

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE
SHRI C. N. Prasad, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, Accountant Member**

ITA No. 247/Del/2023
(Assessment Year: 2018-19)

Cadence Design Systems (Ireland) Ltd, Deloitte Touche Tohmatsu India LLP Building No. 10, Tower B, 7 th Floor, DLF Cyber City Complex, DLF City, Phase-II, Gurgaon (Appellant)	Vs. ACIT, Circle-1(2)1(1), International Taxation, New Delhi
PAN: AADCC9139J	(Respondent)

Assessee by :	Ms. Reema Grewal, CA
Revenue by:	Shri Sanjay Kumar, Sr. DR

Date of Hearing	21/08/2023
Date of pronouncement	04/09/2023

O R D E R

PER M. BALAGANESH, A. M.:

1. The appeal in ITA No.247/Del/2023 for AY 2018-19, arises out of the order of the Commissioner of Income Tax (Appeals)-42, New Delhi [hereinafter referred to as 'ld. CIT(A)', in short] in Appeal No. ITBA/APL/S/250/2022-23/1047806257(1) dated 05.12.2022 against the order of assessment passed u/s 143(3) Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 23.09.2021 by the DCIT, Circle-1()(1), International Taxation, New Delhi (hereinafter referred to as 'ld. AO').

2. The assessee has raised the following grounds of appeal:-

"1. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the assessment order passed

by the Learned Assistant Commissioner of Income-tax, Circle 1(2)(1) (International Taxation), New Delhi (hereinafter referred as "Ld. AO") under section 143(3) of the Act, wherein, a refund of INR 50,140 was determined in case of the Appellant.

2. That on the facts and circumstances of the case and in law, the CIT(A) has erred in upholding the action of the Ld. AO in granting only partial credit of taxes deducted at source ("TDS") of INR 43,72,157 as against INR 4,50,84,043 claimed by the Appellant in the return of income.

3. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not properly adjudicating the grounds of appeal raised by Appellant with respect to grant of TDS credit for AY 2018-19 albeit appropriate amount/credit is reflected in the Form 26AS for 2018-19.

4. That on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in passing the appellate order under section 250(6) of the Act without taking into consideration the provisions of section 199 of the Act read with rule 37BA of the Income-tax Rules, 1962."

3. We have heard the rival submissions and perused the material available on record. The assessee is a company incorporated under the laws of Ireland and is a part of Cadence Group. It is engaged in the business of development and distribution of pre-packaged computer software and also provides services with respect to software sold to its customers. It filed its return of income for AY 2018-19 on 11.10.2018 declaring total income of Rs. 4,32,20,170/- and claimed TDS credit of Rs. 4,50,84,043/- in the return. The assessment was completed u/s 143(3) of the Act on 23.09.2021 accepting the returned income. However, TDS credit was granted by the Id AO in the tax computation sheet only to the extent of Rs. 48,72,157/- as against the claim made by the assessee in the return of income of Rs. 4,50,84,043/-.

4. It is not in dispute that the assessee earned income in the nature of royalty/ fee for technical services amounting to Rs. 45,32,20,170/- from various customers in India. This was duly offered to tax in the

return filed by the assessee and corresponding TDS credit for such income was claimed by the assessee. Additionally, during the year under consideration, the assessee also received consideration on account of supply of software from its customers in India. The consideration received by the assessee from supply of such software was not taxable in India as per Article 7 read with Article 5 and Article 12 of India-Ireland Double Taxation Avoidance Agreement. However, despite non-taxability of the aforesaid receipts, certain customers in India deducted tax on such payment u/s 195 of the Act. Since, the aforesaid receipts were not taxable in India and the same were not to be offered to tax in return filed by the assessee, corresponding TDS was claimed as refund by the assessee. It is a fact that the Id AO had accepted the return of income of the assessee.

5. The breakup of TDS credit claimed by the assessee is as under:-

i.	TDS appearing in Form 26AS of assessment year 2018-19	Rs. 4,26,15,723/-
ii.	TDS appearing in Form 26AS of AY 2019-20, but income offered to tax by the assessee in AY 2018-19 itself and hence, TDS credit claimed for AY 2018-19	Rs. 24,68,320/-
	Total	Rs. 4,50,84,320/-

6. With regard to Sl. No. 2 above, it is not in dispute that amount of TDS claimed in AY 2018-19 by the assessee and corresponding income thereon has also been assessed by the Id AO in AY 2018-19 itself on accrual basis. Hence, the assessee would be entitled for corresponding TDS credit of Rs. 24,68,320/- in AY 2018-19. In order to ensure assessee had not claimed TDS credit for AY 2019-20 for the very same sum of Rs. 24,68,320/- , based on Form 26AS reflection, for this limited aspect, we deem it fit to restore this aspect of the issue to the file of Id. AO for verification. The assessee is also directed to place evidence on

record in this regard and prove that it had not made any double claim of TDS credit. If it is found on verification that this TDS credit of Rs. 24,68,320/- was not claimed in AY 2019-20, then it should be allowed in AY 2018-19 to the assessee.

7. In so far as TDS appearing in Sl. No. 1 above to the tune of Rs. 4,26,15,724/-, the same is duly reflected in Form 26AS for AY 2018-19 itself. The assessee would be duly entitled for TDS credit of this figure in AY 2018-19 itself. We direct the Id AO accordingly.

8. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

9. In the result, the appeal of the assessee is allowed statistical purposes.

Order pronounced in the open court on 04/09/2023.

-Sd/-
(C. N. Prasad)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 04/09/2023
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi