

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'D' BENCH,
NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT, AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 408/DEL/2022 [A.Y. 2019-20]

UI PATH SRL, C/o 11-A
Vishnu Digamber Marg
Delhi

Vs. The A.C.I.T.,
Circle 1(1)(2)
International Taxation
New Delhi

PAN - AACCU 5784 A

(Applicant)

(Respondent)

Assessee By : Shri Sachit Jolly, Adv
Ms. Soumya Singh, Adv

Department By : Shri Sanjay Kumar, Sr. DR

Date of Hearing : 04.10.2023

Date of Pronouncement : 06.10.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 42, Delhi dated 30.12.2021 pertaining to Assessment Year
2019-20.

2. The grievances of the assessee read as under:

"1. On the facts and circumstances of the case & in law, the order passed under section 250 of the Income-tax Act, 1961 ('the Act') dated 30 December 2021 by the Learned Commissioner of Income Tax Appeal, Delhi-42 ('Ld. CIT(A)') is bad in law.

2. On the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in applying the ratio of *Goetze India Ltd* [[2006] 284 ITR 323 (SC)] and denying the claim of additional credit of taxes deducted at source (TDS') amounting to INR 3,01,78,429 on the software license income, claimed as not chargeable to tax in the return of income, during the appellate proceedings in addition to the TDS credit claimed by the appellant in its return of income.

3. On the facts and circumstances of the case & in law, the Ld. CIT(A) has erred in holding that corresponding income against additional TDS credit of INR 3,01,78,429 has not been offered for taxation and claimed as exempt in return of income without appreciating that the same is assessable in the year under consideration and has been claimed in return of income as not chargeable to tax under India-Romania Double Taxation Avoidance Agreement.

4. On the facts and circumstances of the case & in law, the Ld. CIT(A) grossly erred in not appreciating the returned position of the appellant that income from distribution *I* sale of software license is not chargeable to tax in view of the Hon'ble Supreme Court's judgement in case of Engineering Analysis Centre of Excellence Private Limited [2021] 432 ITR 471, and the additional TDS credit claimed during appellate proceedings be allowed as refund since income itself is not chargeable to tax.

5. On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in holding that the appellant did not pursue the relevant deductors to revise their TDS return to include appellant's PAN, thereby resulting in short TDS credit of INR 53,68,048 to the appellant.

6. On the facts and circumstances of the case & in law, the Ld. CIT(A) erred in upholding the order of the Learned Assessing Officer, CPC for the charge of interest under section 234A, 234B and 234C of the Act.

The grounds mentioned herein are without prejudice to one another.

The Appellant craves leave to add to and/or to alter. amend. rescind. modify the grounds herein above or produce "

3. Briefly stated, the facts of the case are that the assessee filed its return of income electronically on 07.10.2020. The said return was processed and intimation u/s 143(1) of the Income-tax Act, 1961 [the

Act, for short] was issued vide order dated 23.12.2020 by which demand of Rs. 72,67,600/- was created. Credit of TDS was denied.

4. The matter was agitated before the ld. CIT(A) but without any success.

5. Before us, the ld. counsel for the assessee brought to our notice that a total income of Rs. 7,00,28,704/- comprising of income from professional services under the provisions of DTAA between India and Romania was returned, on which tax payable was computed at Rs. 70,02,870/-.

6. The ld. counsel for the assessee explained that the assessee has claimed credit for withholding tax aggregating to Rs. 70,12,874/-. It is the say of the ld. counsel for the assessee that credit of tax was restricted to Rs. 17,46,011/- which resulted into demand of Rs. 72,67,600/-. The ld. counsel for the assessee explained that the assessee company did not have PAN in India during the F.Y.2018-19 relevant to A.Y 2019-20. Therefore, TDS was not tagged to the PAN of the company for income received during the year and, therefore,

credit for such tax deducted at source is not reflecting completely in Form 26AS.

7. The ld. counsel for the assessee drew our attention to the Transaction Based Reports from the portal of the Income tax Department to show that the taxes have been deducted at source by deductors and the same can be verified. The ld. counsel for the assessee further pointed out that the assessee has also earned income of Rs. 61,86,58,610/- from sale of software licensing in India, which was not returned for taxation purposes as the same were not chargeable to tax in India as per provisions of Article 12 of the treaty.

8. The ld. counsel for the assessee stated that the claim of additional credit for tax deducted at source was inadvertently not factored in the return of income but claimed before the ld. CIT(A), which was denied by the ld. CIT(A) drawing support from the decision of the Hon'ble Supreme Court in the case of Goetz India Ltd 284 ITR 323. The ld. counsel for the assessee prayed for restoration of the appeal to the file of the Assessing Officer for verification of the claim of TDS.

9. Per contra, the ld. DR strongly supported the findings of the ld. CIT(A) but fairly stated that the claim of the assessee needs further verification.

10. We have given thoughtful consideration to the orders of the authorities below. There is no dispute that since the assessee was not having PAN, taxes deducted by the deductors could not be tagged alongwith PAN details in Form No. 26AS. It is also true that in the Transaction Based Report, generated from portal of the Income tax Department, tax has been deducted at source standing credit in the name of the assessee.

11. We have verified the said reports exhibited at pages 88 to 118 of the Paper Book. We also find that the assessee has shown sales of software licensing amounting to Rs. 61,86,58,610/- in its return of income as not chargeable to tax under DTAA. It is true that the assessee did not claim TDS in its return of income but it is equally true that the claim was made before the ld. CIT(A).

12. In our considered opinion, if tax has been deducted at source by the payer, then the assessee ought to get credit of the said TDS. We, therefore, in the interest of justice and fair play, restore the entire quarrel to the file of the Assessing Officer. The Assessing Officer is directed to examine:

- (i) Transaction Based Reports to evidence the deduction of tax by deductors, and if found correct, allow the claim of TDS to the assessee;
- (ii) Examine the additional claim of TDS on the income not chargeable to tax under DTAA and allow the claim as per provisions of law.

13. In the result, the appeal of the assessee in ITA No. 408/DEL/2022 is allowed.

The order is pronounced in the open court on 06.10.2023.

Sd/-

**[SAKTIJIT DEY]
VICE PRESIDENT**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 06th October, 2023.

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	