

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHE 'D' NEW DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No. 4714/Del/2017  
Assessment Year: 2013-14**

Lease Plan India P. Ltd.,  
C4C/332, Ground Floor,  
Janak Puri, New Delhi  
**PAN: AAACL6053B**  
(Appellant)

Versus Income-tax Officer,  
Ward 4(3), New Delhi.  
  
(Respondent)

Assessee by : Sh. Nikhil Gupta, Advocate &  
Sh. Rachit Abhishek, Advocate  
Revenue by : Sh. Hemant Gupta, Sr. DR

Date of hearing : 15.06.2023  
Date of pronouncement: 15.06.2023

**ORDER**

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

This is an appeal by the assessee against order dated 03.05.2017 of learned Commissioner of Income-tax (Appeals)-5, Delhi. Though, in the impugned order, learned Commissioner (Appeals) has disposed of the appeals relating to three assessment

years, i.e., 2011-12, 2012-13 and 2013-14, however, presently, we are concerned with the assessment year 2013-14.

2. The grounds raised by the assessee are as under :

1. That the Commissioner of Income-tax (Appeals) erred on facts and in law in confirming the disallowance of guarantee commission of Rs. 1,33,54,268/-, on account of non-deduction of tax at source therefrom, invoking provisions of section 40(a)(i) of the Income-tax Act, 1961 ('the Act').
2. That the Commissioner of Income-tax (Appeals) erred on facts and in law in holding that the situs of services rendered by way of the issuance of guarantee by Lease Plan Corporation NV was in India and therefore, the same was income of the non-resident in terms of section 9 of the Act.
3. That the Commissioner of Income-tax (Appeals) erred on facts and in law in holding that guarantee commission being an income from a debt claim in the hands of Lease Plan Corporation NV is in the nature of 'interest', covered under Article 11 of the Double Taxation Avoidance Agreement entered into between India and Netherlands.
4. That the Commissioner of Income-tax (Appeals) erred on facts and in law in alternatively holding that guarantee commission paid to Lease Plan Corporation NV represents payment made in consideration for rendering a service that is ancillary and subsidiary to the application or enjoyment of a right and therefore is in the nature of "fees for technical services" as per paragraph 5 of Article 12 of the Double Taxation Avoidance Agreement between India and Netherlands.
- 4.1. That on the facts and circumstances of the case, the CIT(A) erred in law in holding that guarantee commission is paid by the appellant to Lease Plan Corporation NV for providing consultancy services and the same are taxable as "fees for technical services".
5. That the Commissioner of Income-tax (Appeals) erred on facts and in law in failing to appreciate that the aforesaid guarantee commission was not chargeable to tax in India

under the Act or the Double Taxation Avoidance Agreement between India and Netherlands and therefore, the appellant was not required to deduct tax at source therefrom.”

3. As could be seen from the grounds raised, the dispute between the parties is in relation to disallowance of deduction claimed on account of payment of guarantee Commission of Rs.1,33,54,268/- to Lease Plan Corporation NV, by invoking the provisions of section 40(a)(i) of the Income-tax Act, 1961 for alleged failure on the part of the assessee to withhold tax at source.

4. Briefly, the facts are, the assessee is a resident corporate entity engaged in the business of leasing of motor vehicles, financial services and fleet management. For the assessment year under dispute, the assessee filed its return of income on 30.11.2013 declaring loss of Rs.44,85,65,300/- under the normal provisions and book loss of Rs.5,65,95,552/- under section 115JB of the Act. In course of assessment proceedings, the Assessing Officer while verifying Form 3CEB report, noticed that the assessee has paid an amount of Rs.1,33,54,268/- to its Associated Enterprise (AE) for provision of guarantee services. Noticing the above, the Assessing Officer called upon the assessee to explain, whether, the assessee

has deducted tax at source while making such payment. Having noticed that the assessee has not deducted tax at source, the Assessing Officer observed that the payment made is in the nature of fee for technical services u/s. 9(1)(vii) of the Act, hence, liable to tax in India. Since the assessee had failed to deduct tax at source, the Assessing Officer disallowed the deduction claimed of Rs.1,33,54,268/-. The assessee contested the aforesaid disallowance before learned first appellate authority. However, learned Commissioner (Appeals) upheld the disallowance.

5. Before us, it is a common point between the parties that the issue is squarely covered by the decision of the Tribunal in assessee's own case in assessment years 2011-12 and 2012-13. Copy of order dated 16.02.2022 passed in ITA No. 4712 and 4713/Del/2017 is furnished before the Bench.

6. Having considered rival submissions and perused the materials on record, we find that identical nature of dispute arose in assessee's case for the assessment years 2011-12, 2012-13 and 2013-14. In fact, learned first appellate authority has disposed of the appeals for aforesaid assessment years in a consolidated order impugned in the

present appeal. While deciding assessee's appeals for the assessment years 2011-12 and 2012-13, arising out of the very same order of the learned Commissioner (Appeals), the Tribunal, in the order referred to above, has deleted the disallowance made u/s. 40(a)(i) of the Act. There being no difference in the factual position in the impugned assessment year, respectfully following the decision of the coordinate Bench in assessee's own case, as discussed above, we delete the disallowance made u/s. 40(a)(i) of the Act. Grounds are allowed.

7. In the result, appeal is allowed.

Order pronounced in the open court on 15/06/2023.

Sd/-

**(N.K. BILLAIYA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 15/06/2023

\*aks/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Assistant Registrar  
ITAT New Delhi