

आयकर अपीलिय अधिकरण, 'ए'न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री मनोज कुमार अग्रवाल, लेखा सदस्य श्री संजय शर्मा, न्यायिक सदस्य समक्ष
BEFORE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, JUDICIAL MEMBER

आयकर अपील सं./I.T.A Nos.:75 & 76/CHNY/2021
निर्धारण वर्ष/ **Assessment Years: 2018-19 & 2019-20**

M/s. Preludesys India Private Limited,
Old No.D-12, New No.3/A3,
First Cross Road,
Kelambakkam,
Kancheepuram – 603 103.T.N

The Deputy Commissioner of
Income Tax,
Vs. Centralized Processing Center
[CPC],
Income Tax Department,
Bengaluru – 560 500

PAN : AABCP 7252K

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थीकीओरसे/Appellant by

: Mr. B. Ramakrishnan, FCA

प्रत्यर्थीकीओरसे/Respondent by

: Mr. ARV Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing

: 18.08.2022

घोषणा की तारीख/Date of Pronouncement

: 26.08.2022

आदेश /O R D E R

PER SONJOY SARMA, JM:

These two appeals by the assessee are arising out of different orders of the Commissioner of Income Tax (Appeals)-3, Chennai vide order No.ITA No.49/CIT(A)-3/2019-20 and ITA No.233/CIT(A)-3/2020-21 vide orders of even date 17.09.2020. Assessments were framed by the Deputy Commissioner of Income Tax, Centralized Processing Center, Bengaluru for the Assessment Years 2018-19 and 2019-2020 u/s.143(1) of the Income Tax Act, 1961 (hereinafter "the Act"), vide orders dated 16.10.2019 and 08.05.2020 respectively.

2. At the outset, it is noticed that both the appeals are time bared by limitation by 123 days and the Assessee has filed a condonation petition stating the reason that the delay in filing the appeal was not willful and due to the circumstances beyond the control of the Assessee and had requested to condone the delay. On going through the affidavit filed by the Assessee, we noted that the reason stated by the Assessee seems reasonable. Hence, we condone the delay of 123 days in both the appeals and admit the appeals for adjudication on merits.

3. The Assessee has raised the following Grounds of appeal in both the appeals that are as under:

[1] *The order of the Commissioner of Income Tax (Appeals) is contrary to law, facts and circumstances of the case.*

[2] *The learned Commissioner of Income Tax (Appeals) erred in confirming the disallowance made u/s.40(a) of the Income Tax Act, 1961 amounting to Rs.10,11,216/- for the Assessment Year 2018-19 and Rs.11,00,044 for the Assessment Year 2019-20.*

[3] *The learned Commissioner of Income Tax (Appeals) erred in confirming the levy of interest u/s.234B of the Income Tax Act, 1961.*

4. A.Ys: 2018-19 & 2019-20: The brief facts of the case are that the Assessee is a Domestic Company and is presently assessed to tax by the Deputy Commissioner of Income Tax, Corporate Circle-5(2), Chennai. The instant appeals for the Assessment Years in question were filed by the Assessee on 15.11.2019 and 19.05.2020 respectively against orders dated 16.10.2019 and 08.05.2020

passed u/s.143(1) of the Act by the Deputy Commissioner of Income Tax, CPC, Bengaluru vide communication reference No. CPC/1819/A6/1928676575 & No. CPC/1920/A6/2000100700. The Assessee company had filed its return of income on 29.11.2018 & 29.11.2019 for the Assessment Years 2018-19 and 2019-20 respectively declaring a total income of Rs.36,17,750 and 82,83,010/- as the assessment was completed on 16.10.2019 and 08.05.2020 respectively by arriving at a total income of Rs.1,15,42,802 [2018-19] and Rs.1,59,26,510 [2019-20] after making the following disallowances:

- a) Disallowance u/s.36(1)(va) of the Act of Rs.69,13,836/- [2018-2019] and 65,43,456 [2019-2020] respectively and
- b) Disallowance u/s.40(a)(i) of the Act for Rs.10,11,216/- [2018-19] and Rs.11,00,044/- [2019-20] respectively

5. Dissatisfied with the orders of the AO, assessee preferred appeals before Ld CIT(A) where appeals of assessee were partly allowed. Aggrieved by the orders of the CIT(A), assessee appellant filed two separate appeals before us for adjudication.

6. At the time of hearing the AR of the assessee submitted that the alleged payments of Rs.10,00,456/- made for AY 2018-19 and Rs. 11,00,044/- for AY 2019-20, respectively, to non-residents for acquiring license to use their website, however, appellant assessee had made the payments to various non-residents for subscription of their

license to use their website, and no TDS deducted for the same while making payments, as the server with regards to parties above was situated outside India, as such TDS on the same is not applicable, in terms of section 9 of the Income Tax Act, 1961, since the income of an assessee will accrue or arises in India only if the servers of companies situated in India to whom subscription has been made by any assessee to get licenses so as to use their website. However the authority below never considered such prayer made by the appellant assessee. Moreover the Ld. CIT(A) while passing the impugned order has observed that appellant failed to substantiate its claim through documentary evidence like invoice, copies, agreements, tax residency certificate Form 15CA, 15CB etc., in absence of any documentary evidence, it is not possible for him to come to conclusion with respect to the services received by the appellant or to comment on its taxability under the Income Tax Act or the Double Tax Avoidance Agreement (DTAA).

The Ld. AR on context of the above observation be submitted that those documents were never asked from the appellant assessee by the Ld. CIT(A) nor by the AO. Since, the disallowance was made by AO only u/s. 143(1) and if it had been asked under the regular assessment that event assessee would have definitely filed it before the Assessing Officer, he also submitted a paper book in support to substantiate his

claim before us which contains following documents, as well as the various judgment passed by co-ordinate benches:

- (i) Relevant extract of the CIT(A) order containing the break-up of the parties to whom payments were made for AY 2018-19
- (ii) Relevant extract of the CIT(A) order containing the break-up of the parties to whom payments were made for AY 2019-20.
- (iii) break-up invoices for the services received from Non-residents for AY 2018-19
- (iv) break-up invoices for the services received from Non-residents for AY 2019-20
- (v) Elsevier Information Systems GmbH vs DCIT [2019] 106 taxmann.com 401 (Mumbai)
- (vi) Salesforce.com Singapore Pte vs DDIT [2022] 137 taxmann.com 3 (Delhi)
- (vii) Urban Ladder Home Décor Solutions Pvt. Ltd vs ACIT in ITA No. 615 to 620(BANG/2020
- (viii) Factiva Ltd vs DCIT in ITA No. 6455/Mumbai/2018
- (ix) ITO vs Cadila Healthcare Ltd p[2017] 77 taxmann.com 309 (Ahmedabad)
- (x) DCIT vs. Welspun Corporation LTd [2017] 77 taxman..com 165 (Ahmedabad)

While deciding the similar issue by the Co-ordinate bench in the case of ITO vs Cadila Healthcare Ltd p[2017] 77 taxmann.com 309 (Ahmedabad), the co-ordinate bench held that:

"17. We find that as the treaty provision unambiguously requires, it is only when the use is of the copyright that the taxability can be triggered in the source country. In the present case, the payment is for the use of copyrighted material rather than for the use of copyright. The distinction between the copyright and copyrighted article has been very well pointed out by the decisions of Hon'ble Delhi High Court in the case of DIT Vs Nokia Networks OY [(20113) 358 ITR 259 (Del)]. In this case all that the assessee gets right is to access the copyrighted material and there is no dispute about. As a matter of fact, the AO rightly noted that 'royalty' has been defined as "payment of any kind received as a consideration for the use of, or right to use of, any copyright of literary, artistic or scientific work" and that the expression "literary work", under [section 2\(o\)](#) of the

Copyright Act, includes 'literary database' but then he fell in error of reasoning inasmuch as the payment was not for use of copyright of literary database but only for access to the literary database under limited non exclusive and non transferable licence. Even during the course of hearing before us, learned Departmental Representative could not demonstrate as to how there was use of copyright. In our considered view, it was simply a case of copyrighted material and therefore the impugned payments cannot be treated as royalty payments. This view is also supported by Hon'ble Bombay High Court's judgment in the case of DIT Vs Sun and Breadstreet Information Services India Pvt Ltd [(2011) 318 ITR 95 (Bom)]."

7. We are in considered agreement with views so expressed by the co-ordinate bench (supra) and respectfully following the same and in the light of order on this issue, we uphold the grievances of the assessee and direct the AO to grant resultant relief to the assessee.

8. In the result, the appeals of the Assessee in I.T.A Nos.:75 & 76/CHNY/2021 are allowed.

Order pronounced in the court on 26th August, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(संजय शर्मा)

(SONJOY SARMA)

न्यायिक सदस्य / JUDICIAL MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 26th August, 2022

JPV

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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|------------------------|--------------------------|-----------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त (अपील)/CIT(A) |
| 4. आयकरआयुक्त/CIT | 5. विभागीयप्रतिनिधि/DR | 6. गार्डफाईल/GF |