

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

ITA No.5980/Del/2017
Assessment Year: 2013-14

Addl. CIT, Special Range-2, New Delhi	Vs.	M/s. Beumer Technology India P. Ltd. (Earlier know as M/S. Enexco Technologies India Ltd.) 1, Prabhat Bhawan, 2 nd Floor, 96, LBS Marg, Vikhroli (West), Mumbai
PAN :AACCB3959N		
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Sh. Satpal Gulati, CIT (DR)

Date of hearing	20.01.2022
Date of pronouncement	16.02.2022

ORDER

PER SAKTIJIT DEY, JM:

This is an appeal by the Revenue against the order dated 30.05.2017 of learned Commissioner of Income Tax (Appeals)-3, Delhi, for the assessment year 2013-14. The grounds raised by the Revenue are as under:

1. *The order of the Id. CIT(A) is bad in law and not in consonance with the facts of the case.*
2. *The Id. CIT(A) has erred in deleting the addition of Rs. 1,61,52,564/- made by the AO, u/s 40(a)(ia) for non deduction of*

TDS on guarantee/fee commission paid to bank relying upon the notification no 56/2012 (F. No 275/53/202-IT(B) dated 31.12.2012 as the provisions of the same are not applicable to the prior period of notification.

3. *The Id. CIT(A) has erred, when the AO himself gave effect to the said notification vide order u/s 154 of the IT Act dated 06.05.2016 on the request of the assessee itself, for the period falling under the purview of the notification and reduced the addition u/s 40(a)(ia) to the tune of Rs. 95,68,829/-.*
4. *The appellant craves leave for reserving the right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal.*

2. Briefly the facts are, the assessee is a resident company. Assessment in case of the assessee was completed under section 143(3) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') on 17.03.2016 determining the total income of Rs.21,02,47,264/-. While completing the assessment, the Assessing Officer made disallowance of Rs.1,61,52,564/- under section 40(a)(ia) of the Act towards alleged non-deduction of tax at source on guarantee commission paid to the bank.

3. Assessee contested the aforesaid disallowance before learned first appellate authority. Additionally, the assessee filed an application under Section 154 of the Act before the Assessing Officer seeking rectification on the ground that as against the addition of Rs.1,61,52,564/-, the actual guarantee commission paid to the bank was Rs.95,68,829/-. Having found assessee's claim correct, the Assessing Officer passed an order on

06.05.2016 under Section 154 of the Act restricting the disallowance under Section 40(a)(ia) to Rs.95,68,829/-. However, while computing the income in the aforesaid order, the Assessing Officer actually disallowed Rs.65,83,735/-.

4. Be that as it may, while considering assessee's appeal on the issue, learned Commissioner (Appeals) found that as per Circular No. 56 of 2012, dated 31.12.2012 issued by Central Board of Direct Taxes (CBDT), TDS provisions are not applicable on debit/credit/commission/bank guarantee commission on the transactions made by a person with the bank listed in the second schedule to the Reserve Bank of India Act, 1934 excluding a foreign bank. Further, relying upon certain judicial precedents, including, the decision of the Tribunal in case of Kotak Securities Ltd. Vs. DCIT, [2012] 18 taxmann.com 48 (Mum.), learned Commissioner (Appeals) ultimately held that there is no requirement to deduct tax at source on payment of bank guarantee commission to a Bank listed in the second schedule of Reserve Bank of India, 1934 excluding a foreign bank. Thus, he deleted the disallowance made by the Assessing Officer.

5. When the appeal was called for hearing, none was present on behalf of the assessee. Accordingly, we proceed to dispose of

the appeal ex parte qua the assessee after hearing learned Departmental Representative.

6. As could be seen from the materials on record and discussed by us in forgoing paragraphs, while disposing of the rectification application filed by the assessee, the Assessing Officer himself has stated that the payment actually made to the bank towards guarantee commission in the previous year relating to the assessment year under dispute is only to the extent of Rs.95,68,829/-. Hence, according to him, the disallowance under section 40(a)(ai) of the Act should be restricted to that amount. Of course, while computing the income, he actually made disallowance to Rs.65,83,732/-. Thus, as per the Assessing Officer's own admission, in the worst case scenario, the disallowance which could have been made under section 40(a)(ia) of the Act is to the tune of Rs.95,68,829/- and no more. In view of the aforesaid undisputed factual position emerging on record, the tax effect on the amount which ultimately survived after the order passed under Section 154 of the Act and which can be the subject matter of dispute between the Revenue and assessee would be less than Rs. 50 lakhs as per CBDT Circular No. 17/2019, dated 08th August, 2019.

7. That being the case, the present appeal of the Revenue, in the first place, not being maintainable, has to be dismissed.

8. Even, otherwise also, insofar as the merit of the issue is concerned, we do not find any error in the decision of learned first appellate authority. Admittedly, the payment which is the subject matter of disallowance under Section 40(a)(ia) of the Act is bank guarantee commission paid to a schedule Indian bank. As rightly held by learned Commissioner (Appeals) by placing reliance on certain judicial precedents, there is no element of agency between the assessee and the bank, insofar as, it relates to payment of guarantee commission. We are also of the view that learned Commissioner (Appeals) has correctly applied the extant Circular of CBDT as it is clarificatory in nature. In view of the aforesaid, we uphold the decision of learned Commissioner (Appeals) by dismissing the grounds raised.

9. In the result, the appeal is dismissed.

Order pronounced in the open court on 16th February, 2022

Sd/-
(B.R.R. KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 16th February, 2022.

RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi