

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D" NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT  
AND  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**आ.अ.सं./I.T.A No.456/Del/2016  
निर्धारणवर्ष/Assessment Year: 2012-13**

<b>Kuiper Compagnons Rumtelikje Ordering Stedenbouw Architecture Landscape BV C/o V. Raghavendran &amp; Co., CAs, No. 10, 2<sup>nd</sup> Floor, Trust Complex, DVG Road, Basavangudi (Near Gandhi Bazar Circle), Bangalore. PAN No. AAECK0563F</b>	<b>बनाम Vs.</b>	<b>DCIT (International Taxation), Circle 2(1)(2), New Delhi.</b>
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

<b>निर्धारितकीओरसे /Assessee by</b>	<b>None</b>
<b>राजस्वकीओरसे /Revenue by</b>	<b>Shri Anand Kumar Kedia, CIT DR</b>

<b>सुनवाईकीतारीख/ Date of hearing:</b>	<b>19.10.2022</b>
<b>उद्घोषणाकीतारीख/Pronouncement on</b>	<b>26.12.2022</b>

**आदेश /O R D E R**

**PER SAKTIJIT DEY, J.M.**

This is an appeal by the assessee against the final assessment order dated 21.10.2015 passed under section 143(3) read with

section 144C(13) of the Income Tax Act, 1961, in pursuance to the directions of learned Dispute Resolution Panel (DRP).

2. When the appeal was called for hearing none appeared on behalf of the assessee.

3. On perusal of record, it is observed, though, the appeal was fixed for hearing earlier on multiple occasions, however, the assessee never appeared in spite of issuance of notices of hearing. Even, the notice issued through the office of learned Departmental Representative by post as well as in the e-mail address of the assessee, failed to evoke any response. Since, the assessee has not responded to the notice of hearing issued by this office on multiple occasions and has not made any attempt to enquire about the fate of the present appeal, it has to be concluded that the assessee has no interest in pursuing the present appeal.

4. In view of the aforesaid, we proceed to dispose off the appeal *ex parte* qua the assessee after hearing learned Departmental Representative and based on materials available on record. The basic issue in dispute in the present appeal is concerning disallowance of Rs.76,14,726/- under section 40(a)(i) of the Act.

5. Briefly the facts are that assessee is a non-resident corporate entity incorporated in Netherlands. For the assessment year under dispute, assessee filed its return of income declaring income of Rs.8,48,930/- and claiming refund of Rs.28,48,790/-. In course of assessment proceedings, the Assessing Officer noticed that in the relevant financial year the project of office of the assessee had claimed certain expenditure as consultancy charges. On further scrutiny the Assessing Officer found that no tax has been deducted on payment of consultancy charges. When the Assessing Officer called upon the assessee to explain why the payment made being in the nature of fee for technical services (FTS) under section 9(1)(vii) of the Act, no tax was deducted at source the assessee furnished its explanation submitting that the payment made is not in the nature of FTS. The Assessing Officer, however, was not convinced with the submissions of the assessee and held that the amount paid towards consultancy charges was liable for deduction of tax under section 195 of the Act. The assessee having failed to do so, the Assessing Officer disallowed the consultancy charges paid to two parties aggregating to Rs.76,14,726/- by invoking the provisions of section 40(a)(i) of the Act. Against the draft assessment order passed by the Assessing Officer, assessee raised objections before learned

Dispute Resolution Panel (DRP). However, learned DRP rejected the objections of the assessee. Accordingly, the assessment was finalized.

6. We have heard learned Departmental Representative and perused the materials on record.

7. Undisputedly, in the year under consideration, the project office of the assessee had claimed deduction of consultancy charges paid to two overseas entities as expenses. However, in course of assessment proceedings, the assessee was unable to furnish any cogent explanation supported by evidence to establish that the consultancy charges paid are not in the nature of FTS. Further, on perusal of the directions of learned DRP, it is observed that similar disallowance under section 40(a)(i) of the Act was made in assessment year 2011-12 in respect of similar payment and the assessee accepted the disallowance. Thus, the assessee having failed to controvert the concurrent finding of the departmental authorities to the effect that the consultancy charges paid are in the nature of FTS, we do not find any reason to interfere with the decisions of the departmental authorities. Accordingly, the disallowance made under section 40(a)(i) of the Act is upheld. Grounds are dismissed.

8. In the result, the appeal is dismissed.

Order pronounced in the open court on 26/12/2022

Sd/-  
**(G.S. PANNU)**  
**PRESIDENT**

Sd/-  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 26.12.2022

*\*Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard  
file of ITAT.

**By order**

**Assistant Registrar, ITAT: Delhi Benches-Delhi**