

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER  
AND  
SMT. BEENA PILLAI, JUDICIAL MEMBER**

<b>IT(IT)A No. 3432/Bang/2018</b>
<b>Assessment Year : 2014-15</b>

M/s. Scania CV AB, C/o. Scania Commercial Vehicles India Pvt. Ltd., Plot No. 63 (Part), 64-66, 88-97, Narsapura, KIADB Indl. Area, Achantanahalli Village, Narsapura, Hobli, Kolar (Taluk), Kolar District – 563 130 <b>PAN: AAUCS3863L</b>	<b>Vs.</b>	The Deputy Commissioner of Income Tax, International Taxation, Circle – 2(1), Bangalore.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Sharath Rao, CA
Revenue by	:	Dr. Manjunath Karkihalli, CIT DR

Date of Hearing	:	06-07-2022
Date of Pronouncement	:	06-07-2022

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by the assessee against the final assessment order dated 25/10/2018 passed by Ld.DCIT(IT), Circle – 2(1), Bangalore for A.Y. 2014-15 on following grounds of appeal.

*“Based on the facts and circumstances of the case and in law, Scania CV AB (hereinafter referred to as “the*

Company" or "the Appellant'), respectfully craves leave to prefer an appeal under section 253 of the Income-tax Act, 1961 ("the Act") against the order passed by the learned Assessing Officer (hereinafter referred to as the "learned AO" or "Ld. AO") dated October 25, 2018 under section 143(3) read with section 144C(13) of the Act pursuant to the directions dated September 17, 2018 issued by the DRP u/s 143(3) read with Section 144C(5) of the Act ('the Impugned order') inter-alia on the following grounds:

General:

1. Impugned order of Ld. AO and directions of Ld. DRP are based on incorrect appreciation of all relevant facts as also incorrect interpretation of law and therefore, are bad in law.

2. On the facts and in the circumstances of the case and in law Ld. DRP erred in issuing unlawful directions and Ld. AO erred in assessing the total income of Appellant at INR 19,44,19,324 as against returned income of INR 12,86,35,099.

Grounds on classification of Reimbursement of salary expenses as fees for technical service ('FTS'):

3. Ld. AO/ DRP have erred, in law and in facts, in holding that seconded employees work under direction, control and supervision of the Appellant thereby impliedly rejecting Appellant's contention that Scania Commercial Vehicles India Private Limited ('Scania India') is the economic employer of seconded employees:

4. Ld. AO/ DRP failed to appreciate that amounts paid by Scania CV AB represented salary cost of Scania India where taxes were withheld u/s 192 of the Act;

5. Ld. AO/ DRP erred in re-characterizing mere reimbursement of amounts paid by Scania India to Scania CV AB as fees for technical services rendered, thereby holding it to be taxable in India while in fact, no services had been provided by Appellant;

6. Without prejudice to the other grounds, Ld. AO/ DRP have erred in concluding that 'make available' condition is satisfied and that payment was towards FTS;

Others

7. The learned AO erred, in law and in facts, in initiating penalty proceedings u/s 271(1)(c) of the Act.

The Appellant submits that each of the above grounds is independent and without prejudice to one another.

The Appellant craves leave to add, alter, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal, so as to

*enable the Hon'ble Tribunal to decide on the appeal in accordance with the law."*

2. At the outset, the Ld.AR submitted that the only issue alleged before this *Tribunal* is non-deduction of TDS on reimbursement of salary expenses made on behalf of the seconded employees as fee for technical services.

2.1 The Ld.AR submitted that TDS has been deducted on the entire salary paid by assessee to the seconded employees and what is reimbursed is the payment which has been partly made by the AE to the families of such seconded employees. The Ld.AR submitted that though the 100% salary has been subjected to TDS assessee has paid only part of the salary to the seconded employees in India and balance of such salary has been reimbursed to the AE as the same has been paid by the AE to the employees. The Ld.AR submitted that all the details relevant in respect of the salaries and the TDS deduction which were submitted before the authorities below which has not been considered.

2.2 The Ld.AR relied on the following decisions.

- *Decision of Hon'ble Karnataka High Court in case of DIT(IT) vs. Abbey Business Services India (P.) Ltd. reported in [2020] 122 taxmann.com 174*
- *Decision of Hon'ble Karnataka High Court in case of M/s. Flipkart Internet Pvt. Ltd. vs. DCIT (IT) in W.P. No. 3619/2021(T-IT) by order dated 24.06.2022*
- *Decision of Hon'ble Pune Tribunal in case of M/s. Faurecia Automotive Holding vs. DCIT (IT) in ITA No. 784/PUN/2015 by order dated 08.07.2019*
- *Coordinate Bench of this Tribunal in case of M/s. Toyota Boshoku Automotive India Pvt. Ltd. vs. DCIT in IT(TP)A No. 1646/Bang/2017 by order dated 13.04.2022 and*
- *Coordinate Bench of this Tribunal in the case of Goldman Sachs Services Pvt. Ltd. vs. DCIT in IT(IT)A Nos. 362 to 369 & 338 to 345/Bang/2020 by order dated 29.04.2022.*

2.3 It is submitted that identical issue has been considered at length and in detail in the above decisions. The Ld.AR referred to the recent decision of *Hon'ble Karnataka High Court* in case of *M/s. Flipkart Internet Pvt. Ltd. vs. DCIT (IT) (supra)* wherein *Hon'ble Court* observed as under:

*“(viii) The Revenue has relied upon the judgment of the Apex Court in C.C., C.E. & S.T.-Bangalore (Adjudication) etc. v. M/s.Northern Operating Systems Pvt. Ltd.12 where the Apex Court has interpreted the concept of a secondment agreement taking note of the contemporary business practice and has indicated that the traditional control test to indicate who the employer is may not be the sole test to be applied. The Apex Court while construing a contract whereby employees were seconded to the assessee by foreign group of Companies, had upheld the demand for service tax holding that in a secondment arrangement, a secondee would continue to be employed by the original employer.*

*(ix) The Apex Court in the particular facts of the case had held that the Overseas Co., had a pool of highly skilled employees and having regard to their expertise were seconded to the assessee and upon cessation of the term of secondment would return to their overseas employees, while returning Civil Appeal Nos.2289-2293/2021 such finding on facts, the assessee was held liable to pay service tax for the period as mentioned in the show cause notice.*

*(x) It needs to be noted that the judgment rendered was in the context of service tax and the only question for determination was as to whether supply of man power was covered under the taxable service and was to be treated as a service provided by a Foreign Company to an Indian Company. But in the present case, the legal requirement requires a finding to be recorded to treat a service as 'FIS' which is "make available" to the Indian Company.*

*(xi) Accordingly, any conclusion on an interpretation of secondment as contained in the M.S.A. to determine who the employer is and determining the nature of payment by itself would have no conclusive bearing on whether the payment made is for 'FIS' in light of the further requirement of "make available."”*

3. On the contrary, the Ld.DR placed reliance on orders passed by authorities below.

4. We have perused the submissions advanced by both sides in the light of records placed before us.

4.1 We note that the evidences filed by assessee has not been considered by the revenue authorities.

4.2 We therefore remand this issue to the Ld.AO to consider the claim in accordance with the decision of *Hon'ble Karnataka High Court* in case of *M/s. Flipkart Internet Pvt. Ltd. vs. DCIT (IT) (supra)* and Coordinate Bench of this *Tribunal* in the above referred cases *M/s. Toyota Boshoku Automotive India Pvt. Ltd. vs. DCIT (supra)* *Goldman Sachs Services Pvt. Ltd. vs. DCIT(supra)* having regard to the evidences filed by the assessee. Needless to say that proper opportunity of being heard must be granted to assessee in accordance with law.

**Accordingly this ground raised by assessee stands allowed for statistical purposes.**

**In the result, the appeal filed by assessee stands allowed for statistical purposes.**

Order pronounced in open court on 06<sup>th</sup> July, 2022.

Sd/-  
(CHANDRA POOJARI)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 06<sup>th</sup> July, 2022.  
/MS /

**Copy to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,  
ITAT, Bangalore