IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'I' BENCH, MUMBAI

[Coram: Pramod Kumar (Vice President)
and Saktijit Dey (Judicial Member)]

ITA Nos.: 7078 to 7094/Mum/2019
Assessment years: 2017-18, 2018-19, 2019-20

Income Tax Officer (International Taxation)
Ward 1(1)(2), Mumbai ***……..Appellant***

Vs.

Bennett Coleman & Co Ltd ***……Respondent***
The Times of India Building,
Dr D N Road, Mumbai 400 001 [PAN: AACB4373Q]

Appearances by
Vijaykumar Subramanian *for the appellant*
Ajeet Kumar Jain *along-with* **Siddesh Chaugule** *for the respondent*

Date of concluding the hearing : July 29, 2021
Date of pronouncement of the order : July 30, 2021

O R D E R

Per Bench:

1. These seventeenth appeals pertain to the same assessee, involve common issues with regarding to materially similar foreign remittances made by the assessee to Intelsat Global Sales and Marketing Ltd-an entity fiscally domiciled in the UK, and were heard together. As a matter of convenience, therefore, we are disposing of all these appeals together.

2. Learned representatives fairly agree that whatever we decide in ITA No. 7077/Mum/2019, an appeal in the assessee's own case for the assessment year 2018-19 which was also heard alongwith these appeals, will equally apply in all these cases as well.

3. Vide our order of even date, we have allowed the said appeal and observed as follows:

1. By way of this order, the assessee-appellant has challenged the correctness of the order dated 28th August 2019, in the matter of appeal, under section 248 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), denying the liability to deduct tax at source from a payment, equivalent to Rs 87,20,271 made to Intelsat Global Sales and Marketing Ltd- an entity fiscally domiciled in the UK.

2. When this appeal was called out for hearing, learned Departmental Representative raised a preliminary objection. He submitted that this is a case in which the learned CIT(A) has passed his order without affording an opportunity of hearing to the Assessing Officer, as is mandatory under section 250 of the Act, and as such, the proceedings before the CIT(A) are vitiated in law. He submits that neither the assessee approached the Assessing Officer concerned for determination of tax withholding liability nor the assessee even allowed him to present his case before the CIT(A). The very authority which has the authority to take the first call on whether tax is deductible from the overseas remittances or not is thus completely bypassed. We are therefore urged to set aside the impugned order. In response to this proposition, and in response to the bench's inviting learned counsel's attention to the coordinate bench decision in the case of Mahindra & Mahindra Ltd Vs ACIT [(2006) 106 ITD 521 (Mum)], learned counsel for the assessee points out that the present appeal is an appeal under section 248 and is directed against the liability to deduct the tax at source. Learned counsel points out that, in terms of the provisions of Section 248, where under an agreement or other arrangement, the tax deductible on any income, other than interest, under section 195 is to be borne by the person by whom the income is payable, and such person having paid such tax to the credit of the Central Government, claims that no tax was required to be deducted on such income, he may appeal to the Commissioner (Appeals) for a declaration that no tax was deductible on such income. He points out that this provision is materially distinct from the earlier provision under which a person could have filed appeal only when he deducted ta in accordance with the provisions of sections 195 and 200, which essentially required determination of liability by the Assessing Officer. It is submitted that the decision of the coordinate bench in the case of Mahindra & Mahindra Ltd Vs ACIT (supra), which required the Assessing Officer's determination of tax withholding liability from the foreign remittance as a precondition for availing the appellate remedy, is no longer good law. As for the Assessing Officer being given an opportunity of hearing, no matter how desirable that be, the requirement of section 250 (1) is that the "Assessing Officer against whose order the appeal is preferred" is served the notice of hearing, and when the appeal is not against the order of an Assessing Officer, this requirement of hearing being afforded to the Assessing Officer does not come into play. It is thus not a statutory requirement to provide such opportunity of hearing to the Assessing Officer concerned, unless the appeal is against the order passed by such an Assessing Officer. Learned counsel further submits that the issue in the appeal is an issue fully covered in favour of the assessee, by a number of decisions of the coordinate benches as also by the decisions of Hon'ble Courts above, and these technicalities, even if any, must not result in prolonged agony of litigation to the assessee. We are thus urged to adjudicate the matter on merits. In brief rejoinder, learned Departmental Representative submits that whatever be the wordings of the statute, a fair dispute redressal mechanism must ensure that the perspective of the Assessing Officer should be placed before the appellate authority, i.e. learned CIT(A), and that any deviation from this practice could result in miscarriage of justice. We are thus once again urged to remit the matter to the file of the CIT(A) for fresh adjudication after being afforded an opportunity of hearing to the Assessing Officer concerned, or to the Assessing Officer concerned for adjudication on the tax withholding obligation of the assessee.

3. We have heard the rival contentions, perused the material on record and duly considered the facts of the case in the light of the applicable legal position.

4. We find that Section 250 (2) specifically provides for "the right to be heard at the hearing of the appeal" to "(a) the appellant, either in person or by an authorised representative; (b) the Assessing Officer, either in person or by a representative". Admittedly no such opportunity of hearing is given to the Assessing Officer concerned. In view of this position, we deem it fit and proper to remit the matter to the file of the CIT(A) for adjudication de novo after giving a reasonable opportunity of hearing to the Assessing Officer having jurisdiction over ascertainment of the tax withholding liability from foreign remittances. As we are remitting the matter to the file of the CIT(A), we see no need to go into the decision of the learned CIT(A) on merits or on the question as to whether Mahindra & Mahindra decision (supra) holds good in the post amendment law. All these aspects of the matter, as on now, are wholly academic. We may also add that although the tax effect involved in this appeal is less than Rs 50 lakhs since this appeal is only in respect of one of the foreign exchange remittances made to the foreign company and the assessee has made a large number of such remittances in the period pertaining to this assessment year, learned representatives had fairly agreed that the low tax effect of this individual appeal will not come in the way of filing of this appeal. It was in this backdrop that this appeal was entertained for adjudication and has been decided as such.

4. We see no reasons to take any other view of the matter than the view so taken by us in assessee's own case. Respectfully following the same, and holding that the observations made therein will equally apply *mutatis mutandis* in these cases as well, we uphold the preliminary objection of the learned Departmental Representative and allow the appeals to that extent.

5. In the result, all the sixteen appeals are allowed in the terms indicated above. Pronounced in the open court today on the 30th day of July 2021.

Sd/- Sd/-
Saktijit Dey **Pramod Kumar**
(Judicial Member) (Vice President)
Mumbai, dated the 30th day of July, 2021

Copies to: *(1) The appellant (2) The respondent*
(3) CIT (4) CIT(A) declared
(5) DR (6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai