

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI R. K. PANDA ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 2237/DEL/2018 (A.Y 2013-14)
(THROUGH VIDEO CONFERENCING)**

Hitachi Metglas (India) Pvt. Ltd. (Now merged with Hitachi Metals India P. Ltd.) 1 C, Vandana Building 11, Tolstoy Marg, Cannaught Place, New Delhi AABCH9302G (APPELLANT)	Vs	ACIT Circle-11(2) Room No. 419, C. R. Building, New Delhi (RESPONDENT)
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**I.T.A. No. 2236/DEL/2018 (A.Y 2012-13)
(THROUGH VIDEO CONFERENCING)**

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Appellant by	Sh. Himanshu Sinha, Adv & Sh. Bhuwan Dhooper, Adv
Respondent by	Sh. Kumar Padmapani Bora, Sr. DR

Date of Hearing	17.11.2021
Date of Pronouncement	17.11.2021

ORDER

PER SUCHITRA KAMBLE, JM

These two appeals are filed by the assessee against order dated 14/12/2017 passed by CIT(A)-35 for assessment year 2013-14 & 2012-13 respectively.

2. The grounds of appeal are as under:-

I.T.A. No. 2237/DEL/2018 (A.Y 2013-14)

Impugned Order dated 14.12.2017 passed under section 250(6) of the Income-tax Act, 1961 ("the Act") by Ld. Commissioner of Income Tax (Appeals) ["Ld. CIT(A)"] pursuant to an appeal against Assessment Order passed on 13.12.2016 under section 143(3) of the Act by Deputy Commissioner of Income Tax, Circle 11(2) ("Ld. Assessing Officer" / "Ld. AO"), is erroneous and not in accordance with provisions of law and contrary to facts, inter- alia, on the following Grounds, which are without prejudice to each other:

- 1. Ld. CIT(A) / AO have erred in confirming disallowance of INR 42,76,220 under section 40(a)(i) of the Act.*
- 2. Ld. CIT(A) / AO have erred in law and on facts of the case in holding that the network and administrative support rendered to the Appellant by its non-resident group companies & others are technical in nature and partakes the character of Fee for Technical Services ("FTS") under section 9(1)(vii) of the Act.*
- 3. Ld. CIT(A) / AO have erred in law and on facts of the case in presuming that there is an element of managerial, technical or consultancy in the services rendered to Appellant by its non-resident group companies, by completely disregarding facts including that the provisioning of such standard facility did not involve any human intervention.*
- 4. Ld. CIT(A) / AO have erred in law and on facts of the present case by holding that payments made for network and administrative support charges are characterized as FTS under section 9(1)(vii) of the Act and therefore the*

appellant is liable to deduct tax at source under section 195 of the Act.

5. Ld. CIT(A) / AO have erred in law and on facts of the case by not considering all materials / submissions filed during the course of assessment/appellate proceedings.

6. Ld. CIT(A) has erred in law and on facts by nor passing in speaking order.

7. Ld. AO has erred by alleging that the Assessee has furnished inaccurate particulars of income, thereby proposing to initiate penalty proceedings under Section 271(1)(c) of the Act.

I.T.A. No. 2236/DEL/2018 (A.Y 2012-13)

Impugned Order dated 14.12.2017 passed under section 250(6) of the Income-tax Act, 1961 ("the Act") by Ld. Commissioner of Income Tax (Appeals) ("Ld. CIT(A)") pursuant to an appeal against Assessment Order passed on 26.02.2016 under section 143(3) of the Act by Assistant Commissioner of Income Tax, Circle 11(2) ("Ld. Assessing Officer" / "Ld. AO"), is erroneous and not in accordance with provisions of law and contrary to facts, inter- alia, on the following Grounds, which are without prejudice to each other :

- 1. The Ld. CIT(A) / AO have erred in confirming disallowance of INR 33,60,382 under section 40(a)(i) of the Act.*
- 2. The Ld. CIT(A) / AO have erred in law and on facts of the case in holding that the network and administrative support rendered to the Appellant by its non-resident group companies & others are technical in nature and partakes the character of Fee for ' Technical Services ("FTS") under section 9(l)(vii) of the Act.*
- 3. The Ld. CIT(A) / AO have erred in law and on facts of the case in presuming that there is an element of managerial, technical or*

consultancy in the services rendered to the Appellant by its non-resident group companies, by completely disregarding facts including that the provisioning of such standard facility did not involve any human intervention.

4. *The Ld. CIT(A) / AO have erred in law and on facts of the present case by holding that payments made for network and administrative support charges are characterised as FTS under section 9(l)(vii) of the Act and therefore the appellant is liable to deduct tax at source under section 195 of the Act.*
5. *The Ld. CIT(A) / AO have erred in law and on facts of the case by not considering all materials / submissions filed during the course of assessment / appellate proceedings.*
6. *The Ld. CIT(A) has erred in law and on facts of the case by not passing a speaking order.*
7. *The Ld. AO has erred by alleging that the Assessee has furnished inaccurate particulars of income, thereby proposing to initiate penalty proceedings under Section 271(l)(c) of the Act.”*

3. As the facts are identical in both the years, we are taking up A.Y. 2013-14. The assessee company is engaged in the business of designed and manufacturing of cores and other amorphous metal or nano-cryalline soft magnetic metal used in transmission and distribution equipment and in electronic and computer products and other related products. Assessee filed return of income on 30.11.2013 declaring current year losses of Rs. 10,73,85,520/-. The Transfer Pricing Officer (TPO) has not made any adjustment as per the order u/s 92CA(3) of the Act dated 31.08.2016. The Assessing Officer made addition of Rs. 47,76,220/- on account of disallowance of non deduction of TDS on net profit charges and administrative support

charges as well as addition of Rs. 34,54,152/- on account of cash discount given to related parties. Thus, the Assessing Officer passed assessment order dated 13.12.2016 under Section 143(3) of the Income Tax Act, 1961.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that all the issues contested by the assessee in the present appeal are decided in favour of the assessee by the Tribunal in A.Y. 2011-12 in assessee's own case being ITA No. 3694/Del/2014 order dated 13.10.2021. Therefore, the same directions may be passed in the present assessment year as well.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A), but submitted that the issues contested herein are identical to that of earlier years which was decided by the Tribunal and there are no new facts in the present assessment year.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the CIT(A) has relied upon the order of the CIT(A) in A.Y. 2011-12 thereby confirming the additions contested herein. The Tribunal in A.Y. 2011-12 observed and held as under:

“14. We find that the services provided by the non-resident AEs to the Assessee are standard automated services. These services, as specified above, are provided to enable the assessee to send and receive data through the broadband network over the intranet and internet. All companies of the Hitachi group are provided with network services to exchange information through intranet and regulate use of internet through its proxy servers or provide remote access to log on to the company's network. It is a settled law that standard/ common services cannot partake the character of FTS under the IT Act.

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19. *The invoices raised by Hitachi Limited, Japan and Hitachi Asia Limited, Singapore to the Assessee in lieu of the services Hitachi Metglas ((India) Pvt. Ltd. received by the latter make it clear that services provided by foreign AEs were not technical in nature but were standard intranet, broadband and link services. Payment of network charges does not take the character of FTS due to absence of human intervention:*

20. *Hence, the services received by the assessee can be said to be not in the nature of FTS as defined under Explanation 2 to Section 9(1)(vii) of the IT Act. To treat any consideration as FTS, such consideration must be paid for rendering of managerial, technical or consultancy services.*

21. *The revenue failed to consider the fact that the IT support services availed by the Assessee did not involve any human intervention. The Ld. CIT (A) reproduced extracts of the Master Service Agreement between the Assessee and Hitachi Asia Limited, Singapore and observed that human intervention is an integral part of the Master Service Agreement which is completely misconceived. In fact, no reasons were provided by the Ld. CIT (A) as to how human intervention was an integral part of the Master Service Agreement.*

22. *The extracts of the agreement relied upon by the Ld. CIT(A) do not indicate that the IT support services were provided through human intervention. By their very nature and inherent characteristics, networking services over internet and intranet including mail services cannot be provided by human activities and intervention. Sections 4 - 8 of the services agreement extracted by the Ld. CIT(A) in his order does not demonstrate or show in any manner that human intervention was required for rendering the IT support services. The Hitachi Metglas ((India) Pvt. Ltd. obligation to share information, confidentiality and other obligations are standard obligations that are provided in any services agreement and do not deal with the manner of*

provisioning of services but with ancillary obligations of the parties. There is no human intervention in the supply of services.

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25. Thus we conclude that the foreign AE (service provider) has neither employed any technical or skilled person to provide managerial or technical service nor there was direct interaction between the assessee and the foreign AE. Thus, where the entire process resulting in provisioning of service is fully automated process with no human intervention, charges paid for provision of such services cannot be classified as FTS for the purpose of the IT Act.

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27. In view of the foregoing submissions, it is held that the IT support services availed by the Assessee from Hitachi Ltd., Japan, and Hitachi Asia Ltd., Singapore are standard connectivity and networking services cannot be termed as technical services within the meaning of Section 9(1)(vii) of the Act. Hence, we hold that the assessee was not liable to deduct TDS on such expenditures. Accordingly, the disallowance made by the AO and confirmed by the Ld. CIT (A) in the present case is liable to be deleted.”

In A.Ys. 2012-13 and 2013-14 also the assessee availed IT Network facility from its non-resident group companies and third party domestic companies. The services/facility consists of internet proxy services and access charges. The services are standard services/facility provided to the assessee which do not require any human intervention. In fact, the assessee has given detailed description of the flow of services thereby substantiating that no human intervention was involved before the Assessing Officer. The assessee had entered into the agreements with the foreign group companies to promote sale of its products. The discounts were offered to increase the sales of certain category of products of the assessee and were in line with the regular business

practices. These facts are identical to that of A.Y. 2011-12. No new or distinguishing facts were pointed out by the Ld. DR at the time of hearing. Hence, both the appeals of the assessee are allowed.

8. In result, the both the appeals of the assessee are allowed.

Order pronounced in the Open Court in presence of both the parties on this 17th Day of November, 2021

Sd/-

**(R. K. PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 17/11/2021
*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI