IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD

BEFORE

SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.	A.Y.	Appellant	Respondent
1004/Hyd/2019	2012-13	Dy.Commissioner of Income Tax, Central Circle-3(2), Hyderabad	M/s.Hyderabad Educational Institutions Pvt. Ltd., Shankarpally Mandal (PAN: AACCK9435E)
1005/Hyd/2019	2013-14		
1006/Hyd/2019	2014-15		
437/Hyd/2019	2015-16		
1007/Hyd/2019	2016-17		

Assessee by: Shri V.Srinivasan,
Revenue by: Shri Y.V.S.T.Sai, CIT-DR

Date of hearing: 23/05/2022
Pronouncement on: 26/05/2022

ORDER

PER K. NARASIMHA CHARY, JM:

Challenging the orders passed by the CIT(Appeals)-11, Hyderabad ("Ld.CIT(A)") in the case of M/s. Hyderabad Educational Institutions Pvt. Ltd., ("the assessee") for the AYs.2012-13 to 2016-17, Revenue preferred these appeals. Facts involved for all these assessment years are similar. So also the grounds of appeal. We, therefore, deem it just and convenient to dispose of these appeals by way of this common order, taking the appeal for the AY.2015-16 as a lead case.

2. Brief facts of the case are that the assessee is a company incorporated under the provisions of the Companies Act, 1956 and has been running a main school known as Indus International School, offering International Baccalaureate (IB) and another pre-school known as Gachibowli School. Academic year followed in the main school commences in the month of August and ends in the month of May of the succeeding calendar year, whereas the academic year of Gachibowli School commences in the month of June and ends in the month of March of the succeeding calendar year. It is evident, therefore, that the academic year followed by the schools is different and partly overlaps, and also falls into different financial years followed by assessee for the purpose of accounting and filing income tax returns. While passing the assessment order, learned Assessing Officer made certain additions including additions relating to the (i) fee received on accrual basis, (ii) disallowance of foreign remittances and (iii) interest waiver not admitted u/s.41(1) of the Income Tax Act, 1961 ("the Act"). In the appeals for the other assessment years, additions relating to (i) fee received on accrual basis and (ii) disallowance of foreign remittances are subject maker. We deal with these additions one after the other hereunder.

3. Insofar as the addition of fee received on accrual basis is concerned, facts are that the assessee collects tuition fee from the students every quarter for the entire academic year and recognises revenue only in respect of the tuition fee collected for the period relevant to the financial year as per the mercantile system of accounting followed by them. The tuition fee collected by the assessee for the period relating to the

academic year that falls in the succeeding financial year is regarded as an advance received and shown as a liability in the financial statements.

4. It is submitted on behalf of the assessee that though this fact was submitted, the learned Assessing Officer discarded the same and observed that inasmuch as the assessee has been following the mercantile system of accounting, and particularly because there is no further liability on the assessee except regular running of the school, and also the assessee is not to return any part of the fee collected, the tuition fee received amounts to accrual. On this premise, learned Assessing Officer brought the fee collected in the fourth quarter of the year to tax.

5. In appeal, assessee pleaded that all the receipts during a financial year do not tantamount to income, because unless and until the corresponding expenditure is taken into consideration, it gives a distorted picture of income. According to the assessee, since the corresponding expenditure is met during the first quarter of the succeeding year, recognizing the revenue during that period alone gives proper picture of income for the purpose of taxation. It is also argued by the assessee before the Ld. CIT(A) that insofar as a particular financial year is concerned, though the receipt of tuition fee in the last quarter is not recognized in that financial year, the same is considered as the receipt in the first quarter in the succeeding year in which the corresponding expenditure is met, and, therefore, the addition made by the learned Assessing Officer in respect of the receipts of the last quarter of the relevant financial year is in addition to the receipt of the tuition fee received during the last quarter of the previous financial year, but recognized in the first quarter of this financial

year. He, therefore, submits that this addition is double addition and does not give correct picture of income.

6. Ld. CIT(A) considered the submissions made on behalf of the assessee and accepted the same. While placiang reliance on the decision reported in ACIT Vs. M/s.Mahindra Holidays & Resorts (I) Limited (131 TTJ (Chennai)(SB) 1), and also the decision of the Hon'ble Apex Court in the case of Madras Industrial Investment Corporation Ltd Vs. CIT (1997) 225 ITR 802 (SC) Ld. CIT(A) held that if the receipts pertaining to a period beyond the financial year are included in the income of the year, the same would lead to distortion of income. He, accordingly, directed the deletion of the addition on this score.

7. Learned DR placed reliance on the assessment order and submitted that inasmuch as the assessee has been following the mercantile system of accounting, is not open for the assessee to contend that following the matching principle would alone give correct picture of income, whereas it is submitted on behalf of the assessee that it is only when the receipt and expenditure are considered, the correct picture of income emerges. According to him, it is only in the subsequent quarter of the year, the relevant expenditure like salaries of the teachers and other related expenses are met and, therefore, the income accrues only after the expenditure is considered. He placed reliance on the decision reported in CIT Vs. Dinesh Kumar Goel (2011) (331 ITR 10) (Del).

8. Insofar as facts are concerned, there is no dispute. Though the receipt is there in the last quarter of a financial year that relates to the period of instructions to be imparted by the assessee in the next quarter,

which falls in the next financial year. It, therefore, goes without saying that though the receipt is there in the last quarter of a financial year, the corresponding service is rendered by the assessee in the next quarter which falls in a different financial year. In the case of Dinesh Kumar Goel (supra), the Hon'ble Delhi High Court observed that :

> *"Under section 5(1)(b) of the Income-tax Act, 1961 when the income accrues or arises or is deemed to accrue or arise to the assessee in India during the previous year, it is to be taxed in that year. It is important, therefore, that receipt of a particular amount in the relevant year should be an 'income' under the provision. The relevant yardstick is the time of accrual or arisal for the purpose of taxation,* viz., *in order to be chargeable, the income should accrue or arise to the assessee during the previous year. There must be a "right to receive the income on a particular date, so as to bring about a creditor and debtor relationship on the relevant date". A right to receive a particular sum under agreement would not be sufficient unless the right accrued by rendering of services and not by a promise for services : where the right to receive is anterior to the rendering of services, the income would accrue on the rendering of the services".*

9. It is, therefore, clear that income accrues only when the right accrued by rendering of services and not by promise for services. Where the right to receive is anterior to the rendering of services, the income would accrue only on the rendering of services. As on the date of receipt of tuition fee, and for that matter in the quarter in which it was received, no service was rendered. Service was rendered in the following quarter which falls in a different financial year. It leaves no doubt in our mind that in this situation, the right to receive i.e., accrual happens only in the quarter in which the services were rendered, namely, in the following quarter.

10. While respectfully following the decision of the Hon'ble Delhi High Court in the case of Dinesh Kumar Goes (supra), we are of the considered opinion that the assessee was right in recognizing the revenue in the financial year in which the corresponding service was rendered, because it is only on consideration of the expenses relating to the rendering of services, the correct picture of income emerges, and it is only such income is taxable and not every receipt. With this view of the matter, we uphold the findings of the Ld. CIT (A) and find the grounds relating to this issue are devoid of merits.

11. Now coming to the second issue relating to the foreign remittances, the facts are that the assessee makes payment to two foreign universities/institutions viz., University of Cambridge (UK) and International Baccalaureate (IB) (Switzerland) in connection with the schools run by it; that according to the assessee, these payments made by them are, firstly, towards payment of examination fee collected from the students, which are not exactly the payment made by the assessee but merely collected from students and remitted, secondly, as fees for syllabus, setting up of question papers, training of teachers, etc; and that in respect of these payments made, the assessee did not make any deduction of tax at source u/s. 195 of the Act, before making the aforesaid payments taking the view that there was no income that accrued or arose to the aforesaid foreign universities and educational institutions in India.

12. Submissions of assessee on this aspect are too fold. Firstly, they are not income in the hands of the assessee inasmuch as the assessee is only a passing through entity for the purpose of examination fee. Neither the income is recognised nor are the expenses claimed. According to them,

such a fee was paid in connection with the educational activities conducted by the assessee in accordance with the instructions of the foreign universities. The other plea of the assessee is that this particular receipt cannot be treated as Fee for Technical Services (FTS) since the Double Taxation Agreements (DTAA) entered into by India with UK and Switzerland exclude the amounts received for "teaching in or by educational institutions from the ambit of expression FTS. Further, Article 13 of the India-UK DTAA contains make available clause, in order to term a service as FTS, but in this case, no such technical services is made available to the assessee enabling the assessee to perform the function on their own. Since there is neither income recognised nor any expenditure claimed, Section 40(a)(i) of the Act has no application.

13. Learned Assessing Officer, however, brushed aside the contentions raised by the assessee and was of the opinion that there were skilled educational services rendered by the University of Cambridge (UK) and International Baccalaureate (IB) (Switzerland) to the assessee and, therefore, such services fall in the ambit of the expression FTS under the Income Tax Act. Further according to the learned Assessing Officer, the examination fee and the teachers workshop fee paid by the assessee do not constitute payments made for teaching services and such services are not exempt under DTAA. It is further held by the learned Assessing Officer that the payments made by the assessee are in the nature of consultancy services and personal services rendered in the field of education and accordingly, exemption under DTAA cannot be stretched to this extent.

14. In appeal, Ld. CIT(A) recorded that the examination fee collected by the assessee is only as a pass through entity in the sense that these

examination fee, though collected by the assessee was remitted in toto to the International Baccalaureate (IB) (Switzerland) on behalf of the students, in connection with the educational activities conducted by the assessee in accordance with the syllabus set by the universities and, therefore, cannot be termed as the payments for managerial/technical/ consultancy services availed by the assessee. Further according to the Ld. CIT(A), Section 40(a)(i) of the Act could be invoked only when any expenditure is claimed by the assessee, but in this case, no expenditure is booked by the assessee. Lastly, Ld. CIT(A) making reference to the DTAA held that the amounts paid by the assessee to both the universities are not answerable to the description of technical services/royalty services as defined in those DTAAs.

15. Learned DR contended that the invoices for the payment of examination fee are not raised by the foreign universities and there is nothing indicating that the amounts are paid by the students to such foreign universities through the assessee. He submits that since the assessee is raising the invoices on their name and receiving the amounts on their own behalf, it cannot be said that the assessee is only a passing through entity. He further submitted that the expression "for teaching in or by educational institutions" does not cover the high end technical services involving syllabus framing, paper setting, paper evaluation and modern teaching methods so on and so forth. He accordingly submits that the exemption clause referred to by the learned AR does not extend the specific activities for which the payment is made.

16. Per contra, learned AR submits that the word teaching cannot be confined to the activity of imparting instructions, but it has to be taken in

a broader sense to include the activities relating to the education. He submits that the activities of setting syllabus and conduct of examinations are intrinsic to the activity of teaching. He further submitted that the treatment of the receipts and remittances in the books of the accounts of the assessee clearly reflect the role of the assessee in respect of these receipts. He submits that the entire receipts in rupees are transmitted to the foreign universities in foreign currency, and whatever the gain or loss resulted in the foreign exchange transaction it is routed through the profit and loss account and declared for tax purposes. He placed reliance on the provisions of DTAA between India and UK and India and Switzerland.

17. We have gone through the record. There is dispute that the receipt in question is relating to the activity of syllabus, setting up of question papers, training of teachers etc. It is not the case of revenue that the said remittance to the foreign universities is from out of the funds of the assessee, but the fee is collected and directly remitted to the foreign universities. No part of such receipt is retained by the assessee, nor is any additional expenditure in that respect incurred by the assessee. What is received is transmitted. There is no gain nor any loss in that transaction. Assessee is collecting the tuition fee separately and appropriating the same for themselves. There is nothing on record to contradict the statement of the assessee that the assessee is conducting the activities on their own, and in that pursuit, they are taking the managerial, technical or consultancy services from outside agencies like the universities in question. The case of assessee is that they are imparting instructions in India as per the syllabus set by the foreign universities, and subsequently, foreign universities are conducting the examinations before issuing the

degrees. In these circumstances, the finding of the Ld. CIT(A) that the assessee is only a pass through entity in the sense that they are collecting the exam fee on behalf of the foreign universities does not appear to be unreasonable or perverse.

18. Further, Article 13 (5)(c) of the DTA between India and the UK, and Article 12 (5)(a) of the DTAA between India and Switzerland clearly read that the definition of fee for technical services does not include any amount paid for teaching in or by educational institutions. Ld. CIT(A) took the view that in view of this provision contained in DTAAs, the amount paid to the above two universities do not come under the clutches of the technical services or the royalty services. Ld. CIT(A) made reference to the decisions reported in ACIT Vs. Mahindra Holidays and Resorts (I) Ltd. (supra) and also the decision of the Hon'ble Karnataka High Court in the case of CIT Vs. DE Beers India Minerals P. Ltd., (2012) (346 ITR 467) (Kar) to reach the conclusion that the activities conducted by the foreign universities in this case are out of technical/royalty services. The expression 'teaching in or by educational institution' cannot be confined to the activity of imparting the instructions alone, in a broader sense, teaching includes not only the imparting the instructions but also the verification of the extent of perception of such instruction by the pupil and thereby includes the activity of examinations also. In this sense, this particular activity falls in the ambit of the exemption clause in the DTAAs which exempt the amounts paid for teaching in or by the educational institutions.

19. With this view of the matter, we are of the considered opinion that the findings of the Ld. CIT(A) on this aspect do not suffer any perversity,

illegality or irregularity and they are in consonance with the spirit of the Act. We, therefore, do not find any merit in the contention of the Revenue and dismiss the grounds on this aspect.

20. Now coming to the addition on the ground of waiver of interest, the facts are that for the purpose of acquisition of the lands, construction of the school building etc., the assessee borrowed in the FY.2008-09, a sum of Rs.60.46 Crores, namely, Rs.25.46 Crores from Corporation Bank and Rs.35 Crores from State Bank of India. The contracted rate of interest was 13% p.a. Assessee capitalized the interest on these borrowings till the commencement of the business activities i.e., 31/03/2009. Subsequently, the assessee was not in a position to service the loans because of insufficient enrolment of students. Assessee, therefore, approached the CDR Cell for restructuring of the loan. Restructure package was accepted giving repayment schedule with conversion of interest of Rs.9.41 Crores into Funded Interest Term Loan (FITL) with interest rate 9.75% and concessional rates of interest on term loan, excluding the FITL at Rs.10.50% as against 13% originally agreed. This reduction in the rate of interest and reschedule was subject to certain conditions.

21. In this set of circumstances, the assessee estimated the liability that arises in case of the bankers revoking the concessions, for the entire period of term loans and such estimate came to Rs.15.02 Crores. This estimate is mentioned as a contingent liability, because it becomes a liability in case of any default by the assessee or the reversal of the waiver and interest sacrifice as per CDR guidelines. According to the assessee by looking at this note in the financial statements, the learned Assessing Officer, without seeking any clarification from the assessee as to the nature of this amount,

assumed that this is the amount that reflects the difference between the interest payable and paid, and, therefore, to that extent, the assessee had the benefit of waiver of interest. On this premise, learned Assessing Officer proceeded to add this amount to the income of the assessee.

22. Before the Ld. CIT(A), the assessee submitted that as per the Corporate Debt Restructuring, the rate of interest was reduced from 13% to 10.5% by the bankers, bankers charged interest accordingly, but not at 13%, and since the assessee paid the interest that was charged by the bankers, the question of waiver does not arise. Assessee further submitted that the learned Assessing Officer wrongly assumed that the figure Rs.15.02 Crores represent the interest that was waived by the banker in case of assessee, whereas the fact of the matter is that the figure Rs.15.02 Crores represents the estimate of the assessee as to the amount that may likely to be incurred by them in case of any default with CDR guidelines and on the contingency of the banker reversing the benefit that is extended under CDR.

23. Ld. CIT(A) sought the remand report from the learned Assessing Officer and learned Assessing Officer reiterated his stand in the remand report. On an appraisal of the contentions on either side, Ld. CIT(A) found, as a matter of fact that the amount of Rs.15.02 Crores mentioned in the notes to audit report is not the loan/interest waived inasmuch as the interest charged of Rs.9.41 Crores upto 30/06/2013 was converted as FITL with charge of interest at 9.75% p.a. thereafter and on the representation of the assessee the bankers reduced the rate of interest from 13% to 10.5% through letter dt.22/01/2013, what all the assessee mentioned in the notes to the audit report is the projected liability that may arise in case of

default of the assessee to follow the CDR guidelines and that too for the entire period of term loan but not for a particular assessment year. On this factual finding, Ld. CIT(A) further found that no benefit was derived during the FY.2014-15 by the assessee, and during that financial year, the bankers charged and the assessee paid interest at 10.5% as reduced by the bankers under CDR.

24. No material is produced before us to reach a different conclusion. It is always open for the learned Assessing Officer to ascertain the rate of interest payable by the assessee during this particular financial year, the interest paid by the assessee and if there is any waiver of such interest or a part thereof by the banker to bring the same to tax. All through the proceedings before the Ld. CIT(A), the assessee maintained that the mentioning of Rs.15.02 Crores in the notes to the audit report does not represent the interest, if any, waived by the bankers but it is only the estimate made by the assessee as to their probable liability contingent upon the default, if any, committed by the assessee in respect of the CDR guidelines or the bankers revoking the reduction of interest for any reason. As against this contention, the learned Assessing Officer did not demonstrate from the financial statements of the assessee that, as a matter of fact, an interest to the magnitude of Rs.15.02 Crores was in fact waived by the bankers. It goes undisputed that before making this addition, learned Assessing Officer did not seek any clarification from the assessee before proceeding to assume anything in respect of the mentioning of Rs.15.02 Crores as contingent liability in the notes to audit report by the assessee. Had the learned Assessing Officer obtained any such clarification, it would have obviated the addition. In the absence of

any proof as to the waiver of interest by the bankers, addition on that score basing on assumptions cannot be maintained. Ld. CIT(A) is perfectly right in deleting the same and we hold such finding.

AYs.2012-13, 2013-14, 2014-15 & 2016-17:

25. As far as the appeals for the AYs.2012-13, 2013-14, 2014-15 & 2016-17 are concerned, learned Assessing Officer made additions relating to the fee received on accrual basis, and disallowance of foreign remittances and the Ld. CIT (A) has taken a view in favour of assessee in respect of these two issues. In the preceding paragraphs we uphold the findings of Ld. CIT(A) in respect of the AY.2015-16. Since the facts involved for these years are identical to the facts involved for the AY.2015-16, while following the said view, we uphold the findings of the Ld. CIT(A) for these assessment years also, and dismiss the grounds raised by the Revenue.

26. In the result, all the appeals of Revenue are dismissed.

Order pronounced in the open court on this the 26th day of May, 2022

Sd/-	Sd/-
(RAMA KANTA PANDA)	**(K. NARASIMHA CHARY)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

TNMM

Hyderabad,
Dated: 26/05/2022

Copy forwarded to:

1. The Deputy Commissioner of Income Tax, Central Circle-3(2), Hyderabad.
2. M/s.Hyderabad Educational Institutions Pvt. Ltd., Survey No.424, 425, Kondakal Village, Near Mokila, Shankarpally Mandal.
3. The CIT(Appeals)-11, Hyderabad.
4. The Pr.CIT(Central), Hyderabad.
5. DR, ITAT, Hyderabad
6. GUARD FILE

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