IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" DELHI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.As. No.6081, 6082 & 6083/DEL/2018
Assessment Year 2014-15, 2015-16 & 2016-17

Vidya Bal Mandli, C/o Pushkar Jain, Adv., 115-C, Jain Nagar, Meerut.	v.	JCIT (OSD), International Taxation, Noida.
TAN/PAN: AAATV3392C		
(Appellant)		(Respondent)

Appellant by:	Shri S. Krishnan, CA.		
Respondent by:	Shri Sanjay Kumar, Sr.D.R.		
Date of hearing:	09	02	2022
Date of pronouncement:	17	02	2022

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeals have been filed at the instance of the assessee against the consolidated order of the Commissioner of Income Tax (Appeals)-II, Noida ['CIT(A)' in short], dated 23.07.2018 arising from consolidated order dated 28.03.2018 passed by the Assessing Officer (AO) under Section 201(1)/201(1A) of the Income Tax Act, 1961 (the Act) concerning AYs 2014-15, 2015-16 and 2016-17.

2. As stated at the bar, the grievance of the assessee in all the three captioned appeals are common and arises from the common order of the Assessing Officer and first appellate order thereon.

3. As per its grounds of appeal, the assessee has challenged the action of the Revenue deeming the assessee to be 'assessee in

default' alleging failure to deduct tax as required under the provisions of the Act on certain foreign exchange remittances.

3. Briefly stated, the deductor-assessee M/s. Vidya Global School (Vidya Bal Mandli) is an IB World School imparting teaching in the Primary Years Programme. The assessee Vidya Global School is engaged in providing education to the students enrolled with it. For this purpose, it has made a tie up with International Baccalaureate Organization (IBO) which is an educational institute having its headquarters in Geneva, Switzerland and various regional centres/branches across various countries including Singapore and United Kingdom (UK). Only schools authorized by the IB organization can offer any of its three academic programmes, i.e., Primary Years Programme (PYP), the Middle Years Programme (MYP), or the Diploma Programme. The office of Vidya Global School (Vidya Bal Mandli) is at Vidya Knowledge Park, Baghpat Road, Meerut.-250001. The assessee is also registered for carrying out educational activities under Section 12A of the Act. On inquiries, the Assessing Officer observed that the assessee has made several remittances during the Financial Years 2013-14, 2014-15 and 2015-16 abroad (as tabulated in page 3 of the impugned order) to M/s. International Baccalaureate (IB) Organization and University of Cambridge (local examination syndicate) towards (i) PYP annual fees; (ii) registration renewal fee; (iii) examination fee etc. However, while making the remittances, the assessee has failed to deduct withholding tax and thus infringed the provision of Section 195 of the Act. For such conclusion, the Assessing Officer referred to the provision of Section 9(1)(vii) of the Act and Article 12 of the respective DTAAs and concluded that the payments made by the deductor assessee are in the nature of 'fee for technical services' and consequently deemed to accrue or arise in India and hence

chargeable to tax under Section 4 and Section 5 of the Act in terms of provisions of Section 9(1)(vii) and relevant DTAAs. It was *inter alia* alleged that the activities carried out by the assessee cannot be termed as 'teaching in or by educational institute' contemplated under Article 12 of the DTAA and thus does not fall within exclusionary clause of Article 12(5) of the relevant DTAAs. The Assessing Officer accordingly deemed the assessee to be in default under Section 201(1) read with Section 195(1) of the Act and consequently imposed consequences of such failure to deduct or pay tax under Section 201(1) and also interest on tax liability u/s.201(1A) of the Act of different sums in respective assessment years.

4. Aggrieved, the assessee preferred appeal before the CIT(A) seeking to challenge the impugned action of the Assessing Officer. The CIT(A) however broadly endorsed the action of the Assessing Officer under Section 201(1)/201(1A) in its consolidated order for all the three assessment years with a minor aberration/relief. The CIT(A) treated the component of remittances towards 'registration renewal fees' outside the ambit of Section 9(1)(vii) read with Article 12 of the DTAA and consequently held that assessee is not liable for deduction under Section 195 of the Act in respect of registration renewal fee component. However, the CIT(A) upheld the action of the Assessing Officer for fixing the liability under Section 195 in respect of 'PYP annual fee' component and 'examination fee' component of remittance and consequent default under Section 201(1)/201(1A) of the Act.

5. Further aggrieved, the assessee preferred appeal before the Tribunal.

6. When the matter was called for hearing, the ld. counsel for the

assessee, Mr. S. Krishnan, Adv. submitted at the outset that the whole action of the Revenue Authorities is marred by misconception of law and facts and the authorities below have misdirected themselves in deeming the assessee as 'assessee in default' under Section 201(1)/201(1A) of the Act. To begin with, it was submitted that the assessee herein is educational institution registered under Section 12A of the Act and caters to the promotion of education for which it has tied up with IBO having Headquarter at Jeneva, Switzerland and other regional centers across various countries including Singapore and UK which fact is borne out from paragraph 1 of the order itself as passed by the Assessing Officer under Section 201(1)/201(1A) of the Act. It was submitted that in pursuance of notice issued under Section 133(6) in September, 2007, the assessee pointed out in particular that zero certificate has already been issued on similar remittances on 21.11.2016 which falls under Financial Year 2016-17 (Assessment Year 2017-18). It was submitted that the entire proceedings were continued and carried out on the basis of the impugned notice under Section 133(6) of the Act at which time the assessee was already holding a zero certificate obtained under Section 195(2) of the Act meaning thereby that the assessee was allowed by the revenue authorities to make remittances of identical nature without any deduction of tax to such foreign counterpart. It was submitted that on the basis of such certificate, the assessee was not treated as assessee in default in the subsequent assessment year, i.e., Assessment Year 2017-18 and thus by the same token, the assessee could not have been treated as assessee in default for the impugned Assessment Years 2014-15, 2015-16 and 2016-17 in question. It was pointed out that despite a well considered stand of the Department in Assessment Year 2016-17 for the absence of obligation under Section 195(1) of the Act, the obligation has been fastened on the assessee in the impugned assessment years in question. Ld. counsel next adverted our attention to Article 12 of the DTAA dealing with 'Royalties and Fee for Included Services' as reproduced in the order itself and pointed out that clause 5 of Article provides for exclusion of certain services within the sweep of 'royalties and fees for including services'. It was submitted that clause (c) to Article 12(5) specifically records that 'Fee for Included Services' shall not cover a sum in the nature of 'for teaching in or by educational institutions". It was thus pointed out that in view of glaring exclusion provided in Article 12(5)(c) of the DTAA, the remittances made from educational activities stood excluded from the ambit of taxation and are not susceptible to tax obligation in India in terms of DTAA and hence the assessee is not liable to deduct tax under Section 195(1) of the Act. Therefore, the assessee cannot be treated as assessee in default in such circumstances. It was harped by the ld. counsel that all the activities carried out by the registered educational institution herein are ostensibly in the field of education which has been misinterpreted and misread by both the lower authorities *dehors* the facts on record. It was further pointed out that the assessee has made a composite remittance for all education related sources. It has been artificially broken down by the Assessing Officer in (i) PYP annual fee; (ii) registration renewal fee; (iii) examination fee. It was pointed out that the Assessing Officer in page 9 of its impugned order itself has observed that the fees allow the school to access the IB's online curriculum centre (OCC), the co-ordinators notes and program updates published by IB. It was thus contended that on the face of it, the remittances made were for the purposes integral to the educational activity carried on by the assessee which is excluded under beneficial clause of Article 12 of DTAAs from the ambit of fee for technical services and consequent obligation of deduction of tax under Section 195 of the Act. It was further pointed out that the whole proceedings were cursorily carried and continued on the basis of issue of notice under Section 133(6) of the Act only which is purely meant for collection of evidences. It was thus submitted that the action of the Revenue authorities is totally in contravention from the provisions of Section 9(1)(vii) of the Income Tax Act read in conjunction with Article 12 of the respective DTAA. It was thus urged that the order of the CIT(A) be set aside and the Assessing Officer be directed to not treat the assessee as assessee in default.

7. Ld. DR for the Revenue, on the other hand, relied upon the orders of the Assessing Officer and CIT(A) and submitted that the well reasoned order does not call for any interference from the Tribunal.

8. We have carefully considered the submissions and the order of the CIT(A) as well as the assessment order. As noted above, the assessee is a registered educational institution under Section 12A of the Act and has made certain payments by way of foreign remittances during the assessment years in question. While making such foreign remittances, the assessee has not deducted tax at source as obligated under Section 195 of the Act on the ground that the sum so remitted by the deductor-assessee is not chargeable to tax in India by virtue of exceptions provided in Article 12(5) of DTAAs which provides for exoneration from obligation to deduct tax in respect of Educational Institutions giving rise to present controversy.

8.1. In terms of Section 195 of the Act, the obligation to deduct income tax by the payer is dependent upon the fact that such income is chargeable to tax in India. The governing DTAAs in the instant case provides for appropriate article (Article 12 or Article 13) which exonerates the payee from the liability to pay tax in India with reference to *teaches in or by educational institution.*

8.2 It is the case of the assessee that the remittances have been made solely for the purposes of teaching in or by the foreign entity (payee) and thus such payment clearly falls within the exclusion clause of Article 12 of the Act. The DTAA thus restricts the scope and condition of taxability of the remittances in relation to educational institutions. The assessee thus contends that it is entitled to claim that beneficial provisions of DTAA should apply to its case. It is well settled position of law that wherever any provision of the DTAA is more beneficial to an assessee, assessee can claim to be governed by the DTAAA as Sections 4 and 5 of the Act are overridden by Section 90 which gives the enabling power to the Central Government to enter into DTAAs.

8.3 Section 195 of the Act provides for vicarious liability on the payer responsible for making payment to non-resident any sum chargeable as per the provisions of the Act.

8.4 On a plain reading of the factual matrix in the instant case, it is ostensible that the assessee has made remittances for the purposes of imparting education to its students and the payment so made is directly or indirectly in relation to teaching in or by the overseas payee(s) in question. Hence, the assessee is entitled to claim that the beneficial provisions of DTAA should apply in its case for the purposes of ascertaining whether such income is chargeable to tax in India or otherwise in terms of Section 195 of the Act. The claim of the assessee that it is governed by the beneficial provision of DTAA thus cannot be brushed aside. The factual matrix clearly gives an overriding expression that the services obtained by the payer assessee from foreign entity is in relation to teaching and other activities squarely in connection with imparting education. This being so, beneficial provisions of DTAA squarely applies to the instant assessee. Under the circumstances, where the income remitted to the non-resident is not chargeable to tax in India by virtue of DTAA, the liability to deduct tax would not arise under Section 195 of the Act. Consequently, the assessee herein cannot be treated as 'assessee in default' for such remittances.

8.5 We thus find merit in the plea of the assessee for cancelling the tax liability under Section 201(1) and consequently interest under Section 201(1A) for alleged failure to deduct tax. Consequently, we set aside the order of the CIT(A) and quash the impugned order for all the three assessment years in question.

9. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open Court on 17/02/2022.

Sd/-	Sd/-
[SAKTIJIT DEY]	**[PRADIP KUMAR KEDIA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: **17/02/2022**

Prabhat