

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "D" : DELHI]

BEFORE SHRI G. S. PANNU, PRESIDENT
A N D
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

आ.अ.सं./I.T.A No. 1783/Del/2022
निर्धारणवर्ष /Assessment Years: 2017-18

DCIT, Circle : 3 (1)(2) International Taxation, New Delhi.	<u>बनाम</u> Vs.	Siemens International Trading Limited, Shanghai, RM 515, South Building, Sanlian Tower 2, Haujing Rd., Waigaoqiao Free Tradezone, Shanghai-2001301, China.
		PAN No. AATCS6765Q
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकीओरसे /Assessee by :	None;
राजस्वकीओरसे / Department by	Shri Sanjay Kumar; Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	6/07/2023
उद्घोषणाकीतारीख/Pronouncement on	26/09/2023

आदेश / O R D E R

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the Revenue against the order of the Id. Commissioner of Income Tax (Appeals)-43 [hereinafter referred

to CIT (Appeals)] New Delhi, dated 2.05.2022 for the assessment year 2017-18 in allowing the claim for credit for TDS to the assessee.

2. In spite of issue of notices to the assessee none appeared nor any adjournment was sought. We also observe that when the appeal was fixed on 6.03.2023 the notice issued by Registered post with Acknowledgement due returned un-served by the Postal authorities with the remarks "LEFT". Therefore, we dispose of the appeal on merits on hearing the ld. DR.

3. Brief facts are that the assessee company filed return for the assessment year 2017-18 on 31.08.2017 declaring NIL income and claimed refund of Rs.1,26,71,067/- being TDS. The Assessing Officer completed the assessment under section 143(3) of the Income Tax Act, 1961 (the Act) on 11.03.2019 accepting the income returned. However, the claim for refund of TDS was denied for the following reasons:

IL and FS Rail Ltd. (IRL) had entered into a contract with Siemens Consortium comprising of Siemens Aktiengesellschaft (Siemens AG), Siemens Ltd. (Siemens Ltd. India) Siemens International Trading Ltd. (SITL) and Siemens Ltd. China (SLC) for execution of Rapid Metro Rail, Gurgaon South Extension Project and scope of work of the assessee company under the contract was limited to delivery of raling stock. SITL shall render off shore of raling stock i.e. supply of equipment and these equipment will be entirely made in China. The assessee has submitted that the

consideration in respect of the above scope of work is not chargeable to tax in India as the consideration would be paid by IRL in convertible foreign exchange directly into bank SITL outside India, SITL would not undertake any activities in India and hence revenue sent by SITL from such off shore supply of equipment are not taxable in India under provisions of the Act. The Assessing Officer observed that the assessee earned revenue of Rs.58.58 crores from off shore supply of equipment in connection with the contract on which payer has deducted TDS of Rs.1,26,71,067/- and since the corresponding income was not offered for taxation the assessee is not entitle for credit for TDS.

4. On appeal the ld. CIT (Appeals) held that the Assessing Officer is not correct in not granting credit for TDS observing as under:-

“5.1 The facts of the case disposed earlier for Assessment Year 2015-16, Appeal No.60/2017-18 are similar to the present case. The finding of the same are reproduced as under:

5.2 Ground No.1 & 2: The appellant in ground number 1 and 2 has submitted that credit for TDS has not been allowed simply on the ground that no income was offered by him corresponding to tax deducted. The appellant has stated that the assessing officer in the course of the assessment order himself admitted that income is not taxable in India in paragraph 3 of the Assessment Order. Despite this finding, the assessing officer proceeded to disallow the credit of withholding tax. The appellant has quoted a number of judgements wherein it has been held that credit of TDS is required to be allowed to the assessee from whose receipts, Income Tax was deducted and paid to the Government of India. The appellant has quoted a judgement of Escort Limited vs DCIT 15 SOT 368 in this regard.

5.3 The appellant was specifically asked to explain as to why the provisions of Rule 37BA(3) are not applicable to him. In this regard, the appellant explained that the rules are subservient to Section 199 and maybe read in harmony with the said section. It was also submitted that the tax was deducted on the instance of the revenue which was specified in the certificate issued under section 197. It was further stated that the term "assessable" should not mean that the amount per se is actually taxable. The arguments furnished by the appellant have been seen. The basic issue which arises from the aforesaid facts is that whether the credit for TDS is eligible to be refunded if the consideration did not yield any taxable income under the Income Tax Act. The rigid and literal interpretation of Rule 37BA may indicate that credit for tax deducted is only available against income declared corresponding to such receipts. This is however not logically correct. Once tax has been deducted and deposited, the deductee has a right to claim credit of that tax. This is borne out by a number of judgments quoted by the appellant in his submissions and also on prima facie facts. The credit available to the appellant may be eligible to him as a refund case the consideration on which the tax has been deducted is not taxable. This is the primary concept of taxation and withholding tax. Therefore, once the appellant's income is not held to be taxable in the current year, the credit for tax on such receipt cannot be denied to him. The AO therefore, is incorrect in not granting credit by application of Rule 37BA.

5.1.1 Further this was also held in Assessment year 2016-17 and 2018-19.

5.2 Ground no 2 and 3 raise the same issue. The above decision is followed in the present year as the facts are exactly similar in nature to the earlier Assessment Year 2015-16.

5.3 In view of the above discussion, the appeal for the present year is allowed. The AO therefore, is incorrect in not granting credit by application of Rule 37BA and the same is eligible to the appellant in view of the discussion above."

5. We further observe that the assessee contended before the ld. CIT (Appeals) that credit for TDS was denied on an incorrect premise that corresponding income was not offered to tax by the assessee in its return of income for the year under consideration. The assessee contended that the assessee had duly disclosed the revenue from the contract with IRL in its return of income and or during the course of assessment proceedings more particularly vide submission dated 10th September, 2018 and 25.11.2019. The assessee contended that the consideration received by SITL from IRL attributed to off shore supply of equipment shall not result in any income chargeable to tax in India in the hands of the assessee. Therefore, it is an incorrect assumption that the assessee has not disclosed the income for the assessment year under consideration. The assessee also contended that in its own case for assessment years 2015-16 and 2016-17 it was held that once the income is not liable to tax credit for tax on such receipt cannot be denied. All these submissions were duly considered by the CIT (Appeals) and allowed the credit for TDS since the Assessing Officer assessed the income of the assessee during the year under consideration at NIL. We further observe that similar claims were also allowed to the assessee for the assessment years 2015-16, 2016-17 and 2018-19 as observed by the ld. CIT (Appeals). In the circumstances we do not see any valid reason to interfere with the finding of the ld. CIT (Appeals) in holding that the assessee is entitled for credit for TDS for the year under consideration. Grounds raised by the Revenue are dismissed.

6. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on : 26/09/2023.

Sd/-
(G. S. PANNU)
PRESIDENT

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

Dated : 26/09/2023.

MEHTA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. आवेदक / Assessee
2. राजस्व / Revenue
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI /
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	21.09.2023
Date on which the typed draft is placed before the dictating Member	22.09.2023
Date on which the typed draft is placed before the Other Member	26.09.2023

I.T.A. No. 1783/Del/2022

Date on which the approved draft comes to the Sr. PS/PS	26.09.2023
Date on which the fair order is placed before the Dictating Member for pronouncement	26.09.2023
Date on which the fair order comes back to the Sr. PS/PS	26.09.2023
Date on which the final order is uploaded on the website of ITAT	26.09.2023
Date on which the file goes to the Bench Clerk	26.09.2023
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	