

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **387/CHNY/2021**

निर्धारण वर्ष/Assessment Year: 2010-11

The ACIT,
Large Taxpayer Unit-2,
Chennai - 34.

**M/s. NCS Pearson (India) Pvt.
Ltd.,**
vs. (merged with Pearson India
Education Services Pvt. Ltd.,)
No.18, Ramnath House,
Yusuf Sarai Community Centre,
Green Park, New Delhi – 110016.

(अपीलार्थी/Appellant)

PAN:AABCN 7923R
(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Shri R. Mohan Reddy, CIT
: Shri Sharath Rao, CA

सुनवाई की तारीख/Date of Hearing : 04.05.2023
घोषणा की तारीख/Date of Pronouncement : 17.05.2023

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-3, Chennai in ITA No.151/CIT(A)-3/2014-15 dated 06.03.2020. The assessment was framed by the DCIT, Circle 13(1), New Delhi for the assessment

year 2010-11 u/s.143(3) of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 24.03.2014.

2. At the outset, it is noticed that this appeal by Revenue is barred by limitation by 518 days. The Revenue received the impugned appellate order on 13.03.2020 and appeal was to be filed on or before 12.05.2020 but actually it was filed on 12.10.2021 thereby there was a delay of 518 days. The Revenue has filed a letter dated 05.05.2022 stating that this delay is due to pandemic period of Covid 19 and subsequent events and the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. Since the Hon'ble Supreme Court has condoned the delay during the said period, respectfully following the same we condone the delay and admit the appeal.

3. The only issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the addition made by AO amounting to Rs.12,50,06,167/- for non-deduction of TDS u/s.195 of the Act

thereby invoking the provisions of section 40(a)(i) of the Act. For this, Revenue has raised various grounds from ground Nos.2 to 2.7, which was argumentative, exhaustive and factual and hence, need not be reproduced.

4. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the assessee is engaged in the business of providing support services to NCS Pearson Inc. USA. NCS India collects fee paid by the candidates who appear for examination at a third party authorized testing centre and remits the same to NCS USA. NCS India is remunerated for the services rendered on cost plus basis of 15%. This remuneration of cost plus basis of 15% is duly offered for tax by the assessee. The AO while completing assessment u/s.143(3) of the Act made disallowance of entire amount of service income of Rs.12,50,06,167/- for non-deduction of TDS u/s.195 of the Act being payment remitted to NCS USA by invoking the provisions of section 40(a)(i) of the Act. We noted that the activity of the assessee that NCS USA is engaged in the business of providing Electronic Test Delivery Services to international entities / organisations which have established given levels of education, training and/ or testing experience necessary to qualify for a specified certification or other forms of recognized

position, title or status. The clients of NCS USA include companies with Information Technology ("IT") certification exams and professional associations with licensing exams. NCS USA uses its own technology and software which makes it possible for its clients to have their exams provided on-demand via computer based testing at third party Authorised Testing Centers ("ATC") (such as Jetking) around the globe. Each ATC access the software and takes responsibility for administering the exams when test takers come to the centre. NCS USA has entered into a service agreement with NCS India wherein NCS India renders technical support to the third party ATC if the test administration software has not been properly installed or activated and collects the test fee paid by the candidates/customers who appear for the examination at the third party ATC's and remits the same to NCS USA. NCS India is remunerated for the services rendered on a cost plus basis of 15 percent which is duly offered for taxation in its return of income.

4.1 According to the AO from the very agreement i.e., service agreement with NCS Pearson Inc, USA and NCS Pearson India Pvt. Ltd., (the assessee company) and is dated 06.06.2002, the technical and provisional services which were provided by NCS USA in India is through NCS India only and the entire income was

taxable in India, therefore it is liable to TDS u/s.195 of the Act. Hence, the assessee is failed to deduct TDS u/s.195 of the Act, the AO disallowed this amount of Rs.12,50,16,167/-.

4.2 We noted that when the matter was carried in appeal before CIT(A), the assessee contended that the assessee never made claim of any expenditure and this is a part of support services, the assessee facilitated collection and remission of examination fees collected by third party authorized collection centre from candidates / customers who appears for examination to NCS USA. There is no expenditure claimed by assessee in regard to this and this is only a support service rendered for which there is cost plus 15% markup which was declared as income of the assessee and accepted by the Department. The CIT(A) accordingly followed the decisions of Hon'ble Bombay High Court in the case of CIT vs. Dedicated Healthcare Services (TPA) India (P.) Ltd., [2018] 408 ITR 36 and the Delhi Tribunal in the case of Delhi Tourism and Transport Development Corporation Ltd., vs. DCIT in ITA No.3457/Del/2007 allowed the claim of assessee by observing as under:

4.10 The AO further argues that the amount collected by the appellant on behalf of the US Company should be treated as a receipt in the hands of the appellant Company. This contention of the AO is out of order and untenable, as the said case was also subject to Transfer Pricing Audit. The Transfer Pricing officer has not given any finding on treating such receipts as income of the Appellant. Further, on perusal of the agreement between NCS India and NCS US, it is

clear that NCS India is being remunerated on cost plus 15% mark up basis and no separate consideration is charged for its revenue. Whatever fees that are collected from Third party administrators are purely on behalf of NCS US and in cannot partake the characteristic of being an income for the appellant.

4.11 In view of the discussion above, it is held that since the remittance itself was not claimed as a expenditure, provisions of Section 40(a)(i) cannot be triggered. Hence the AO is hereby instructed to delete the said addition.

5. We noted that once there is no expenditure claimed by assessee, there is no cause where assessee has to deduct TDS and once the assessee is under no obligation to deduct TDS, no disallowance can be made by invoking the provisions of section 40(a)(i) of the Act. Since the assessee has not claimed any expenditure, he has rightly not deducted any TDS and hence, the CIT(A) is right in deleting the addition. We dismiss the appeal of Revenue.

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

Order pronounced in the open court on 17th May, 2023 at Chennai.

Sd/-

(मंजुनाथ. जी)

(MANJUNATHA.G)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 17th May, 2023

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|-------------------------|--------------------------|--------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकरआयुक्त /CIT |
| 4. विभागीय प्रतिनिधि/DR | 5. गार्ड फाईल/GF. | |