

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH : BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND SMT. BEENA PILLAI, JUDICIAL MEMBER

IT(IT)A Nos. 658 & 659/Bang/2020 & 152 to 155/Bang/2021
Assessment years : 2012-13 to 2016-17

The Deputy Commissioner Of Income Tax, Circle 1(2), Bangalore.	Vs.	M/s. Infosys Ltd., Plot No.44 & 97A, Konappana Agrahara, Hosur Road, Electronics City, Phase I, Bangalore – 560 100. PAN: AAACI 4798L
APPELLANT		RESPONDENT

Appellant by	:	Shri Muzaffar Hussain, CIT(DR)(ITAT), Bengaluru.
Respondent by	:	Shri B.R. Sudheendra, Advocate

Date of hearing	:	24.06.2021
Date of Pronouncement	:	24.06.2021

ORDER

Per Chandra Poojari, Accountant Member

All these appeals by the revenue are directed against the orders of CIT(Appeals) which is passed consequent to the order of AO passed u/s. 248 r.w.s. 206AA of the Income-tax Act, 1961 [the Act] for the assessment years 2012-13 to 2016-17.

2. The common grounds raised by the revenue in all these appeals are as follows:-

“1. Whether on facts and circumstances of the case, Ld. CIT(A) is justified in holding that the of DTAA overrides the provision of sec 206AA of the IT Act, 1961.

2. Whether on the facts and circumstances of the case, Ld. CIT(A) is justified in not following the decision of the Hon'ble ITAT in the case of M/s. Bosch Ltd Vs ITO reported in 141 ITD 387(2013), wherein the Hon'ble ITAT had categorically decided that the provisions of Sec 206AA have overriding effect over the other provisions of the Act.

3. Whether on the facts and circumstances of the case Ld. CIT(A) is justified in holding that the DTAA provisions override the clauses of sec 206AA of the IT Act, 1961 without appreciating the fact that section 90(2) of the IT act only confers the beneficial applicability of treaty benefits, and as such sec 90(2) is overridden by 206AA of the IT Act, 1961.

(Only For AY 2016-17}

4. Where on facts and circumstances of the case, Ld CIT (A) is justified in app.I04 the provisions of Rule 37BC to AY 2016-17 when the said provisions was inserted only wef 24.06.2016 and can not have retrospective application?.”

3. In these cases, there was a delay in filing the appeals as follows:-

A.Y.	Date of CIT(A)'s order	Date of receipt of CIT(A)'s order	Due date for filing the appeal before the Tribunal	Date of filing the appeal before the Tribunal	No. of days of delay in filing the appeals before the Tribunal
2012-13	27.1.2020	30.1.2020	30.3.2020	8.9.2020	161 days
2013-14	27.1.2020	30.1.2020	30.3.2020	8.9.2020	161 days
2014-15	27.1.2020	30.1.2020	30.3.2020	8.9.2020	161 days
2015-16	27.1.2020	30.1.2020	30.3.2020	8.9.2020	161 days
2016-17	27.1.2020	30.1.2020	30.3.2020	8.9.2020	161 days
2016-17	12.2.2020	20.2.2020	20.4.2020	8.9.2020	141 days

4. The Id. AR has filed a letter before us stating that the due date for filing the appeals before the Tribunal expired and appeals were filed belatedly as above. It was explained that the delay was due to National Lockdown due to COVID-19 pandemic from 24.3.2020 to 31.5.2020. It was submitted that the delay may be condoned in view of the extension of limitation from 15.3.2020 till 14.3.2021 by judgment of the Hon'ble Supreme Court in suo motu WP(C) No.3/2020 dated 23.3.2020 which was further extended until further orders by the judgment dated 27.4.2021. Reliance was also placed on the Taxation and Other Laws (Relaxation and Amendment of Certain Provisions) Act, 2020 dated 29.9.2020. Being so, though there was a delay, it cannot be stated as barred by time in filing the appeals. Accordingly, the appeals are admitted.

5. Regarding the issue in dispute, the issue is squarely covered by the judgment in *DCIT(IT) V. Infosys BPO Ltd.* [2015] 60 taxmann.com 465 wherein it was held that where assessee made royalty payments to non-residents, since benefit of DTAA was available to said recipients, **their TDS liability could not be more than rate prescribed under DTAA or Act whichever was lower.** In these cases the issue was pertaining to Assessment years 2012-13 and 2016-17. The Assessee was engaged in activity of Business Process Outsourcing (BPO). During relevant year, assessee made payments of royalties and fees for technical services to non-residents. Assessee deducted tax at source at rate of 10 per cent as per provisions of section 115(A)(1)(b). Assessing Officer while issuing intimation under section 200A, computed tax liability at rate of 20 per cent, as provided under section 206AA. It was held that since there was no dispute that benefit of DTAA was available to non-resident recipients, tax liability of recipients **could not be more than rate prescribed under DTAA or Act whichever was lower.**

6. The ITAT Bangalore in the case of *Wipro Ltd. v. Income Tax Officer (International Taxation), Ward 1(3), Bangalore [2017] 88 taxmann.com 435* has held that when non-resident is eligible for benefit of DTAA on sum in question, there is no scope for deduction of tax at source at 20 per cent as provided under provisions of section 206AA.

7. The ITAT HYDERABAD (SPECIAL BENCH) in the case of *Nagarjuna Fertilizers & Chemicals Ltd. v. Assistant Commissioner of Income-tax, Circle-15 (1), Hyderabad [2017] 78 taxmann.com 264 (Hyderabad - Trib.) (SB)* has held that if rate of tax applicable under DTAA is lower than 20 per cent tax rate prescribed under section 206AA, TDS would have to be deducted at such lower rate even if non-resident deductee fails to furnish his PAN.

8. The decision of Authority for Advance Rulings, New Delhi in the case of *South West Mining Ltd., In re AAR [2005] 148 Taxman 366 (AAR - New Delhi) - AAR No. 660 of 2005 - SEPTEMBER 9, 2005* is relevant. In this case it was held that rate of tax applicable for purpose of TDS would be lesser of rates prescribed under Finance Act, 2005 or in para 2 of article 12 of the DTAA between India and Canada, that is whichever is more beneficial to applicant.

9. The appellant has also submitted that rule 37(b)(1) was introduced from 24.06.2016 and after this date the details as provided in the rule as furnished by the appellant. There is no need to deduct tax at higher rates. These provisions are as under:-

[Relaxation from deduction of tax at higher rate under section 206AA.

37BC. (i) In the case of a non-resident, not being a company, or a foreign company (hereafter referred to as 'deductee') and not having permanent account number the provisions of section 206AA shall not apply in respect of payments in the nature of interest, royalty, fees for technical services and payments on transfer of any capital asset, if the deductee furnishes the details and the documents specified in sub-rule (2) to the deductor.

(2) The deductee referred to in sub-rule (a), shall in respect of payments specified therein, furnish following details and documents to the deductor, namely:-

- (i) name, e-mail id, contact number;
- (ii) address in the country or specified territory outside India of which the deductee is a resident;
- (iii) a certificate of his being resident in any country or specified territory outside India from the Government of that country or specified territory if the law of that country or specified territory provides for issuance of such certificate;
- (iv) Tax Identification Number of the deductee in the country or specified territory of his residence and in case no such number is available, then a unique number on the basis of which the deductee is identified by the Government of that country or the specified territory of which he claims to be a resident.].

10. In view of the s.90(2) and following the above judicial rulings and on account of rule 37(b)(1) w.e.f 24.06.2016, wherein held that the rate prescribed under DTAA or Act whichever was lower is applicable.

11. Being so, the CIT(Appeals) has taken the correct view in the facts and circumstances of the case and decide the issue in favour of assessee.

We do not find any infirmity in the orders of CIT(Appeals). The same is confirmed.

12. In the result, all the appeals by the revenue are dismissed.

Pronounced in the open court on this 24th day of June, 2021.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 24th June, 2021.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.