

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B" DELHI**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.3811/DEL/2018
Assessment Year 2013-14

Control Risks India Pvt. Ltd. 401, Copia Corporate Suite, Jasola Complex, New Delhi.	Vs.	ACIT, Circle-6(2), New Delhi.
TAN/PAN: AADCC3008J		
(Appellant)		(Respondent)

Appellant by:	Shri Upvan Gupta, CA		
Respondent by:	Shri N.K. Bansal, Sr.DR		
Date of hearing:	21	06	2023
Date of pronouncement:	11	09	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-II, New Delhi ['CIT(A)' in short] dated 19.03.2018 arising from the assessment order dated 29.03.2016 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2013-14.

2. The grounds of appeal raised by the assessee read as under:

"1. That on the facts and circumstances of the case, the CIT(A) erred in law in upholding the assessment made by the assessing officer ("AO") under section 143(3) of the Income-tax Act, 1961 ("the Act") at an income of Rs.1,59,62,193 as against loss of Rs.1,79,51,014 returned by the Appellant.

2. That on the facts and circumstances of the case, the CIT(A)

erred in law in allegedly holding that the documents furnished by the Appellant, viz., (1) Agreements entered into by the Appellant with the non-resident group companies, and (2) No Permanent Establishment Certificates were additional evidences and in absence of application under Rule 46A of the Income-tax Rules, 1962 ("the Rules"), the same could not be admitted for adjudication of the issues involved.

2.1 Without prejudice, that on the facts and circumstances of the case, the CIT(A) erred in law in not granting an opportunity to the Appellant to furnish the aforesaid additional documents by way of application under Rule 46A of the Rules.

3. That on the facts and circumstances of the case, the CIT(A) erred in law in confirming the disallowance made by the AO under section 40(a)(i) of the Act in respect of inter-company fees and international commission payments of Rs.1,96,82,063 and Rs.1,42,31,144 respectively, made by the Appellant to its group companies located outside India on the ground that tax has not been withheld therefrom under section 195 of the Act.

3.1 That on the facts and circumstances of the case, the CIT(A) erred in law in confirming the action of the assessing officer allegedly on the ground that in absence of Agreement (which was not admitted for want of application under Rule 46A of the Rules), the nature of services for which payments have been remitted remained unverified.

3.2 That on the facts and circumstances of the case, the CIT(A) erred in law in confirming the aforesaid disallowance made by the AO under section 40(a)(i) of the Act without returning any finding of its own regarding the nature of services received by the appellant and taxability of income arising from such services in India."

3. Briefly stated, the assessee-company is stated to be engaged in the business of risk management, risk analysis, mitigation consultant and to provide solutions related to crisis management etc. The assessee filed return of income digitally declaring loss of Rs.1,79,51,014/- for the Assessment Year 2013-14 in question. The return filed by the assessee was subjected to scrutiny assessment under Section 143(3) of the Act. In the course of assessment proceedings, the Assessing Officer *inter alia* observed that during the relevant assessment year, the assessee had *inter alia* made

payment on account of intercompany fees, i.e., payment in consideration for outsourced risk consultancy services and commission being payment for reference of work to overseas group companies located at Singapore, UK, USA and UAE etc. The Assessing Officer observed that no withholding tax has been deducted as contemplated under Section 195 of the Act on such payments to companies located in these overseas countries for payment of commission amounting to Rs.1,06,71,559/- and intercompany fees of Rs.1,80,85,489/-. The Assessing Officer further observed that no TDS has been deducted for commission payment of Rs.35,59,585/- and intercompany fees of Rs.15,96,574/- to companies located in other location in Germany, Hong Kong, Japan etc. In response to the show cause notice in this regard, the assessee submitted that the beneficiary of the payments have no permanent establishment in India and therefore, in terms of Article 5 read with Article 7 of different treaties, the income is not deemed to accrue or arise in India and thus not liable for taxation in India in terms of respective treaty with UAE, Australia, Germany, UK, Japan, Singapore etc. The Assessing Officer however observed that assessee has not furnished Tax Residency Certificate in majority of the cases and could not justify the non deduction of tax to his satisfaction. The Assessing Officer accordingly invoked provision of Section 40(a)(i) of the Act and disallowed the expenses claimed towards such fees and commission owing to alleged failure of the assessee to deduct TDS while incurring expenditure. The Assessing Officer examined the provisions of the law and respective tax treaty and concluded that assessee has failed to deduct withholding tax under Section 195 on an aggregate sum of Rs.3,39,13,207/- towards such expenses intercompany fee and commissions attributable to Non-Resident entities.

4. Aggrieved the assessee preferred appeal before the CIT(A). The CIT(A) confirmed the action of the Assessing Officer and refused to admit additional evidences filed by the assessee in the form of 'no PE certificate' from certain entities, 'Tax Residency Certificate' (TRC) etc. on the ground that no formal application has been moved under Rule 46A explaining the reasons why such evidences were not submitted in the course of assessment proceedings. The CIT(A) thus ignored the additional evidences and refused to entertain the relief claimed by the assessee.

5. Further aggrieved, the assessee preferred appeal before the Tribunal.

6. The Id. counsel Mr. Upvan Gupta made wide-ranging arguments and *inter alia* submitted that the additional evidences placed before the CIT(A) were wrongfully not admitted for consideration of the appeal on merit. The Id. counsel contended that the additional evidences placed before CIT(A) goes to the root of the matter and would demonstrate the absence of obligation for deduction of withholding tax contemplated under Section 195 of the Act in the light of the provisions of Income Tax Act r.w. Tax Treaties with the respective countries.

7. The Id. DR for the Revenue relied upon the order of the CIT(A).

8. We have heard the rival submissions and perused the material available on record.

9. The assessee in the captioned appeal has raised several grounds assailing the order of the CIT(A) for summary disposal of the appeal of the assessee. It is however noticed at the outset that

one of the substantive grounds raised by the assessee whereby the assessee seeks to impugn the order of the CIT(A) towards alleged violation of natural justice as disposal of first appellate order without admitting additional evidences placed before CIT(A) on consideration of technical infirmities.

10 With reference to the non admission of additional evidences, the Id. counsel for the assessee vehemently points out that such remittances towards intercompany fees and commission to overseas group companies located outside India are not susceptible to withholding tax as per the scheme of the Act and when the provisions of the Act and the appropriate Articles of the DTAA are read in conjunction. The Id. counsel contends that the payments have been made to non resident entities who have no permanent establishment in India and the payment made do not confirm the requirement of 'make available condition' under DTAA provisions. In continuance, the Id. counsel submits that the TRC and certificate showing presence of PE of non resident entities in India are vital for the determination of the obligation of the assessee under Section 195 of the Act. The Id. counsel contends that merely because some technical mistake might have occurred in the proceedings before the CIT(A), the CIT(A) was not justified in rejecting such crucial documents with disdain without bringing such technical defects to the notice of assessee. The Id. counsel also referred to affidavit placed in this regard before the Tribunal to submit that the TRC and 'no PE certificate' of the foreign recipients were actually filed before the Assessing Officer in the assessment proceedings also which have not been considered. The Id. counsel thus contends that the order of the Assessing Officer as well as CIT(A) is vitiated owing to blatant transgression of natural justice and deserves to be set aside.

11. On appraisal on facts placed before us, it is observed that the controversy revolves around the admission of additional evidences and consequent conclusion that legally flows based on appraisal of totality of evidences.

11.1 It is the case of the assessee that all the relevant documents were placed before the Assessing Officer. Notwithstanding, the documents were filed before the CIT(A) as well. The CIT(A) has ignored the additional evidences on technical grounds and came to an adverse conclusion contrary to the position of law.

11.2 At this stage, we observe that judicial propriety demands that a fair opportunity should be given to the assessee to enable it to explain its case. In the present circumstances, evidences obtained from external sources which have a critical bearing on the outcome of the subject matter ought to have been admitted to reinforce the overriding cause of substantial justice vis-a-vis technical considerations. The breach of sacrosanct principles of natural justice is fundamental and goes to the root of process of framing assessment. Needless to say that the spirit of Rule 46A of IT Rules enabling the assessee to place additional evidences before the CIT(A) are founded on the doctrine of legitimate expectation and principles of natural justice. It is indeed the sacrosanct obligation of the first appellate authority to have ensured that any effective opportunity is granted to the assessee for presenting its case and all evidences are taken into account while determining the issue. The powers of the CIT(A) are not fettered or circumscribed by Rule 46A for admission of additional evidences. In view of mandate of provisions of Section 250(4) of the Act also, the situation existing in the case as narrated above, clearly warranted admission of additional evidences by the CIT(A). We are thus convinced on the fallacy in

the action of the CIT(A).

12. The order of the CIT(A) on the subject matter of appeal is thus set aside and restored to the file of the Assessing Officer for *de novo* adjudication in accordance with law, after making or causing proper inquiry as may be deemed expedient and after taking into account of such evidences as may be placed before him by the assessee. A reasonable opportunity shall be given to the assessee to address the issue involved.

13. In the light of the observations made above, the order of the CIT(A) appeal against is set aside and issues raised in the captioned appeal is restored back to the file of the Assessing Officer for fresh adjudication in accordance with law.

14. In the result, the captioned appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 11/09/2023

Sd/-

**[CHANDRA MOHAN GARG]
JUDICIAL MEMBER**

DATED: /09/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**