आयकर अपीलीय अधिकरण 'बी' न्य□पीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

मा□नीय श्री वी. दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ **ITA No.2092/Chny/2017**
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Standard Chartered Global Business Services Pvt. Ltd. (formerly known as Scope International Pvt. Ltd.) No.1, Haddows Road, Chennai – 600 006.	**बनाम**/ Vs.	**DCIT** International Taxation-2(2), Chennai.
स्थायी लेखा सं./जीआइ आर सं./**PAN/GIR No. AAECS-9043-E**		
(□पीलार्थी**/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थी की ओरसे/ **Appellant by**	:	Shri Sriram Seshadhri (CA) – Ld. AR
प्रत्यर्थी की ओरसे/**Respondent by**	:	Ms. Sheila Parthasarathy (Addl.CIT) – Ld. DR

सुनवाई की तारीख**/Date of Hearing**	:	02-11-2022
घोषणा की तारीख **/Date of Pronouncement**	:	18-11-2022

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2014-15 arises out of the order of learned Commissioner of Income Tax (Appeals)-16, Chennai [CIT(A)] dated 01-06-2017 in the matter of an order passed by Ld. Assessing Officer [AO] u/s.201(1) / 1(A) of the Act on 28-06-2016. The grounds taken by the assessee are as under:

> 1. The order of the Commissioner of Income Tax (Appeals) ["CIT(A)"] is contrary to law, facts and circumstances of the case.
> **2. Remittances made towards general training services treated as Fees or Technical Services** (FTS).

2.1 The CIT(A) erred in confirming the order of the AO treating the Appellant as "assessee in default" under section 201 of the Act in respect of the remittances made to the non-resident Standard Chartered Bank (SCB), Singapore.
2.2 The CIT(A) ought to have appreciated that the remittances made to the non-resident SCB, Singapore were not taxable in India and as such there is no obligation to deduct taxes under section 195 of the Act.
2.3 The CIT(A) ought to have appreciated that the non-resident SCB, Singapore does not have any Permanent Establishment (PE) in India and as such the income earned by the non-resident would not be taxable in India.
2.4 The CIT(A) ought to have appreciated that training towards soft skills like leadership, general communication, team work etc. cannot be termed as technical in nature.
2.5 The CIT(A) ought to have appreciated that the general training services provided by SCB, Singapore cannot be construed as technical services and as such the same will not fall within the meaning of "fees for technical services" as defined in explanation (2) to section 9(l)(vii) of the Act.
2.6 The CFT(A) erred in incorrectly understanding the nature of services rendered by the non-resident SCB, Singapore without appreciating correct nature of services provided by the non-resident.
2.7 The CIT(A) ought to have appreciated that the charges paid to SCB, Singapore will not fall within the purview of FTS as per the Double Taxation Avoidance
Agreement.
2.8 Without prejudice to the above and assuming without admitting that even if the training is considered as technical services, the CIT(A) ought to have appreciated that the employees who received the soft skills training are not in a position to further impart such soft skills training to others and as such in the absence of 'make available' the same is not taxable as "Fees for Technical Services" as per the Double Taxation Avoidance Agreement.
3. The Appellant prays that directions be given to grant all such relief arising from the grounds of appeal mentioned supra as also all consequential relief thereto.
4. The Appellant craves leave to add, alter, amend, substitute, rescind, modify and / or withdraw in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.

As is evident, the sole substantive ground that fall for our consideration is whether the assessee could be held as ‘assessee-in-default’ for want of tax deduction at source (TDS) on certain payments.

2. The impugned demand against the assessee stem from the fact that the assessee paid an amount of Rs.141.75 Lacs to another Singapore based entity i.e., M/s Standard Chartered Bank. The payment was pursuant an agreement whereby the assessee group

established a training center in Singapore to impart soft skill training like leadership skills, communication etc. A group wanting to avail the services could recommend the selected employees to undergo the training which is mainly through online portal. This is stated to be general training on soft skill and on general topics like basis of banking etc. which may be useful in general to employees getting training but the same would not have any specific relation to the work being done by them. Accordingly, it was submitted that there was no transfer of technology and the training was not in the nature of transfer of technical skill etc. The 'make available' clause as prescribed in Article-12 of India-Singapore Double Taxation Avoidance Agreement (DTAA) would not be satisfied since the services acquired by the recipient should enable him to apply the technology therein which was not the case here. Further, Article-7 provides that business income would be taxable in India only if the payee has permanent establishment (PE) in India. Since the payee does not have any PE in India, there was no obligation of TDS as mandated u/s 195.

3. However, rejecting assessee's submissions, Ld. AO held that the services were technical services which would require TDS u/s 195. Accordingly, impugned demand was raised against the assessee.

4. During appellate proceedings, the assessee, inter-alia, relied on the decision of Hon'ble Supreme Court in the case of **GE India Technology Cen. (P) Ltd. vs. CIT (193 Taxman 234)** which provide that tax withholding provisions would trigger only in case sum so paid was chargeable to tax in India. Since, the payment was not chargeable to tax, there was no obligation to deduct TDS. The assessee submitted that it was a general training which would not fit into the definition of

managerial, technical or consultancy services as held in various decision of coordinate benches of Tribunal. Further, 'make available' clause would be satisfied only when the services results in transmitting technical knowledge so that the payee could derive an enduring benefit and utilize the knowledge or know how on his own in future without the aid of service provider. In the present case, since there was no transfer of technology but it was a case of rendering the general training services, the 'make available' clause was not satisfied. The decision of Ahmedabad Tribunal in **ITO vs. Veeda Clinical Research (P) Ltd. (35 Taxmann.com 577)** rendered on similar factual matrix was also referred to support the submissions.

5. The Ld. CIT(A), after perusal of course contents, noted that the program was critical in imparting knowledge towards the roles to be performed by the employees. The knowledge so required was expected to be applied by the employees in their day-to-day functioning. Accordingly, the skills so acquired would enable the person to apply the same on his own. Therefore, the services were 'fees for technical services' which would be taxable under DTAA as well as u/s 9(1)(vii) Explanation-2. Accordingly, the impugned demand was confirmed against which the assessee is in further appeal before us.

6. It is admitted position that the services are availed by the assessee for its employees to improve their soft skill in the areas of leadership and general management which is not specific to functions being performed by the employees. This training may improve the skills of the employees but it does not involve transfer of any technology which is made available to the assessee for its future use. In terms of

Article-12 of DTAA, 'fees for technical services' include managerial, technical or consultancy services if such services are ancillary and subsidiary to the application or enjoyment of the right, property or information or it make available technical knowledge, experience, skill, know-how or processes, which enables the person acquiring the services to apply the technology contained therein or it consist of the development and transfer of a technical plan or technical design but excludes any service that does not enable the person acquiring the service to apply the technology contained therein. We find that the services as availed by the assessee is covered in none of these clauses. Therefore, the assessee could not be obligated to deduct TDS on the same. The cited decision of Ahmedabad Tribunal rendered on similar factual matrix squarely supports the case of the assessee. Accordingly, the impugned demand could not be sustained. We order so. No other ground has been urged before us.

7. The appeal stand allowed.

Order pronounced on 18th November, 2022.

Sd/-	**Sd/-**
(V. DURGA RAO)	**(MANOJ KUMAR AGGARWAL)**
न्यायिक सदस्य /JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

चेन्नई / Chennai; दिनांक / Dated : 18-11-2022
EDN/-

आदेश की प्रतिलिपि ग्रेषित/Copy of the Order forwarded 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