

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No. 3035/Chny/2018  
निर्धारण वर्ष/**Assessment Year:2009-10**

M/s. Shriram EPC Ltd.,  
18/03, Rukmani Lakshmiopathy  
Road, 4<sup>th</sup> Floor Sigappi Achi Building,  
Egmore, Chennai 600 008.  
**[PAN:AAFCS1410C]**

The Deputy Commissioner of  
Income Tax,  
Company Circle 6(1),  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri R. Sivaraman, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri D. Hema Bhupal, JCIT  
सुनवाई की तारीख/ Date of hearing : 27.06.2022  
घोषणा की तारीख /Date of Pronouncement : 29.07.2022

**आदेश /O R D E R**

**PER V. DURGA RAO., JUDICIAL MEMBER:**

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 15, Chennai, dated 31.07.2018 relevant to the assessment year 2009-10 challenging the appellate order of confirming the disallowance made under section 40(a)(ia) of the Income Tax Act, 1961 ["Act" in short].

2. The appeal filed by the assessee is delayed by six days in filing the appeal before the Tribunal, for which, the assessee has filed a petition for

condonation of the delay in the form of an affidavit, to which; the Id. DR has not raised any serious objection. Consequently, since the assessee was prevented by sufficient cause, the delay of six days in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee filed its return of income for the assessment year 2009-10 on 29.09.2009 admitting an income of ₹.34,59,53,000/-. The case was selected for scrutiny and the assessment under section 143(3) r.w.s. 92CA(4) of the Act was completed on 28.03.2013 determining the total income of the assessee at ₹.37,76,49,093/-. Subsequently, the Assessing Officer noticed that there were some mistakes apparent from the records which were omitted to be considered in the assessment order. Accordingly, a notice under section 154 of the Act was issued on 19.12.2016 to rectify various mistakes noticed in the assessment records. In response to the above notice, the assessed filed a letter dated 22.12.2016 intimating the Assessing Officer that there is no objection for the proposed revision. Accordingly, after considering the submissions of the assessee, the Assessing Officer passed the rectification order under section 154 of the Act dated 31.03.2017 and determined the total

income of the assessee at ₹.38,89,21,739/- after making various additions.

3.1 Facts leading the ground of confirmation of disallowance made under section 40(a)(ia) of the Act are that the Assessing Officer has disallowed ₹.63,90,710/- under section 40(a)(ia) of the Act on the ground that the assessee has not furnished evidence for TDS deduction and remittance thereof and brought to tax.

3.2 On appeal before the Id. CIT(A), the assessee has furnished party-wise details of payment made and filed the remittance as required under section 195 of the Act in respect of party JOACHIM KLIMPKE and also submitted that in respect of the payments made to the remaining parties, no TDS is required as they were not having permanent establishment in India and that income is not chargeable to tax in India. The party-wise details are reproduced as under:

Sl.No.	Name of the party	Amount	TDS	Reason
1.	JOACHIM KLIMPKE	12,81,861	1,28,050	08.07.2008 Challan No. 2
2.	KMG Pipe Rehab Emirates	4,64,922	NIL	Not having PE
3.	Perco Engineering Services Ltd.	2,45,557	NIL	Not having PE
4.	Dorsey & Whitney LLP	36,21,070	NIL	Not having PE
5.	Haskel Slaughter & Rdiker	7,77,500	NIL	Not having PE

3.3 After considering the submissions of the assessee, the Id. CIT(A) directed the Assessing Officer to delete the disallowance to the extent of ₹.12,81,861/- as the assessee has produced challan towards remittance of TDS of ₹.1,28,050/- and confirmed the disallowance made under section 40(a)(i) of the Act amounting to ₹.51,08,849/- since the assessee failed to substantiate with documentary evidences, the necessary invoices and the agreement with terms & conditions to determine the nature of payment made to the non-resident.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the payments made to the non-resident do not fall under “fee for technical services” and that the companies do not have permanent establishment in India and prayed for deleting the addition of ₹.51,08,849/-.

5. On the other hand, the Id. DR strongly supported the order passed by the Id. CIT(A) on this issue.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this

case, the Assessing Officer made disallowance under section 40(a)(ia) of the Act for the payments made without deduction of TDS towards technical know-how of ₹.530.80 lakhs, Engineering services of ₹.503.09 lakhs & consultancy charges of ₹.63.91 lakhs. Against the disallowance of consultancy charges of ₹.63,90,710/-, the assessee produced challan No. 2 dated 08.07.2008 in respect of payment of TDS for the payment of ₹.12,81,861/- to Jaachin Klimpke under section 195 of the Act. After considering the documentary evidence filed by the assessee, the Id. CIT(A) directed the Assessing Officer to delete the disallowance to the extent of ₹.12,81,861/-.

7. With regard to the payments made to other four parties, the Id. CIT(A) has observed as under:

*“5.1.1. In relation to the other four parties mentioned in the table reproduced above, the appellant's contention was that the said parties did not have any permanent establishment in India and income was not chargeable to tax in India and therefore the appellant did not deduct tax at source u/s 195.*

*5.1.2. The appellant's contention is not acceptable for the reason the appellant failed to substantiate with documentary evidences, the necessary invoices and the agreements with terms and conditions to determine the nature of payment made to the non- resident. Necessary bank advice as well as the provisions of the Double Taxation Avoidance Agreement in support of its claim has not been submitted. I am of the considered opinion that payment falls under 'Fee for technical services' u/s 9(1)(vii). The appellant has also failed to note that as per Explanation to Sec 9(2), Permanent Establishment need not be proved in relation to payments made to non-residents chargeable*

*to tax in India. Therefore, the disallowance made u/s. 40(a)(i) amounting to Rs.51,08,849 (Rs.63,90,710-12,81,861) is confirmed.”*

8. Even before the ITAT, the assessee has not substantiated with documentary evidences the necessary invoices and the agreements with terms and conditions to determine the nature of payment made to the non-resident. Moreover, necessary bank advice as well as the provisions of the Double Taxation Avoidance Agreement in support of its claim has also not been submitted to take a different view than the findings of the Id. CIT(A). In view of the above facts and circumstances, we find no infirmity in the order passed by the Id. CIT(A) on this issue and accordingly, the ground raised by the assessee is dismissed.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on the 29<sup>th</sup> July, 2022 in Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 29.07.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.