IN THE INCOME TAX APPELLATE TRIBUNAL
"A'' BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI GEORGE GEORGE K., JUDICIAL MEMBER

IT(IT)A Nos.7 & 8/Bang/2023
Assessment Year: 2010-11 & 2013-14

Hindustan Aeronautics Limited RWRDC, Vimanapura S.O. Bangalore North Bangalore 560 017 Karnataka **PAN NO : AAACH3641R**	**Vs.**	Deputy Commissioner of Income-tax (International Taxation) Circle-1(2) Bangalore
APPELLANT		**RESPONDENT**

Appellant by	**:**	Shri Siddhesh Chougule, A.R.
Respondent by	**:**	Dr. Sankar Ganesh K., D.R.

Date of Hearing	**:**	20.02.2023
Date of Pronouncement	**:**	20.02.2023

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

These two appeals by assessee are directed against different orders of CIT(A) dated 9.11.2022 for the assessment years 2010-11 & 2013-14. There are common grounds in both these appeals except figures and hence, we reproduce grounds in IT(IT)A No.7/Bang/2018 which are as follows:

1. The Order is bad in law and on facts

1.1 The Order passed by the Ld. CIT(A) under section 250 r.w.s 201(1) and 201(1 A) of the Act, is bad in law and on facts.

2. Erroneous dismissal of appeal filed before the Ld. CIT(A)

2.1 The Ld. CIT(A) failed to appreciate that the favorable ITAT order dated 10 March 2022 passed in case of the Appellant for AY 2009-10 was in respect of regular assessment proceedings, and not against the TDS proceedings under section 201(1) and 201(1A) of the Act for AY 2010-11.

2.2 Consequentially, the Ld. CIT(A) erred in holding that there remained no issue for adjudication. Therefore, the Ld. CIT(A) erred in treating the appeal as infructuous and disposed-off the appeal as dismissed.

Total tax effect – Rs.11,09,949/-

2. Facts of the case in both the appeals are common. Hence, we consider the facts in IT(IT)A No.8/Bang/2023, which are as follows:

2.1 M/s. Hindustan Aeronautics Limited (HAL/"**assessee company")** having its registered office at Bangalore, is engaged in the business of design and development of engines of flights & helicopters. The Assessee Company entered into an agreement with Turbomeca for designing Dhurve/Shakti engine. The Shakti engine was co-developed by Turbomeca (company based at France) and HAL and the assistance for conducting flight tests were provided by CGTM, France a subsidiary of Turbomeca.

2.2 On verification, it was noticed that the assessee company, HAL has made the payments to CGTM, France for providing technical assistance for Shakti Air Flight Test. The details of total payments made to CGTM, France is as shown under:

(Amount in Euros)

Activities	Total amount	Paid on 14-05-2009	Paid on 13-01-2010	Paid on 08-07-2008	Paid on 22-10-2012
Air intake survey	172493	43123.25	77480		51889.8
Engine bay FADEC Day & oil cooling	52652	13163			39489
Engine Accessories &FADEC Vibration	32020	8005			24015
Measurement of Gas Concentration	64849	16212.25		.	48636.8
Hot fuel test	58037	14509.25			43527.8
Technical assistance for 8	97172			20303.78	60721.7
Total	**477223**		.		

2.3 Examination of payments made by the assessee to CGTM, France reveals that the payments were made without deduction of tax at source for availing the technical assistance. Further CGTM, France had also not filed any application before the Department for lower or NIL rate of deduction of tax at source. No application was also filed neither by the assessee nor by CGTM, France before the AAR seeking a ruling on the issue of deduction of tax at source on the payments made to CGTM, France for payment made towards technical assistance.

2.4 As per the provisions of Sec.195 of the Income-tax Act,1961 ['the Act' for short], any person responsible for paying to a non-resident, not being a company, or to a foreign company, any interest or any other sum chargeable under the

provisions of the Act (not being the income chargeable under the head salaries) shall at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by the issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force.

2.5 It was observed that the payments made by the assessee company to CGTM, France for providing technical assistance was covered by the definition of FTS as defined in Section 9(l)(vii) of the Act. The sum paid by the assessee company to the CGTM, France is therefore chargeable to tax under the Act. As the Assessee Company had not complied with the provisions of Sec. 195 of the Act on remittances made to CGTM, France, proceedings under Section 201 of the Act were initiated and the assessee company was asked to show cause by issue of Notice on 17-12-2014 as to why it should not be treated as an Assessee in default for failure to deduct tax at source in respect of the aforesaid payments.

2.6 Accordingly, in these assessment years for non-deduction of TDS u/s 195 of the Act, common order has been passed for assessment years 2009-10 & 2013-14 u/s 201(1) & 201(1A) of the Act. Now the assessee is in appeals before us for the assessment years 2010-11 & 2013-14 by above grounds of appeal.

2.7 At the time of hearing, ld. A.R. submitted that the assessee came in appeal before this Tribunal in assessment year 2009-10 in ITA No.83/Bang/2018 with regard to disallowance u/s 40(a)(ia) of the Act in respect of non-

deduction of TDS in that assessment year on the same issue as in the present case for non-deduction of TDS. Thus, he submitted that in ITA No.83/Bang/2018 vide order dated 10.3.2022, the Tribunal held as under:

> *"11.We have heard both the parties and perused the materials on record. The nature of service rendered by CGTM France to the assessee needs to be examined. The ALH Shakti Engine was co-developed by Turbomeca (a company based at France) and the assessee and the assistance for conducting flight tests were provided by CGTM France a subsidiary of Turbomeca. The perusal of the details of technical services provided by CGTM France to the assessee shows that the technicians/engineers of CGTM carried out Air intake Survey relating to Air inlet distortion and installation losses. On the basis of test results, the assessee would look into various issues involving in the Shakti Engine and would carry out the requisite test for improving its engine. The fees paid towards the services in question here is purely towards the testing of Shakti Engines in order to identify the issues of Air inlet distortion and installation losses. The subsequent action of the assessee to carry out the improvement based on the test results given by CGTM France cannot be considered as a basis for 'make available' services rendered by CGTM France to the assessee. Conducting the test and subsequent improvement to the engines based on test results are independent activities and cannot be considered together. As contended by the assessee, the test conducted by CGTM France cannot be independently carried out by the assessee without the support of engineers from CGTM France and hence does not satisfy the conditions of 'make available' that the services rendered by CGTM France to the assessee. It is settled law that mere rendering of services would not be taxable unless the person receiving the services is enabled to utilize such services on its own in the future without having recourse to the person providing the service. The Hon'ble Karnataka High Court in the case of CIT vs. De Beers India Minerals Pvt. Limited (2012): 346 ITR 467 (Kar) while considering a similar issue has held that*
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> > *"To be said to "make available", the service should be aimed at and result in transmitting technical knowledge etc so that the payer of the service could derive an enduring benefit and utilize the knowledge or know-how on his own in future without the aid of the service provider. In other words, to fit into terminology "making available", the technical knowledge, skills" etc must remain with the person receiving the service even after the particular contract comes to an end. It is not enough that the services offered are the product of intense technological effort and a lot of technical knowledge and experience of the service provider has gone into it. The technical knowledge or skills of the provider should be*

imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in the future without

depending upon the provider. On facts, while the Dutch company performed the surveys using substantial technical skills, it has not made available the technical expertise in respect of such collection or processing of data to the assessees, which the assessee can apply independently and without assistance and undertake such survey independently. Consequently, the consideration is not assessable as "fees for technical services"

In view of the above, we are of the considered opinion that fees paid by the assessee to CGTM France is not in the nature of fees for technical services and hence does not attract the provisions of sec. 195 with regard to requirement for deduction of tax at source on payment of fees for technical services of an resident outside India. As a result, no disallowance is warranted u/s 40(a)(ia) of the expenses claimed by the assessee towards payment of service charges to CGTM France. Accordingly, we allow the appeal in favour of the assessee."

2.8 Accordingly, the ld. A.R. was submitted that on the same reason, assessee is not liable for deduction of TDS u/s 195 of the Act. As such, there is no question of levying any penalty u/s 201(1) of the Act for charging interest u/s 201(1A) of the Act.

3. The ld. D.R. fairly conceded the same.

4. We have heard both the parties and perused the materials available on record. After hearing both the parties, we are of the opinion that there is merit in the argument of ld. A.R. since the Tribunal has already held that there was no question of deduction of TDS on the payment made to CGTM, France for the service rendered by them to the assessee and the payment made to them does not fall under the "fees for technical service." Hence, it does not attract the provisions of section 195 of the Act so as to deduct TDS. Accordingly, we allow the grounds taken by the assessee on the same issue as stated in the order of the Tribunal cited (supra) in both the appeals.

5. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 20th Feb, 2023.

Sd/-	**Sd/-**
(George George K.)	**(Chandra Poojari)**
Judicial Member	**Accountant Member**

Bangalore,
Dated 20th Feb, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.