper book. In the Paper book at page 27 to 34, the assessee has placed each and every head of expenditure and this Expenditure has been bifurcated under the three heads- STP unit entitled to deduction under section 10A, non STP not entitled to deduction u/s.10A and support services. Further, it is found that the basis of allocation amongst the three heads is actual expenses,

number of employees and ratio of fixed assets, floor area and turnover ratio. Thus, on the basis of above five criteria, expenditure has been allocated to the three heads.. Further, it is noticed that the total expenditure allocated under third head i.e. support services; has been again allocated under two heads - 1) STP units entitled to deduction u/s. 10A and non-STP which is not entitled for deduction u/s. 10A on the basis of turnover ratio. In our considered opinion the allocation of expenditure contained in the Paper book at page 27 to 31 appears to be appropriate. As per details contained in pages 27 to 31, it can be seen that the appellant company has only allocated expenses of Support Service Division between 10A and non-10A activities in the ratio of turnover has been called for by the Assessing Officer by this letter dated 20.01.2000 appearing at page 35 of the Paper book. Further, direct expenses relating to 10A and non- 10A activity has been directly charged against the profits of these activities and do not call for any interference." .

The above observations of the Tribunal resolve the controversy before us. Admittedly, prior to incorporation of assessee company, SSL was carrying on two units independently i.e. unit exempted u/s. 10A and the unit not exempted. Direct expenses incurred were separately booked to respective units. Only the

support services expenses were allocated on the basis of turnover. Such allocation has been found to be proper and reasonable by the Tribunal. There is no dispute that non exempted unit was taken over by the assessee company and support services were continued to be rendered by SSL. From the inception, the stand of the assessee has been that such expenses were allocated on the basis of turnover as is apparent from para 4.3.3(ii) of the 'assessment order, wherein it has been mentioned that expenses were allocated in debit notes as the basis of turnover. Even the CIT(A) has also admitted this factual position at page 23 of his order where he mentioned "The details of the expenditure which has been allocated on the basis of respective turnover is given along with debit notes, copies of which were filed before me, as also before the Assessing Officer". Faced with the same, the id. Departmental Representative had nothing to add except to rely on the order of Assessing Officer. The Id. Departmental Representative submitted that allocation of expenses requires verification and therefore the matter may be referred to Assessing Officer for necessary verification. We are unable to accept this request since there is no dispute to the factual position that allocation of service expenses was made on the basis of turnover. No useful purpose would be served

in restoring the issue. Accordingly, following the finding of the Tribunal in the case SSL, we set aside the order of CIT(A) on this issue and delete the disallowance sustained by him."

11. The above order of the Tribunal has been followed in assessee's own case for A.Y 2002-03, in ITA No.3027/M/06, A.Y 03-04, 3758/M/06 , A.Y 2004-05 & A.Y 2005-06 ITA No.3158& 3161/M/08. Facts and circumstances under which the disallowance was made in the earlier years and the present Assessment year are identical. Respectfully following the aforesaid decisions we uphold the order of CIT(A) dismiss ground No.1 raised by the revenue.

With regard to Ground No. 2 & 3.

17. We have heard the submissions of the learned DR on Gr.NO.2 and 3 who relied on the order of the AO. The learned counsel for the Assessee reiterated submissions made before CIT(A) and the order of the CIT(A).

18. We have considered the rival submissions. While deciding Gr.No.1 of the Assessee, we have already seen the terms of the Agreement between the Assessee and SSL by which SSL agreed to render some common services in the areas of Finance, Accounts, Taxation, Legal, Administration, HRD, education, Training , Research etc.

Clause-3 of the said agreement which have been referred to in the earlier part of this order clearly shows that the expenses covered by that agreement cannot and do not relate to expenditure incurred on deputing employees to work on specific projects of the Assessee. Therefore the expenses on account of deputation charges as well as other expenses are not covered under the aforesaid agreement. The other reasons given by the AO for making the impugned disallowance cannot also be sustained. The order of the Tribunal referred while deciding Gr.No.1 will equally apply to Gr.No.2 and 3 also as the other reasons given for making the impugned disallowance are similar to the one given while making the disallowance of expenses which is subject matter of Gr.No.1. We are therefore of the view that there is ho merit in Gr.No.2 and 3 raised by the Revenue. Consequently Gr.No.2 and 3 are dismissed.

12. Therefore, respectfully following the decision of Coordinate Bench of ITAT which is applicable *mutatis mutandis* in the present case, we are inclined to accept the submission of Ld. AR. Accordingly, the grounds 1, 2 & 3 raised by the revenue are **dismissed**.

13. With regard to Ground No. 4, Ld. DR submitted that it is an admitted fact on record that assessee has not deducted TDS on claim of provision of expenses. When assessee credited the expenses and claims the relevant expenses, the provision of section 40(a)(ia) gets attracted and moreover the assessee has reversed the entries in the subsequent year. It is clearly a violation of provision of section 40(a)(ia) of the Act and accordingly, AO has rightly disallowed the claim by invoking section 40(a)(ia) of the Act.

14. With regard to alternate ground raised to plea that Ld. CIT(A) should have invoked section 37 to disallow the expenses claimed by the assessee, Ld. DR submitted that the liability claimed by the assessee is unascertained liability.

15. On the other hand, Ld. AR brought to our notice page 32 of the paper book, the chart showing details of provision of expenses for Assessment Year 2013-14 as per which, the assessee had created total provision of Rs. 245,55,504/-. He submitted that this provision of expenses relating to the incomplete project for which assessee has already recognized the

revenue, but these expenses are in the nature of salary, variable performance pay and other incentives to the work force. These expenses cannot be ascertained due to the reason that the assignment of work is not determined and the nature of expenses claim may change. The exact nature of expenses will be determined only when the actual expenses or work is assigned in the subsequent Assessment Year. These are part of revenue recognized for this Assessment Year and assessee regularly follows this accounting procedure over the year. When the identity of the person in whose hands, such income /payment is includible will be known and the quantum of payment is ascertainable only at that point of time, when the actual work is assigned or completed in the subsequent assessment year. Until the quantum of expenses is ascertained till then the provision of TDS will not apply. In that proposition, he relied on the following case laws:-

a) Apollo Tyres Ltd. Vs DCIT [2017][78 taxmann.com 195], Hon'ble Delhi Tribunal.

b) Industrial Development Bank of India Vs. ITO [2007][107 ITD 45], Hon'ble Mumbai Tribunal.

- c) Dishnet Wireless Ltd. Vs. DCIT, [2015][60 taxmann.com 329], Hon'ble Chennai Tribunal.
- d) Karnataka Power Transmission Corporation Ltd Vs. Dy. CIT(TDS)[2016] 383 ITR 59, Hon'ble Karnataka High Court.
- e) IBM India P. Ltd Vs. ITO [2015] 128 DTR (Trib) 25, Hon'ble Bangalore Tribunal.
- f) Aditya Birla Nuvo Ltd. vrs. DCIT [2014] (ITA N. 8427/Mum/2010), Hon'ble Mumbai Tribunal
- g) Industrial Development Bank of India vrs. ITO (2007) (107 ITD 45).

16. Considered the rival submissions and material placed in record. We notice from the record that assessee has recognized the revenue and at the same time, there are costs which has to be absorbed before recognizing the revenue. Those costs which are visible and estimated but cannot be quantified i.e. they have identified the nature of expenses to be incurred, but cannot decide to whom such work to be assigned. This will be ascertained only when such jobs are assigned. In order to close the books with the matching principles, generally, the assesseees

will create a general provision in their books and it will be reversed in the subsequent year as and when it is assigned or ascertained. Since the payee is not known and also liability is not ascertained, the assessee cannot apply the TDS provisions. This method of accounting is adopted by the assessee consistently, therefore the method adopted by the assessee is proper. Since the assessee has already declared the revenue without completing the unascertained jobs, without creating the relevant general provision, it will amount to excess charge of income to tax. When the same provision is disallowed, it amounts to double taxation.

17. As per the regular practice, assessee identifies the payee in the subsequent Assessment Year and deducts the relevant TDS. Even the payee declares the relevant income in their ROI and pays the relevant taxes. Therefore, there is no loss to the revenue.

18. At the same time, we notice from the chart at page 32 of the paper book, it clearly indicates that assessee has created liability of Rs. 2,45,55,504/- and the details of treatment in their books are given below:-

<i>Amount of Provision</i>	<i>Payment made in A.Y.2014-15, against the provisioned not claimed in the Computation</i>	<i>Provision reversed in A.Y.2014-15, but amount not reduced in the Computation</i>	<i>Payment made in A. Y.2015-16 against the provision, and claimed in the Computation</i>	<i>Amount not Reversed</i>
<i>Rs.2,45,55,504/-</i>	<i>Rs.97,67,316/-</i>	<i>Rs.45,62,600/-</i>	<i>Rs.90,65,504/-</i>	<i>Rs.11,60,084/-</i>

19. From the above, assessee has already reversed to the extent of Rs. 2,33,95,420/- and only Rs. 11,60,084/- not reversed. It clearly indicates that assessee has followed the accepted method of revenue recognition and to the extent of provision reversed, the assessee gets the benefit of deduction. Further since the assessee does not know the payee or liability is not ascertained, the provision of section 40(a)(ia) is not applicable as held in the case of M/s Apollo Tyres Ltd. vrs. DCIT (2017) 78 taxmann.com 195 (Delhi-Trib). In the said case, the Coordinate Bench of ITAT has held as under:-

As per the scheme of Chapter XVII-B of the Income-tax Act, 1961, there is a provision for deduction of tax at source. Ordinarily, the deduction is to be made at the time of payment or the credit of the amount to the account of payee. However, as per provision of section 194C(2),

the tax is to be deducted even if the amount is not credited to the account of the payee but to the suspense account.

- The Tribunal, Cochin Bench in the case of Abad Builders (P.) Ltd. v. Asstt. CIT [2014] 43 taxmann.com 128/62 SOT 106 after considering the above provision, has held that tax is to be deducted even in respect of provision for expenses. However, the Tribunal, Chennai Bench in the case of Dishnet Wireless Ltd. v. Dy. CIT [2015] 154 ITD 827/60 taxmann.com 329 has held that in the case of the year end provision where the party/payee is identifiable, the TDS is to be deducted and where the party is not identifiable, no TDS is deductible. Similar view has been taken by the Tribunal Mumbai bench in the case of Industrial Development Bank of India v. ITO [2007] 107 ITD 45. After considering the scheme of Chapter XVII-B with regard to tax deduction at source, one agrees with the views expressed by Tribunal Mumbai Bench and Chennai Bench. As per the scheme of TDS under Chapter XVII-B of section 199, the credit for the TDS is to be given to the deductee. Thus, the identification of the person from whose account income-tax was deducted at source is a pre-requisite condition so as to make the provision for Chapter XVII-B workable. Tax deducted at source is considered to be tax paid on behalf of the person from whose income the deduction was made and, therefore, the credit for the same is to be*

given to such person. When the payee is not identifiable, to whose account the credit for such TDS is to be given. Section 203(1) lays down that for all tax deductions at source, the tax deductor has to furnish a certificate to the person to whose account such credit is to be given. Therefore, when the tax deductor cannot ascertain the payee who is the beneficiary of a credit of tax deduction at source, the mechanism of Chapter XVII-B cannot be put into service. In view of the above, we, respectfully agreeing with the views of Tribunal Chennai Bench in the case of Dishnet Wireless Ltd. (supra), set aside the orders of the authorities below on this point and restore the matter to file of Assessing Officer for both the years under consideration. Tribunal directed the Assessing Officer to verify whether the payee is identifiable and the amount payable to him is ascertainable. Then the assessee would be required to deduct tax at source in respect of such provision. However, in case payee is not identifiable, the provision of Chapter XVII-B, i.e., tax deduction at source, cannot be pressed into service and, therefore, the assessee is required to deduct tax at source in such a case. The Assessing Officer will readjudicate the issue afresh after examining the above facts. Needless to mention that he will allow adequate opportunity of being heard to the assessee while giving effect to the order of Tribunal.

20. In the above decision, it was remitted back to AO to verify whether payee is not identifiable. In this case, it is clear from the record submitted before us that the work was not assigned to anyone. Therefore, it is only a general provision and the assessee has not credited to any provision to any specific account. Therefore, the provision of TDS will not apply to the case of assessee. Accordingly, ground no. 4 raised by revenue is **dismissed**.

21. Since the other appeal filed by the revenue for Assessment Year 2014-15 is similar to the appeal in ITA No. 3244/Mum/2018 for Assessment Year 2013-14, therefore we also dismiss the grounds raised by the revenue in this appeal for the parity of reasons.

22. In the net result, both the appeals filed by the revenue stands **dismissed**.

23. *Order pronounced in the open court 08/12/2020.*

Sd/-

Sd/-

(R. L. Negi)

(S. Rifaur Rahman)

न्यायिकसदस्य / Judicial Member

लेखासदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :

08.12.2020

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai**