

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL , 'B' BENCH, CHENNAI
श्री वी.दुर्गा राव, न्यायिक सदस्य एवं श्री जी.मंजुनाथ, लेखा सदस्य के समक्ष
BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER
AND SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

आयकरअपीलसं./I.T.A.No.1601/Chny/2018

(निर्धारणवर्ष / Assessment Year: 2012-13)

The Deputy Commissioner of Income Tax, Corporate Circle-1(2), Chennai-34.	Vs	M/s. BASF Catalysts India P.Ltd E-17, Indl. Complex, Maraimalai Nagar, Kancheepuram-603 209.
		PAN: AAACE 2545B
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Mr. S.Chandrasekaran, JCIT
प्रत्यर्थीकीओरसे/Respondent by	:	Mr. N.V.Balaji, Advocate

मुनवाईकीतारीख/Date of hearing	:	05.09.2022
घोषणाकीतारीख /Date of Pronouncement	:	05.09.2022

आदेश / ORDER

PER G. MANJUNATHA, AM:

This appeal filed by the Revenue is directed against order passed by the learned Commissioner of Income Tax (Appeals)-1, Chennai dated 31.01.2018 and pertains to assessment year 2012-13.

2. The Revenue has raised following grounds of appeal:-

"1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.

2.1 The learned CIT(A) erred in deleting the disallowance of Rs.1,08,78,548/- and Rs.1,60,39,669/- for AY 2011-12 & 2012-13 respectively, made by the AO for non deduction of TDS as required u/s.40(a)(i) r.w.s. 195 of the Act.

2.2 The learned CIT(A) failed to appreciate the fact there was violation of the provisions of section 195 of the IT Act, in as much as the foreign payments were made without deduction of tax at source, and such payments being in the nature of Technical Services are liable to be disallowed u/s. 40(a)(i) of the IT Act.

2.3 The learned CIT(A) failed to appreciate that services provided to the assessee require high degree of technical expertise in Finance Accounting, H.R. Management & Software Analysis and therefore, the nature of expenditure is liable to be covered under Article 12(3) of the India-Malaysia DTAA.

2.4 The learned CIT(A) erred in relying on the Hon'ble jurisdictional Tribunal's order on the identical issue in the assessee's case for AY 2009-10 & 2010-11 which has not been accepted by the Department and is being challenged before the Hon'ble jurisdictional High Court u/s.260A."

3. Brief facts of the case are that the assessee is engaged in the business of manufacture and sale of catalyts and catalytic converters to automobile manufacturers in India has filed its return of income for the assessment year 2012-13 on 27.11.2012 declaring total income of Rs.58,56,96,868/- . The assessment has been completed u/s.143(3) r.w.s 92CA of the Income Tax Act, 1961, on 25.02.2016 and determined total income of Rs.65,56,21,046/- by making various additions, including disallowance of payments made to Associated

Enterprises u/s.40(a)(i) of the Income Tax Act, 1961, for non-deduction of TDS u/s 195 of the Income Tax Act, 1961. The assessee carried matter in appeal before the first appellate authority. The learned CIT(A), for the reasons stated in his appellate order dated 31.01.2018, deleted additions towards payments made to Associated Enterprises for certain services u/s 40(a)(i) of the Income Tax Act, 1961 for non-deduction of TDS u/s.195 of the Income Tax Act, 1961, by following the decision of the ITAT., Chennai, in assessee's own case for the assessment years 2008-09 & 2009-10 reported in (2017) 81 taxmann.com 338 (Chennai Trib). Aggrieved by the learned CIT(A) order, the Revenue is in appeal before us.

4. We have heard both the parties and considered relevant materials on record and we find that an identical issue had been considered by the Tribunal in assessee's own case for the assessment years 2009-10 & 2010-11 in ITA Nos. 650 & 651/Chny/2016 reported in (2017) 81 taxmann.com 338 (Chennai Trib) and held that payments made by the assessee towards accounts and HR services with BASA, Malaysia, does not fall in the category of fees for technical services as defined u/s.9(1)(vii) of the Income Tax Act, 1961, and thus, provisions

of section 40(a)(i) are not applicable for non-deduction of TDS u/s.195 of the Income Tax Act, 1961. The relevant findings of the Tribunal are as under:-

“9. We heard the rival submissions perused the material on record and judicial decisions, the Ld. AR submitted that assessee company has entered into agreement with BASF-Asia Pacific Service Centre (BASC), Malaysia for providing the services of Financial and Accounting, Human Resource and such other services from time to time. The financial services includes Accounts payable and Accounts receivable and other Financial Reports and where as Human Resource (HR) includes payroll processing, salary payments and general ledger posting, employee data administration and processing, training, administration and others. The assessee company has made payment to the Malaysia company for services rendered in the financial year as per the agreement these payments are not covered as technical services or managerial services to be taxable for deduction of TDS/withholding of tax and applicability of provision of 40(a)(i) of the Act.

10. Whereas, the Ld. DR submitted that these services require expertise and high degree of skills on financial accounting management and fall within the provisions of section 9(1)(vii) of the Act and liable for TDS. The Ld. AR further explained that the assessee has entered into the service agreement with Malaysia Company for rendering financial accounting services and the information /Data is sent by Indian Company to Malaysia and they enter the data information and submit to the assessee company. The Ld. AR demonstrated with copy of vouchers filed in the paper book at page 36 and invoice copies

of services at page 40 to substantiate that the services are in the nature of data entry operations and there is no expertise is necessary for making such transactions. We also perused the provisions of section 9(1)(vii) of the Act where the fees for technical services have been considered and the services being international transaction the DTAA agreement between India and Malaysia shall come into effect. In Article 13 of DTAA " fees for technical services for services being rendering of any managerial, technical or consultancy services and includes the provision of services for technical or other which does not include payment for services mentioned in Article 15,16 of the agreement.

11. The Malaysia Company (BASC) provides services under Article 13 r.w.s Article 5 and Article 7of DTAA. The Article 5 deal with permanent establishment defined as the fixed place of business through which the business of enterprise is wholly or partly carried on. The facts are not disputed by the Revenue that there is no PE of the Malaysia Company in India and the services are rendered outside the country. Whereas, the Article 7 deals with the profits of establishment taxable through PE of foreign company having operations. Considering the apparent facts, provisions of law, DTAA and undisputed facts that there is no PE in India and the services are in the nature of data operating entry of Accounts and Human Resource (HR) Service duly supported with evidence of samples invoices and Journal voucher produced, we found that the services of BASC Malaysia does not fall in the category u/s. 9(1)(vii) of the Act and provisions of section 40(a)(i) are not applicable, we found Ld. CIT(A) has dealt on this disputed issue exhaustively in his order Vis-a-vis explanations of the assessee and passed reasoned order in treating the services as not in the nature of technical services

and provision of section 40(a)(i) of the Act are not applicable and we uphold the same and dismiss the Revenue appeal.”

5. In this view of the matter and consistent with the view taken by the co-ordinate Bench, we are of the considered view that there is no error in reasons given by the learned CIT(A) to delete additions towards payments made to Associated Enterprises for rendering services in the field of accounting and human resources u/s.40(a)(i) of the Act for non-deduction of tax at source u/s.195 of the Income Tax Act, 1961, because said payment does not come under the definition of fees for technical services as defined u/s.9(1)(vii) of the Income Tax Act, 1961 . Hence, we are inclined to uphold findings of the learned CIT(A) and dismiss appeal filed by the Revenue.

6. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 5th September, 2022

Sd/-

(वी. दुर्गा राव)
(V.Durga Rao)

न्यायिक सदस्य /Judicial Member
चेन्नई/Chennai,

दिनांक/Dated 5th September,2022

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आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. Appellant
2. Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.

Sd/-

(जी. मंजुनाथ)
(G.Manjunatha)

लेखा सदस्य / Accountant Member