

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.7709/M/2019
Assessment Year: 2011-12**

M/s. Linklaters LLP, C/o Deloitte Haskins & Sells LLP Tower 3, 27-32 Floor, Indiabulls Finance Centre, Elphinstone Mill Compound, Senapati Bapat Marg, Elphinstone (West), Mumbai – 400 013 PAN: AABCL5182G	Vs.	Assistant Commissioner of Income Tax (International Taxation) 3(1)(2), Room No.1603, Air India Building, Nariman Point, Mumbai
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Niraj Sheth, A.R.
Revenue by : Shri Sanjay Singh, D.R.

Date of Hearing : 07.09.2021
Date of Pronouncement : 26.10.2021

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 24.12.2018 of the Disputes Resolution Panel (hereinafter referred to as the DRP) relevant to assessment year 2011-12.

2. The issue raised in ground No.1 & 2 is against the order of AO passed in the set aside proceedings in not allowing the deduction of 5% under section 44C of the Act to the assessee in respect of foreign head office expenses.

3. The facts in brief are that the assessee is engaged in the business of rendering legal advisory services and filed the return of income declaring total income of Rs.2,94,42,273/- which was filed on 28.11.2011. The assessee claimed the deduction of 5% under section 44C of the Act in respect of Foreign Head Office expenditure incurred on estimated basis which was allowed by the Additional Director of Income Tax (International Taxation) [hereinafter referred to as ADIT(IT)] in the draft assessment order dated 28.03.2014 passed under section 144C(1) read with section 143(3) of the Act. The ld ADIT(IT) computed the income after allowing deduction @ 5% under section 44C of the Act though the income was increased to Rs.3,34,87,402/-. Thereafter, the assessee preferred an appeal before the DRP and there was no discussion by the DRP on this issue and finally the assessment order was passed in pursuance to DRP direction under section 143(3) read with section 144C(13) of the Act dated 07.01.2014 wherein the deduction of 5% in respect of foreign office expenses was not allowed. The matter reached the Tribunal and the issue was restored to the file of the AO for verification and allowing deduction, however, the AO again in the order passed under section 143(3) read with section 144(C) read with section 254 of the Act dated 24.12.2018 did not allow the deduction of 5% towards foreign head office expenses incurred by the assessee under section 44C of the Act on the ground that assessee had not filed the details in respect of the said expenses incurred. The assessee preferred an appeal before DRP and DRP again upheld the order of AO by dismissing the ground raised by the assessee.

4. After having considered the facts on record and the rival contentions, we find that the assessee has claimed deduction under section 44C in respect of Foreign Head Office Expenditure @ 5% of adjusted total income which was duly allowed by the ADIT(IT) in the draft assessment order dated 28.03.2014 as referred to above, however the same was not allowed by the ADIT(IT) in the final assessment order dated 07.01.2014 passed under section 143(3) read with section 144C(13) of the Act despite there being no direction to the contrary from DRP on this issue. We note that the co-ordinate Bench of the Tribunal restored the issue back to the file of the AO for verification and allowing the deduction, however, the ADIT(IT) has denied the deduction as assessee has not filed any detail and same was also affirmed by the DRP by following the decision of Delhi Benches of ITAT in the case of M/s. Chennai Trust Commercial Bank vs. ADIT (New Delhi) in ITA No.1257/Del/2011. The issue before us whether the deduction which has been allowed by the ADIT(IT) in the draft assessment order dated 28.03.2014 could be changed in the final assessment order when there is no direction from the DRP or Tribunal to the contrary. After perusing the provisions of the Act and rival submissions on the issue, we are of the considered view that once a deduction is allowed in the draft assessment order dated 28.03.2014 and there is no contrary direction from the higher appellate authorities then ADIT(IT) can not alter or change the amount of deduction allowed in the draft assessment order dated 28.03.2014. So on this issue we are not in agreement with the order of DRP as well as ADIT(IT). In view of these facts, we are inclined to direct the AO to allow the deduction @ 5% under

section 44C of the Act. Accordingly, the ground No.1 & 2 are allowed.

5. The issue raised in ground No.3 is against the non granting of credit of tax of Rs.20,30,000/- paid on regular assessment by the assessee.

6. After hearing both the parties and perusing the material on record, we restore the issue to the file of the AO to examine the issue and allow the credit of tax of Rs.20,30,000/- paid by the assessee on regular assessment.

7. At the time of hearing, ground No.4 was not pressed and therefore ground No.4 is dismissed as not pressed.

8. The issue raised in ground No.5 is pre-matured at this stage and need no adjudication.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 26.10.2021.

**Sd/-
(Saktijit Dey)
JUDICIAL MEMBER**

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

Mumbai, Dated: 26.10.2021.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.