आयकर अपीलीय अधिकरण 'बी' न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, CHENNAI

माननीयश्रीवी. दुर्गाराव, न्यायिकसदस्यएवं
माननीयश्री मनोज कुमार अग्रवाल ,लेखासदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपीलसं./ **ITA No.1069/Chny/2019**

(निर्धारणवर्ष / Assessment Year: 2010-11)

M/s. Tractors and Farm Equipment Ltd. 35, Uthamar Gandhi Salai, Nungambakkam,Chennai – 600 034.	**बनाम**/ Vs.	**DCIT** International Taxation 2(2), Chennai.
स्थायीलेखासं./जीआइआरसं./**PAN/GIR No. AAACT-2761-Q**		
(अपीलार्थी**/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri Vikram Vijayaraghavan (Advocate) – Ld. AR
प्रत्यर्थीकीओरसे/**Respondent by**	:	Shri P. Sajit Kumar (JCIT) – Ld. DR

सुनवाईकीतारीख/ **Date of Hearing**	:	10-02-2022
घोषणाकीतारीख / **Date of Pronouncement**	:	07-03-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2010-11arises out of the order of learned Commissioner of Income Tax (Appeals)-16, Chennai [CIT(A)] dated 20-02-2019 in the matter of order passed by Ld. Assessing Officer [AO] u/s. 201(1)/201(1A) of the Act on 31-03-2017. The grounds raised by the assessee read as under:

1. The order of Commissioner of Income tax (Appeals) is contrary to law, facts, and circumstances of the case.
2. The Commissioner of Income tax (Appeals) erred in confirming the levy of interest under 201 (1)/201 (1A) of the Income Tax Act 1961.
3. The Commissioner of Income tax (Appeals) erred in confirming that expenditure for carrying out the warranty by the Distributors constitute 'fees for technical services' requiring tax deduction at source.
4. The Commissioner of Income tax (Appeals) should have found that the warranty services are "inextricably and essentially linked to the sale of the property" and therefore the same is not in the nature of 'fee for technical services'.
5. The Commissioner of Income tax (Appeals) ought to have appreciated that the payments are not liable to tax in India as the services were rendered and utilized fully outside India. The appellant relies on the decision of the Mumbai Tribunal in the case of Linklaters LLP in ITA Nos. 4896/Mum/03 and 5085/Mum/03.
6. The Commissioner of Income tax (Appeals) ought to have appreciated that the Appellant merely reimbursed the actual expenses of the Distributors and as there was no element of income, no part of the same is taxable in India requiring TDS.
7. The Commissioner of Income tax (Appeals) ought to have appreciated that as per the provisions of DTAA if the payment is to be considered as 'fees for technical services', technical knowledge should be made available to the payer in India. The support services or warranty services has not made available any technology or know-how to the assessee and therefore payment made for such services does not qualify for 'fees for technical services' under the relevant DTAA and hence does not require TDS.
8. The Appellant relies on the following decisions
   (i) DCIT vs AT & S India Private Ltd. ITA Nos. 1262/K/2010, 186/K/2011
   (ii) ACIT vs. M/s. HCL Coment Ltd. ITA Nos. 321/Del/2012
   (ii) DCIT vs M/s. Silicon Graphics Systems ITA No. 2935 & 2937/Del/2013
   (iv) Ciena India Private Limited, vs ITO ITA Nos.- 959 a 984/Del/2011
   (v) Nissan Motor India Private Limited Vs DCIT, ITA No.1854/CHNY/2017
9. The Appellant submits that alternatively even if the amounts are held taxable in India, the Commissioner of Income tax (Appeals) ought to have appreciated that carrying out the warranty constitute business income of the Distributors abroad and as they have no PE in India, no part of the income is taxable in India subject to withholding tax.
10. The Commissioner of Income tax (Appeals) ought to have appreciated the fact that the parties to whom payments were made had no Permanent Establishment in India, the payments have- been made directly to the nonresidents abroad, does not involve any technical knowledge or assistance in technical operations or other support in respect of any other technical matters to the assessee
11. The Appellant submits that Without prejudice to the above, the Commissioner of Income tax (Appeals) ought to have appreciated that the cost of replacement of part is merely a sale of goods and is not taxable in India. Only that portion of the payment to non-resident which is considered taxable in India requires TDS.

2. Drawing our attention to the grounds of appeal, Ld. AR submitted that the issue is squarely covered in assessee's favor by the decision of

this Tribunal in the case of similarly placed assessee **M/s Nissan Motors India Pvt. Ltd. V/s DCIT (ITA No.1854/Mds/2017) dated 21-03.2018.** A copy of the order has been placed on record. The Ld. DR supported the orders of lower authorities.

3. Having heard rival submissions and after going through facts on record including the judicial pronouncements as relied upon during the course of hearing, our adjudication would be as under.

Assessment Proceedings

4.1 The material facts are that the assessee being resident corporate assessee is stated to be engaged as manufacturer of agricultural tractors. It has exported tractors and appointed dealers to sell the tractors abroad. The tractors are subjected to warranty and accordingly, the distributors carry out the warranty and incur expenditure. The payment was predominantly towards cost of parts and small portion towards fitment and repair charges. The expenditure so incurred was reimbursed by the assessee to non-resident distributors on actual basis. Since, the same were mere reimbursements, not tax was deducted at source (TDS) while making the reimbursement. It was also stated that the entire work was carried and utilized outside India and therefore, no Tax was required to be deducted at source. Since the non-resident distributors had no permanent establishment in India, the receipts were not taxable in their hands as per Double Taxation Avoidance Agreement. The payments would not fall under 'fees for technical services' since there was no rendering of any technical skill, know-how or knowledge involved.

4.2 However, all these submissions were rejected by Ld. AO while passing an order u/s 201(1) / 201(1A) wherein the assessee was held to

the assessee-in-default for want of TDS and it was also saddled with interest for the said default. The Ld. AO chose to rely upon the decision of Delhi Tribunal in **SPX India (P.) Ltd. Vs. CIT [2013] 36 Taxmann.com 377** as well as decision of Chennai Tribunal in **Ashok Leyland Ltd. Vs. DCIT [2009] 20 ITR 14** wherein it was held that TDS provisions would be applicable to reimbursements also.

4.3 After examining the various stages of warranty process, it was concluded by Ld. AO that what was rendered at the repair shop was a technical service. The assessee was to provide warranty services to the customers at its own costs for the amounts were collected at the time of original sale itself. To facilitate the same, the assessee entered into arrangement with various dealers to carry out actual services which was to be reimbursed by the assessee, The warranty could only be offered by the manufacturer only. Finally, theservices were held to be technical services and therefore, the assessee was obligated to deduct tax at source. The failure to do so would make the assessee as assessee-in-default u/s 201(1) of the act. Accordingly, liability of Rs.201.26 Lacs was fastened on the assessee u/s. 201(1) & 201(1A) of the Act.

Appellate Proceedings

5. During appellate proceedings, the assessee reiterated that the technical services were rendered by the dealers to the end-users and not to the assessee. The claim by the dealer was only in the nature of business expenditure incurred by the assessee in the course of their business of selling tractors.

Another submission was that the services were rendered and utilized outside India and therefore, no tax would be required to be deducted as

per various judicial pronouncements since the non-resident distributors did not have any permanent establishment (PE) in India.

However. Ld. CIT(A) chose to confirm the stand of Ld. AO, inter-alia, by noticing that the contract of warranty was between the assessee and the customers and the contract for carrying out the warranty services was between the assessee and dealers. The services so rendered were fees for technical services and therefore, the assessee was obligated to deduct tax at source. Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

6. Upon careful consideration of material fact, it could be gathered that the assessee is primarily engaged as manufacturer of agricultural tractors. It has sold tractors overseas through non-resident distributors. As part of the sales obligations, the assessee has to provide warranty. This warranty expenditure is incurred by the overseas distributors and the same are later on reimbursed by the assessee. The submissions of Ld. AR are that warranty expenditure is part of overall sales obligations and the expenditure is reimbursed on actual basis. The warranty obligation being part and parcel of sales transactions and therefore, the same could not be held to be 'fees for technical services'. Another line of argument is that services have been carried as well as utilized outside India and therefore, there is no TDS obligation on the part of the assessee in view of the fact that the payees do not have any permanent establishment in India. Finally, Ld. AR has submitted that no services have been rendered to the assessee rather the technical services, if any, has been rendered to overseas customers by the non-resident distributors. For the same, Ld. AR strongly rely on the decision of this

Tribunal in the case of similarly placed assessee i.e., **M/s Nissan Motors India Pvt. Ltd. V/s DCIT (ITA No.1854/Mds/2017 dated 21-03-2018).**

7. After going through the cited decision, we find that similar was the issue in that case. The bench, after considering the provisions of Sec.9(1)(vii)(b) held that payment made by the assessee to a person outside India for earning income from any source outside India would not require tax at source u/s 195 since the income of recipient would be excluded from the deeming provisions of Sec.9(1) of the Act. The relevant observations of the bench were as under: -

> 4.4 Before us the Ld.AR pointed out the provision of Section 9(1)(vii)(b) of the Act and argued by stating that, the exemption to the provision clearly provides, where any resident pays fees in respect of services for the purpose of making or earning any income from any source outside India, the income arising from such payment to the recipient outside India will not be deemed to be income accruing or arising in India. Further the Ld.AR relied on various decisions to drive his point that tax was not liable to be deductible in the case of the assessee for the payment made towards reimbursement of warranty expenses to sister concerns outside India. The Ld.DR on the other hand relied on the orders of the Ld.Revenue Authorities.
>
> 4.5 We have heard the rival submissions and carefully perused the materials on record. The relevant provision of Section 9 of the Act is reproduced herein below for reference:-
>
> *"Section 9(1) : The following income shall be deemed to accrue or arise in India:-*
>
> *(i)* ----------
> *(ii)* ---
> *(iii)* ---
> *(iv)* ----
> *(v)* ----
> *(vi)* ----
> *(vii)* *Income by way of fees for technical services payable by* -------
> *(a)* ----------
> *(b)* ***A person who is resident**, **except where the fees are payable in respect of services utilized in business or profession carried on by such person** outside India **<u>or</u>for the purpose of making or earning any income from any source outside India**; or"*
>
> The above provision of Section 9(1)(vii) and the second limb of (b) of the Act, clearly provides that where a resident is liable to pay fees in respect of services utilized in a business or profession carried on by such person for the purpose of making or earning any income from any source outside India, the income arising from such payment shall be excluded from the deeming provision of Section 9(1)

> of the Act viz., "income accruing or arising in India". In the case of the assessee, the assessee is a manufacturer of motor cars in India and exports the motor cars to other countries and sells them in those countries through its sister concerns who acts as the dealer of the assessee company. The assessee company also provides warranty to the end customers who purchase the car. The assessee's sister companies who acts as the dealers of the assessee company maintains the cars sold by them according to the terms of the warranty promised by the Assessee Company, towards which the dealer companies incurs expenditure. As per the contractual obligation, the assessee company reimburses such expenses incurred by its "dealer - sister companies". Thus the assessee company incurs expenditure outside India for the purpose of earning income from source outside India. Therefore by virtue of Section 9(1)(vii)(b) of the Act, the payment made by the assessee company to a person outside India for earning income from any source outside India, and the income arising from such payment to the recipient shall be excluded from the deeming provision of Section 9(1) of the Act. Hence we are of the considered view that the assessee company will not be liable to deduct tax U/s.195 of the Act. It is pertinent to mention that the decision relied by the Ld.AO in the case SPX India Pvt. Ltd., Vs. CIT supra and Ashok Leyland Ltd., Vs. DCIT supra are not applicable to the facts of the case of the assessee. In the case SPX India Pvt. Ltd., the issue was with respect to deduction of tax at source on the amount reimbursed as ISO audit fee to parent company. In the case of Ashok Leyland Ltd., the company was engaged in the business of manufacture of motor vehicles in India and the issue was with respect to reimbursement of expenditure towards air fare, accommodation and subsistence cost of personal disputed by foreign company. Accordingly the issue is decided in favour of the assessee.

We find that similar are the facts in the present case. The services have been carried as well as utilized outside India. There is nothing on record that any of the payees has any permanent establishment in India. Therefore, as held by the bench, in such a case, there would be no obligation for assessee to deduct tax at source. We also concur with the submissions of Ld. AR that the warranty obligation being part and parcel of sales transactions and therefore, the same could not be held to be 'fees for technical services'. Therefore, considering the fact of the case, we direct Ld. AO to delete the impugned demand as raised against the assessee.

8. The appeal stands allowed in terms of our above order.

Order pronounced on 07th March, 2022.

Sd/-	**Sd/-**
(V. DURGA RAO)	**(MANOJ KUMAR AGGARWAL)**
न्यायिकसदस्य /JUDICIAL MEMBER	**लेखासदस्य /ACCOUNTANT MEMBER**

चेन्नई/ Chennai; दिनांक/ Dated : 07-03-2022

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant2. प्रत्यर्थी/Respondent 3. आयकरआयुक्त (अपील)/CIT(A)4. आयकरआयुक्त/CIT
5. विभागीयप्रतिनिधि/DR6. गार्डफाईल/GF