IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

ITA No.2020/Del./2022
(ASSESSMENT YEAR : 2018-19)

ITA No.2021/Del./2022
(ASSESSMENT YEAR : 2019-20)

Veritas Storage (Singapore) Pte. Ltd., 9, Temasek Boulevard, 39-01 Suntec Tower 2, Singapore 038989.	vs.	DCIT, Circle 3(1)(1), Intl. Taxation, New Delhi.
(PAN : AAFCV2394A)		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Tarun Gulati, Sr. Advocate
Shri Nikhil Gupta, Advocate
Shri Prince Nagpal, Advocate
Shri Rochit Abhishek, Advocate
Shri Devansh Garg, Advocate
REVENUE BY : Shri Abhishek Sharma, CIT DR

Date of Hearing : 05.09.2023
Date of Order : 13.09.2023

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

These appeals filed by the assessee are directed against the order of Assessing Officer passed pursuant to the directions of the Dispute Resolution Panel (DRP) for the assessment years 2018-19 & 2019-20.

2. Since the issues are common and connected, these are consolidated for the sake of convenience.

3. For the sake of reference, we are referring to grounds and figures of AY 2018-19. Grounds of appeal taken by the assessee for AY 2018-19 read as under :-

> "Ground 1- Impugned Order has been passed in violation of Section 144C of the Act
>
> 1.1. The Impugned Order has been passed arbitrarily and illegally in complete disregard of the directions given by the Hon'ble DRP which were binding on the learned AO under Section 144C(10) of the Act.
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> 1.2. The Hon'ble DRP directed the Learned AO to verify the claim of the Appellant in relation to income from hardware appliances and software licenses in light of the decision of the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence (P.) Ltd. vs. CIT [2021] 432 ITR 471 (SC) and allow relief accordingly. However, the Learned AO, ignoring the submission dated 15.06.22 filed pursuant to the DRP directions, passed the Impugned Order without any such further verification arid did not grant relief as directed by the learned DRP.
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> Ground 2 - The Learned AO has erred in characterizing the entire revenue as Fees from Technical Services ('FTS')
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> 2.1. The learned AO erred in also ignoring the directions of the learned DRP which has given due regard to the different revenue streams earned by the Appellant and erred in characterizing the entire revenue as FTS without considering the actual nature of the income evident from various invoices and agreement with Indian customers placed on record.
>
> 2.2. The learned AO erred in concluding that the receipts from the sale of hardware appliances is taxable as FTS, while the learned DRP directed the learned AO to verify the claim of

the Appellant in relation to such income and to treat the same as non-taxable in absence of permanent establishment.

2.3. The learned AO erred in concluding that the receipts from the sale of software licenses is taxable as FTS, while the learned DRP has directed the learned AO to treat the same as non-taxable following the decision of the Hon'ble Supreme Court in the case of Engineering Analysis Centre OF Excellence (P.) Ltd. vs. CIT [2021] 432 ITR 471 (SC). The applicability of the said decision of the Hon'ble SC has been upheld by the Hon'ble Delhi Tribunal in the Appellant's own case for A Y 2016-17 vide order dated 07.06.2022.

2.4. The learned AO grossly erred in re-characterizing the transaction in relation to income from the sale of software licenses as FTS, where under the same circumstances, for AY 2016-17, the Department has allegedly assessed the same as Royalty, thereby violating the principle of consistency.

Ground 3 - The learned AO and the learned DRP have erred in concluding that the income from the rendition of services is taxable in India.

3.1 The learned AO and the learned DRP have erred in concluding that the income from the rendition of services is taxable under India-Singapore Double Taxation Avoidance Agreement ('DTAA') without appreciating that the pre-condition under Article 12 to India Singapore DTAA of the services 'making available' technical know-how, knowledge, experience, etc. is not satisfied in the facts and circumstances of the present case.

3.2 The learned AO and the learned DRP ought to have appreciated that the receipt from the rendition of services is in the nature of business income, not chargeable to tax in light of Article 7 of the India Singapore DTAA.

Ground 4 - Without prejudice to the above grounds, the learned AO erred in not considering the beneficial rate under the India-Singapore Double Taxation Avoidance Agreement ('DTAA') to the Appellant

> 4.1 Without prejudice to the above grounds, the learned AO has erred in determining the tax liability considering the tax rate provided under the Act and not considering the beneficial rate Under the DTAA."

4. At the outset, ld. Counsel for the assessee submitted that the solitary grievance of the assessee is that AO has erred in treating the receipt of sale of software licences as fee for technical services in accordance with the provisions of section 9(1)(vii) of the Income-tax Act, 1961 (for short 'the Act') and Article 12 of the DTAA between India and Singapore.

5. In this case, during the assessment proceedings, the AO noted that during the year, the assessee received an amount of Rs.152,66,98,440/- from the sale and maintenance service of software licences. The assessee claimed the same as not taxable under Article 12 of the India- Singapore DTAA relating to royalty. However, AO was not convinced. He held that the consideration received by the assessee amounting to Rs.152,66,98,440/- is 'fee for technical services' under Article 12 of India-Singapore DTAA and IT Act. Assessee agitated the same before the DRP but did not succeed.

6. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.

7. Ld. Counsel for the assessee submitted that the issue is squarely covered in favour of the assessee by the decision of ITAT in assessee's

own case for AY 2016-17 in ITA No.9428/Del/2019 vide order dated 07.06.2022.

8. Per contra, ld. DR for the Revenue could not dispute this proposition.

9. Upon careful consideration, we note that on similar disallowance, ITAT in assessee's own case for AY 2016-17 (supra) has referred to Hon'ble Apex Court decision in the case of Engineering Analysis Center of Excellence Pvt. Ltd. (2021) 432 ITR 471 and decided the issue in favour of the assessee. We may refer the ITAT order as under :-

> "10. We have carefully considered the orders of the authorities below. We are of the considered view that the impugned quarrel is now well settled by the decision of the Hon'ble Supreme Court in favour of the assessee and against the Revenue in the case of Engineering Analysis Center of Excellence Pvt Ltd. [2021] 432 ITR 471 wherein the Hon'ble Supreme Court, in a bunch of appeals, conclusively held as under:
>
> > "168. Given the definition of royalties contained in Article 12 of the DTAAs mentioned in paragraph 41 of this judgment, it is clear that there is no obligation on the persons mentioned in section 195 of the income-tax Act to deduct tax at source, as the distribution agreements/EULAs in the facts of these cases do not create any interest or right in such distributors/end-users, which would amount to the use of or right to use any copyright. The provisions contained in the Income-tax Act (section 9(l)(vi), along with explanations 2 and 4 thereof), which deal with royalty, not being more beneficial to the assessees, have no application in the facts of these cases.
> >
> > 169. Our answer to the question posed before us, is that the amounts paid by resident Indian end-users/distributors to nonresident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software through EULAs/distribution agreements, is not the payment of royalty for the use of copyright in the computer software,

> and that the same does not give rise to any income taxable in India, as a result of 5 which the persons referred to in section 195 of the Income-tax Act were not liable to deduct any TDS under section 195 of the Income-tax Act. The answer to this question will apply to all four categories of cases enumerated by us in paragraph 4 of this judgment.
>
> 170. The appeals from the impugned judgments of the High Court of Karnataka are allowed, and the aforesaid judgments are set aside. The ruling of the AAR in Citrix Systems (AAR) (supra) is set aside. The appeals from the impugned judgments of the High Court of Delhi are dismissed."

13. Respectfully following the aforesaid decision of the Hon'ble Apex Court [supra], we direct the Assessing Officer to delete the impugned addition."

10. Respectfully following the aforesaid precedent, we decide the issue in favour of the assessee.

11. Our above order applies *mutatis mutandis* to both the assessment years.

12. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on this 13th day of September, 2023.

Sd/-	**sd/-**
(CHALLA NAGENDRA PRASAD)	**(SHAMIM YAHYA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated the 13th day of September, 2023
TS
Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.DRP
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.