

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.556/Del/2019
Assessment Year: 2015-16

Kelly Services India Pvt. Ltd. 10th Floor, Tower C, Unitech Cyber Park, Sector-39, Gurgaon PAN No.AABCK6665K	Vs	Addl. CIT Special Range-5 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Yishu Goel, Advocate
Respondent by	Sh. Sanjay Kumar, Sr DR

Date of hearing:	09/02/2023
Date of Pronouncement:	09/02/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-36, New Delhi dated 10.10.2018 pertaining to A.Y.2015-16.

2. The grievance of the assessee read as under :-

1. *That on facts and circumstances of the case and in law, the Assessing Officer ("AO") erred in completing the assessment of the Appellant at an income of INR 2,70,61,936 as against returned loss of INR 15,34,501. The CIT(A) has further erred in arbitrarily confirming the adjustments made in the assessment order by the AO.*

2. *That on facts and in circumstances of the case and in law, Ld. CIT(A) has erred in upholding the disallowance made by Ld. AO of INR 1,13,46,730 towards pro-rates paid to Kelly Services Inc., (Kelly US) without appreciating the fact that these*

services are not covered under the definition of fee for included services ('FIS') as per Article 12(4) of the Double Taxation Avoidance Agreement between India - USA ('India-US DTAA').

2.1. *That on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in upholding the disallowance made by Ld. AO on the basis that services rendered by Kelly US 'make available' technical knowledge or know-how or skill to the Appellant and hence are taxable as FIS under Article 12(4) of India - US DTAA.*

3. *That on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in upholding the disallowance made by Ld. AO of INR 1,56,25,880 paid to Kelly Services Pte. Ltd. ('Kelly Singapore') on account of Intercompany Divisional Charges without appreciating the fact that these services are not covered under the definition of fee for technical services ('FTS') as per Article 12(4) of the Double Taxation Avoidance Agreement between India - Singapore (Tndia- Singapore DTAA').*

That on the facts and circumstances of the case and in law, Ld. CIT(A) has erred in upholding the disallowance of Intercompany divisional charges made by AO, being in the nature of Fees for Technical Services ('FTS') under Article 12(4) of the India-Singapore DTAA without appreciating the fact that services do not make available technical knowledge, skill etc.

4. *That on the facts and circumstances of the case and in law, Ld. CIT(A) erred in upholding the addition made by Ld. AO of Rs. 16,23,827 being cheques issued by the Appellant but not presented for payment (stale cheques) by the recipients, incorrectly invoking the provisions of Section 41(1) of the Act.*

4.1. *That on the facts and circumstances of the case and in law, the Ld. AO/ Ld. CIT(A) erred in not appreciating the fact that the Appellant has not written back the amount pertaining to such stale cheques in the books of account.*

3. At the very outset the Counsel for the assessee stated that the quarrel has been settled under the VSV Act, 2020 and submitted form No.5 issued by the department.

4. On such concession the appeal is dismissed as withdrawn.

5. Decision announced in the open court on 09.02.2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

Sd/-
[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: .02.2023

Neha