आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH: CHENNAI

श्री मनोज कुमार अग्रवाल, लेखा सदस्य एवं श्री मनोमोहन दास, न्यायिक सदस्य के समक्ष
BEFORE SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER
AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./**ITA Nos.1587 & 1588/Chny/2018**
निर्धारण वर्ष /**Assessment Years: 2013-14 & 2014-15**

M/s. Standard Chartered Global Business Services Pvt. Ltd., (Formerly known as Scope International Pvt. Ltd.) No.1, Haddows Road, Chennai – 600 006. **[PAN: AAECS-9043-E]**	**Vs.**	**The Dy. Commissioner of Income Tax**, Corporate Circle-6(1), Chennai.
(अपीलार्थी/**Appellant)**		**(**प्रत्यर्थी/**Respondent)**

अपीलार्थी की ओर से/ Appellant by	:	Ms. Amulya. K, C.A & Shri Sriram Seshadri, C.A
प्रत्यर्थी की ओर से /Respondent by	:	Shri D. Hema Bhupal, JCIT
सुनवाई की तारीख/Date of Hearing	:	11.05.2023
घोषणा की तारीख /Date of Pronouncement	:	07.06.2023

आदेश / **O R D E R**

PER MANOMOHAN DAS, J.M:

1. Aforesaid two appeals by assessee for Assessment Years (AY) 2013-14 and 2014-15 arises out of the common order of learned Commissioner of Income Tax (Appeals)-15, Chennai [CIT(A)] dated 31-01-2018 in the matter of separate assessment orders passed by Ld. Assessing Officer [AO] under section 143(3) of the Income Tax Act, 1961 [the Act] on 30-12-2016 and 29-12-2016. The facts as well

issues are quite identical in both the appeals. The grounds taken by the assessee for A.Y 2013-14 are as under: -

1. The order of the Commissioner of Income Tax (Appeals) ["CIT(A)"] is contrary to law, facts and circumstances of the case.
2. Disallowance of expenditure towards general training services under section 40(a)) of the Act
2.1 The CIT(A) erred in confirming the order of the Assessing Officer (A0) in disallowing expenditure on general training services amounting to Rs.92,24,879/- paid outside India under section 40(a)(i) of the Act.
2.2 The CIT(A) ought to have appreciated that the payment towards general training services to the non resident (i.e. SCB, Singapore) is not taxable in India as it neither accrues nor deemed to accrue or arise in India as the services were rendered outside India and as such there is no obligation to deduct taxes under section 195 of the Act.
2.3 The CIT(A) ought to have appreciated that the non-resident does not have any Permanent Establishment (PE) in India and as such the income earned by the non-resident would not be taxable in India.
2.4 The CIT(A) erred in confirming the order of the AO in holding that the expenditure towards general training services is in the nature of Fees for Technical Services (FTS) without appreciating that training towards soft skills, leadership, general communication, team work, etc. cannot be termed as technical in nature.
2.5 The CIT(A) ought to have appreciated that the general training services provided by SCB, Singapore cannot be construed as technical services and as such the same will not fall within the meaning of "fees for technical services" as defined in explanation (2) to section 9(1)(vii) of the Act.
2.6 The CIT(A) erred in not considering the details / supporting documents filed by the Appellant in relation to training services in the right perspective. The CIT(A) erred in incorrectly understanding the nature of services rendered by the non-resident SCB, Singapore without appreciating the correct nature of services provided by the non-resident.
2.7 The CIT(A) erred in holding that the Appellant has not provided the brochure / schedule of the training programmes with the description of contents without appreciating that the said details were specifically furnished before the CIT(A) during the course of appellate proceedings.
2.8 The CIT(A) ought to have appreciated that the charges paid to the non-resident will not fall within the purview of FTS as per the Double Taxation Avoidance Agreement.
2.9 Without prejudice to the above and assuming without admitting that even if the training is considered as technical services, the CIT(A) ought to have appreciated that the employees who received the soft skills training are not in a position to further impart such soft skills training to others and as such in the absence of 'make available' the same is not taxable as FTS as per the Double Taxation Avoidance Agreement.

3. The Appellant prays that directions be given to grant all such relief arising from the grounds of appeal mentioned supra as also all consequential relief thereto.
4. The Appellant craves leave to add, alter, amend, substitute, rescind, modify and / or withdraw in any manner whatsoever all or any of the foregoing grounds of appeal at or before the hearing of the appeal.

As is evident, the sole grievance of the assessee is disallowance u/s 40(a)(i) for want of TDS on certain payments made to its Singapore Associated entity. The undisputed position that emerges is that similar issue has been decided by this Tribunal in assessee's favor for AY 2014-15, vide ITA No.2092/Chny/2017 dated 18.11.2022 wherein an order was passed u/s 201(1) and the assessee was held to be assessee-in-default for non deduction of tax on such payments. A copy of the same has been placed on record. In the said background, our adjudication would be as under.

2. The brief facts of the case are that the assessee is a private limited company incorporated in India under the Companies Act, 1956 and is a tax resident of India. It undertakes back office data processing, information technology support, Call Centre operations, software development, maintenance and support services in Chennai and Bangaluru, India for Standard Chartered Group's operations in India and overseas. Its income tax returns were subjected for scrutiny assessment. The Ld. AO made impugned disallowance for want of TDS on payment made by the assessee to its group entity, treating the

same to be fees for technical services. Similar disallowance was made in AY 2014-15. The Ld. CIT, vide common impugned order, held that the payment made to Singapore entity would be fees for technical services and therefore, the disallowance was justified. Aggrieved, the assessee is in further appeal before us.

3. We find that similar issue stood decided in assessee's favor for AY 2014-15 vide ITA No. 2092/Chny/2017 order dated 18-11-2022 as under: -

> 6. It is admitted position that the services are availed by the assessee for its employees to improve their soft skill in the areas of leadership and general management which is not specific to functions being performed by the employees. This training may improve the skills of the employees but it does not involve transfer of any technology which is made available to the assessee for its future use. In terms of Article-12 of DTAA, 'fees for technical services' include managerial, technical or consultancy services if such services are ancillary and subsidiary to the application or enjoyment of the right, property or information or it make available technical knowledge, experience, skill, know-how or processes, which enables the person acquiring the services to apply the technology contained therein or it consist of the development and transfer of a technical plan or technical design but excludes any service that does not enable the person acquiring the service to apply the technology contained therein. We find that the services as availed by the assessee is covered in none of these clauses. Therefore, the assessee could not be obligated to deduct TDS on the same. The cited decision of Ahmedabad Tribunal rendered on similar factual matrix squarely supports the case of the assessee. Accordingly, the impugned demand could not be sustained. We order so. No other ground has been urged before us.
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> 7. The appeal stand allowed.

Since the nature of payment as well as the payee is identical, taking consistent view in the matter, the impugned disallowance, in both the years, stands deleted. The ground thus raised stand allowed, in both the years.

4. Additional Grounds of Appeal

4.1 The assessee has filed identical additional grounds of appeals in both the years. In one of the ground, the assessee seeks deduction of education cess paid by the assessee while computing the income under normal provisions. However Ld. AR submitted that the assessee is not pressing the same due to amendment made in the statutory provisions. In the remaining ground, the assessee seeks application of India-UK Tax Treaty rate for dividend while determining Dividend Distribution Tax (DDT) liability for the assessee. The Ld. Sr. DR opposed admission of additional ground at this stage of proceedings and submitted that the facts of the issue are not available on record. It was also submitted that this issues, on merits, has been decided against the assessee by Special Bench of Mumbai Tribunal in recent decision titled as **DCIT vs. Total Oil India Private Ltd. (ITA No.6997/Mum/2019 order dated 20.04.2023).** A copy of the same has been placed on record. However, Ld. AR still pressed this ground and justified admission of additional ground as under: -

> **Jurisdiction to admit additional grounds of appeal:**
> The Appellant submits that the said additional grounds are *purely legal in nature* and that the consideration of the said grounds by Your Honours *does not require submission of further details / materials and all* such *material facts and details are already available or record before Your Honours.*
> In support of the above contention, the Appellant relies on the Circular issued by the Central Board of Direct Taxes, instructing the officers of the Income Tax Department not to take advantage of the ignorance of an Assessee as to his rights, and directing the officers to guide the Assessee

where the proceedings or particulars before them indicate a refund or relief due to such taxpayer. The relevant extracts of the circular are reproduced herein:

"(3) Officers of the Department must not take advantage of ignorance of an Assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him. This attitude would, in the long run, benefit the department for it would inspire confidence in him that he may be sure of getting a square deal from the department. Although, therefore, the responsibility for claiming refunds and reliefs rest with Assessee on whom it is imposed by law, officers should-

(a) draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some *reason or other;*

(b) freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs."

It is reiterated the additional grounds raised by the Appellant *are purely legal grounds* requiring no further examination of facts. Hence, it is humbly requested that the additional grounds be admitted based on the order of the Hon'ble Supreme Court in the case of National Thermal Power Corporation.

The Appellant further places reliance on the decision of the Hon'ble Jurisdictional High Court, in the case of Abhinitha Foundation Pvt Ltd.

The Ld. AR further submitted that this claim was neither lodged in Income Tax Return nor raised before any of the lower authorities. The assessee was only recently aware of the tenable legal position that DDT liability is limited to rate of tax under Tax Treaty. The Ld. AR also referred to the decision of Hon'ble Supreme Court of India in the case of **National Thermal Power Corporation Ltd. vs. Commissioner of Income Tax, 1998 229 ITR 383 SC and Abhinitha Foundation Pvt. Ltd 396 ITR 251 [2017] (Madras)** to support admission of additional ground of appeal. The Ld. Sr. DR, opposing the same, relied on the

decisions in the cases of Addl. CIT vs. Gurjargravures (P) Ltd. [1978] 111 ITR 1 (SC); CIT v. G.S Rice Mils [1982] 136 ITR 761 (ALL) and the decision of the Bangalore Tribunal in the case of M/s Texas Instruments Inc. in ITA NO. 525/Ban/2019 dated 11-03-2022 [2022] 139 Taxmann.com 153.

4.3 We find that the Hon'ble Supreme Court of India in the case of National Thermal Power Corporation Ltd (supra) under para Nos. 5 to 8 have observed as under:

> *"5. Under section 254 of the Income Tax Act, the Appellate Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If for example, as a result of judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, we do not see any reason why the assessee should be prevented from raisin that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. We do not see any reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner of Income Tax (Appeals). Both the assessee as well as the Department have a right to file an appeal/cross-objection before the Tribunal. We fail to see why the Tribunal should be prevented from considering questions of law arising in assessment proceedings although not raised earlier.*
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> *6. In the case of Jute Corporation of India Ltd.v- CIT, this Court, while dealing with the powers of the Appellate Assistant Commissioner observed that an appellate authority has all the powers which the original authority may have in deciding the question before it subject to the restrictions or limitations, if any, prescribed by the statutory provisions. In the absence of any statutory provision, the appellate authority is vested with all the plenary powers which the subordinate authority may have in the matter. There is no god reason to justify curtailment of the power of the Appellate Assistant Commissioner in entertaining an additional ground raised by the assessee in seeking modification of the order assessment passed by the Income-tax Officer. This Court further observed that there may be several factors justifying the raising of a new plea in an appeal and each case has to be*

considered on its own facts. The Appellate Assistant Commissioner must be satisfied that the ground raised was bona fide and that the same could not have been raised earlier or good reasons. The Appellate Assistant Commissioner should exercise its discretion in permitting or not permitting the assesse to raise an additional ground in accordance with law and reason. The same observations would apply to appeals before the Tribunal also.

7. The view that the Tribunal is confined only to issues arising out of the appeal before the Commissioner of Income Tax(Appeals) takes to narrow a view of the powers of the Appellate Tribunal [vide, e.g., C.I.T. v. Anand Prasad (Delhi), C.I.T. v. Karamchand Premchand P. Ltd. And C.I.T. v. Cellulose Products of India Ltd. Undoubtedly, the Tribunal will have the discretion to allow or not to allow a new ground to be raised. Bu where the Tribunal is only required to consider a question of law arising from the facts which are on record in the assessment proceedings we fail to see why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.

8. The reframed question, therefore, is answered in the affirmative, i.e., the Tribunal has jurisdiction to examine a question of law which arises from the facts as found by the authorities below and having a bearing on the tax liability of the assessee. We remand the proceedings to the Tribunal for consideration of the new ground raised the assesse on the merits.

4.4 In the case of Abhinitha Foundation Pvt. Ltd. (supra) the observations of the Hon'ble Madras High Court are as under :

"17. A similar situation arose in the case of ACIT vs. Gurjargravures P. Ltd. In this case as well, it was noticed that neither was any claim made before the ITO nor was any supporting material placed on record. It is in this background that no relief was granted. The Supreme Court, in this case, disagreed with the High Court, inasmuch as it sustained he direction of the Tribunal issued to the ITO to grant appropriate relief qua claim made under section 84 of the Act.

"18. In sum, what emerges from a perusal of the ratio of the judgments cited above, in particular, the judgments rendered by the Supreme Court in GOETZE's case and National Thermal Power Co. Ltd.'s case, and those, rendered by the Division Bench of this Court in Ramco Cements Ltd. and CIT vs. Malind Laboratories P. Ltd., as also the judgments of the Delhi High Court in Sam Global Securities Ltd.'s case and Jai Parabolic Spring's Ltd.'s case that, even if, the claim made by the assessee company does not form part of the original return or even the revised return, it could still be considered, if , the relevant material was available on record, either by the appellate authorities, (which includes both the CIT(A) and the Tribunal) by themselves, or on remand, by the Assessing Officer. In the instant case, the Tribunal on perusal of the record, found that the relevant material qua the claim

made by the assessee company under section 80IB(10) of the Act was placed on record by the assessee company during the assessment proceedings and therefore, it deemed it fit to direct its reexamination by the Assessing Officer.

Considering the ratio of these decisions, we would hold that there was no bar for appellate authorities to admit new claims. Therefore, we admit the additional ground for both the years and remand the same for adjudication to the file of Ld. AO with a direction to the assessee to substantiate its claim. The cited decision of Special Bench of Mumbai Tribunal in **DCIT vs. Total Oil India Private Ltd. (ITA No.6997/Mum/2019 order dated 20.04.2023)** shall also be considered by Ld. AO. The additional grounds of appeal stands partly allowed for statistical purposes in both the years.

5. Both the appeals stand partly allowed in terms of our above order.

Order pronounced on 7th June, 2023.

Sd/-	**Sd/-**
(मनोज कुमार अग्रवाल)	**(मनोमोहन दास)**
(Manoj Kumar Aggarwal)	**(Manomohan Das)**
लेखा सदस्य /Accountant Member	**न्यायिक सदस्य/Judicial Member**

चेन्नई/Chennai, दिनांक/Dated: 07.06.2023
EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**
1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त/CIT 4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF