

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.: **2391/CHNY/2018**

निर्धारण वर्ष /Assessment Year: 2014 - 15

The ACIT,
Corporate Circle-6(2),
Chennai – 34.

M/s. Sim Info System Pvt.
Ltd.,
Kalpatharu Complex, 44C,
C.P. Ramaswamy Road,
Alwarpet, Chennai – 600 018.

(अपीलार्थी/Appellant)

PAN: AAJCS 0281P

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri G. Johnson, Addl.CIT
: Ms. Jharna B Harilal, FCA

सुनवाई की तारीख/Date of Hearing

: 21.12.2021

घोषणा की तारीख/Date of Pronouncement

: 21.01.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the Revenue is arising out of order of the order of Commissioner of Income Tax (Appeals)-15, Chennai in ITA No.248/2016-17/CIT(A)-15, vide order dated 28.05.2018. The assessment was framed by the DCIT, Corporate Circle-6(2), Chennai for the assessment year 2014-15 vide order dated

25.11.2016 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act').

2. The only issue in this appeal of Revenue is against the order of CIT(A) allowing credit for withheld tax for assessment years 2008-09 to 2014-15 amounting to Rs.1,22,50,673/-. For this, Revenue has raised the following grounds:-

“2. The Id.CIT(A) erred in allowing credit for the Withheld Tax (WHT) for all the Assessment years from 2008-09 to 2014-15 amounting to Rs.1,22,50,673/-, where as the Tax credit of Rs.31,18,928/- only pertained to AY 2014-15.

2.1 The Ld.CIT(A) erred in holding that the Withholding Taxes (WHT) pertaining to AYs 2008-09 to AYs2014-15 should be given credit, in spite of the fact that the assessee has offered the corresponding income to tax in various years under the Income Tax Act, 1961.

2.2 The Ld.CIT(A) erred in applying the Rule 128 to the instant case, despite the said rule being introduced with effect from 01.04.2017.

2.3 The CIT(A) ought to have appreciated that credit for tax can be given only in the year in which the income has been admitted, and credit for taxes of prior AYs cannot be given.”

3. Briefly stated facts are that the assessee is engaged in the business of software development and has been doing services to M/s. Omega Simulation Co. Ltd, Japan since 2007. The assessee for the assessment year 2014-15 filed it return of income admitting taxable income of Rs.3,01,43,990/- mainly consisting of profits

from business operation at Rs.2,75,05,990/-. The facts are that the assessee company, up to 31.03.2014 since 2007, has exported software to the extent of Rs.12,55,06,206/- and payment have also been received in full. The assessee admitted the profit arising out of above exported software in the income tax returns for the assessment years 2008-09 to 2014-15 and paid taxes accordingly. The assessee before AO explained that during financial year 2013-14 relevant to assessment year 2014-15, Omega Simulation Co. Ltd., has paid withholding taxes under the tax laws of Japan to the extent of Rs.1,22,50,673/- for the financial years 2007-08 to 2013-14 and gave tax credit certificate to the assessee. The assessee received these tax credit certificates in the financial year 2013-14, hence same were claimed credit in this year, as these were not taken credit in the earlier years. It was also explained that on receipt of tax credit certificates in the financial year 2013-14, the assessee admitted the same as business income and claimed tax credit u/s.90 of the Act, for whole of the amount of Rs.1,22,50,673/- in the return of income filed. The AO during the course of assessment proceedings asked the assessee to explain why credit of taxes pertaining to earlier assessment years should not be denied. The assessee explained that Omega Simulation Co. Ltd., Japan has paid the withholding taxes during the financial year

2013-14, though it pertains to earlier years and gave tax credit certificates only during financial year 2013-14. The assessee on receiving the tax credit certificates fully accounted for the amounts and claimed the same in assessment year 2014-15. The assessee claimed that since the income were accrued only in the financial year 2013-14, relevant to this assessment year 2014-15, it correctly admitted the same as income and claimed the tax credit. The assessee explained that since the entire amount of TDS admitted as income in this assessment year only and paid taxes accordingly. But the AO was not convinced and accordingly he held that tax credit of only tax paid in Japan pertaining to the assessment during assessment year 2014-15 can be allowed to the extent of Rs.31,18,928/- and denied the claim of tax credit of Rs.91,31,745/-. Aggrieved, assessee preferred appeal before the CIT(A).

4. The CIT(A) after going through the submissions of the assessee and the remand report of the AO dated 23.04.2018 has noted the following conclusion in para 4.5.5 of his order, which reads as under:-

“(a) The appellant company received tax credit of Rs.1.22 Crores which has been declared as per Section 90, in this relevant AY 2014-15, although, it pertains to sale of software export during the period from AY 2008-09 to 2013-14.

(b) The appellant company has not made any claim for credit towards the aforesaid withholding tax in the earlier AYs prior to this AY 2014-15.

(c) Withholding tax was paid by the Japanese parent company in FY 2013-14 relevant to this AY 2014-15 and the tax credit certificate has been declared in the Income Tax Return for the AY 2014-15.”

5. In view of the above, the CIT(A) noted that the assessee is entitled to credit for withholding tax as per the provisions of section 90 & 91 of the Act and the relevant provision under the DTAA between India and Japan. The CIT(A) also noted that the assessee is entitled to credit for withholding tax as per CBDT notification dated 27.06.2017. Hence, he directed the AO to allow entire credit for withholding tax received in the financial year 2013-14 relevant to this assessment year 2014-15 amounting to Rs.1,22,50,573/-. Aggrieved, Revenue is in appeal before Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. The Id.AR for the assessee before us relied on CBDT notification dated 27.06.2016. He drew our attention to the relevant Rule notified i.e., 128(1) & (4) as under:-

“128. Foreign Tax Credit.-

(1) An assessee, being a resident shall be allowed a credit for the amount of any foreign tax paid by him in a country or specified territory outside India, by way of deduction or otherwise, in the year in which the income

corresponding to such tax has been offered to tax or assessed to tax in India, in the manner and to the extent as specified in this rule: Provided that in a case where income on which foreign tax has been paid or deducted, is offered to tax in more than one year, credit of foreign tax shall be allowed across those years in the same proportion in which the income is offered to tax or assessed to tax in India.

(4) No credit under sub-rule (1) shall be available in respect of any amount of foreign tax or part thereof which is disputed in any manner by the assessee: Provided that the credit of such disputed tax shall be allowed for the year in which such income is offered to tax or assessed to tax in India if the assessee within six months from the end of the month in which the dispute is finally settled, furnishes evidence of settlement of dispute and an evidence to the effect that the liability for payment of such foreign tax has been discharged by him and furnishes an undertaking that no refund in respect of such amount has directly or indirectly been claimed or shall be claimed.

The Id.AR before us also produced the computation of income and balance sheet as on 31.03.2014, wherein the certificate of tax credit issued by Omega Simulation Co. Ltd., Japan which proves that taxes were deducted only during financial year 2013-14 under DTAA of Indo-Japan. Both the parties below have recorded concurrent finding that the assessee company has not made any claim for credit towards the above stated withholding tax in earlier assessment years prior to the relevant assessment year 2014-15. We noted that the income has accrued in financial year 2013-14 relevant to assessment year 2014-15 and the assessee has correctly accounted this income in this very assessment year. Once the assessee has accounted for this income in this year and

also claimed that tax credit, we are of the view that CIT(A) has rightly allowed the claim u/s.199 of the Act. We find no infirmity in the order of CIT(A) and hence the same is confirmed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 21st January, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 21st January, 2022

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF. |