

आयकर अपीलिय अधिकरण
मुंबई पीठ "आई", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
सुश्री पद्मावती. एस, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " I", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आअसं. 1447/मुं/2023 (नि. व. 2017-18)
ITA NO.1447/MUM/2023 (A.Y.2017-18)

DCIT-3(4), Mumbai,
29th Floor, Center-1, World Trade Center,
Cuffe Parade,
Mumbai – 400 005

..... अपीलार्थी/ Appellant

बनाम Vs.

M/s. Tata Consultancy Services Limited,
9th Floor, Nirmal Building,
Nariman Point, Mumbai 400 020.
PAN: AAACR-4849-R

..... प्रतिवादी/ Respondent

Revenue by : Shri Sandeep Raj – CIT DR
Assessee by : Shri Porus Kaka with
Shri Manish Kanth

सुनवाई की तिथि/ Date of hearing : 09/08/2023
घोषणा की तिथि/ Date of pronouncement : 27/09/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the Revenue is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short the 'CIT(A)'] dated 27/02/2023, for the Assessment Year 2017-18.

2. The Revenue in appeal has assailed the order of CIT(A) on following grounds:

(i) Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in deleting addition of "State Taxes" paid overseas amounting to Rs 26,48,96,494/- to book profit u/s 215JB by holding that ' State taxes' do not come under the preview of section 40(a)(ii) of the I.T.Act?

(ii) Whether on the facts and circumstances of the case, the Ld CIT(A) erred in deleting the addition of "State Taxes" paid overseas amounting to Rs26,48,96,494/- to book profit u/s 115JB without appreciating that section categorically disallows ' Any rate of taxes' levied on the profit & gain of the business of the assessee?

(iii) Whether on the facts and circumstances of the case, the Ld CIT(A) erred in deleting the addition of "State Taxes" paid overseas amounting to Rs26,48,96,494/- to book profit u/s 115JB without appreciating that the matter has not reached finality and appeals of the Department on this issue are pending before the Hon'ble High Court?

3. Shri Porus Kaka appearing on behalf of the assessee submitted at the outset that the only issue raised by the Revenue in appeal is disallowance of " State Taxes " paid overseas u/s. 40(a)(ii) of the Income Tax Act, 1961[in short 'the Act']. The Id.Counsel for the assessee submits that return of the assessee was processed u/s. 143(1) of the Act vide intimation dated 30/03/2019. While computing book profit u/s. 115JB of the Act, 'State Taxes' paid overseas were also added. The assessee carried the issue in appeal before the CIT(A). The CIT(A) following the order of Tribunal in assessee's own case in ITA No.5713/Mum/2016 for Assessment Year 2009-10 dated 30/10/2019 deleted the addition. The Id.Counsel for the assessee pointed that the Assessing Officer has already given effect to the order of Tribunal for Assessment Year 2009-10. He referred to the assessment order dated 27/05/2022 passed u/s. 143(3) r.w.s. 254 r.w.s. 144C of the Act at page 64 to 73 of the legal paper book. The Id.Counsel for the assessee further submitted that the issue is recurring since assessment year 2007-08. The Tribunal in ITA

(TP) No.3262/Mum/2017 decided the issue in favour of assessee. Similar addition was made in the Assessment Year 2012-13 and 2013-14. The Tribunal following the order of Co-ordinate Bench in preceding Assessment Years allowed the assessee's appeal.

4. Per contra, Shri Sandeep Raj representing the Department vehemently defended the assessment order and prayed for reversing the findings of CIT(A). However, the Id. Departmental Representative fairly stated that the issue raised in the present appeal was considered by the Tribunal in assessee's own case for the preceding Assessment Years. The Tribunal restored the issue back to the file of Assessing Officer with a specific direction. The present appeal may be decided on similar lines.

5. The Id.Counsel for the assessee vehemently stated that the Assessing Officer has not disputed payment of State Taxes overseas nor the quantum of overseas State Taxes paid are in dispute, therefore, no useful purpose would be served for restoring this issue back to the file of Assessing Officer.

6. We have heard the submissions made by rival sides and have examined orders of authorities below. We have also considered the decisions of the Tribunal on which the Id.Counsel for the assessee has placed reliance in support of his submissions. The solitary issue in appeal is disallowance of State Taxes paid overseas u/s. 40(a)(ii) of the Act. We find that the issue is squarely covered by the decision of Co-ordinate Bench of Tribunal in assessee's own case in ITA No.5713/Mum/2016 for Assessment Year 2009-10(supra). The Tribunal after considering the submissions of the assessee has held as under:-

“6. We have considered the rival submissions and perused the material on record. From the stage of the assessment proceeding itself, it is the claim of the assessee that the term “tax”, as defined under section 2(43) of the Act would only include taxes chargeable under the Indian Income Tax Act. It is the further case of the assessee that since in respect of the State taxes paid overseas, the assessee is not eligible to claim relief under section 90 or 91 of the Act, it will not be covered under section 40(a)(ii) of the Act. On a perusal of provisions of sub-section (43) of section 2 of the Act, it becomes clear that the term “tax” has been defined to mean any tax paid under the provisions of the Act. Section 40(a)(ii) of the Act says that any rate or taxes levied on the profits or gain in any business or profession would not be allowable as deduction. Explanation-1 to section 40(a)(ii) of the Act inserted by the Finance Act, 2006, w.e.f. 1st April 2006, further clarifies that any sum eligible for relief of tax either under section 90 or 91 of the Act would not be allowable as deduction under section 40(a)(ii) of the Act. It is the say of the assessee that the tax eligible for relief under section 90 of the Act are only those taxes which are levied by Federal / Central Government and not by any local authority of State, City or County. Thus, it is ineligible for any relief under section 90 of the Act. The aforesaid submissions of leaned Sr. Counsel for the assessee, prima facie, is acceptable if one has to strictly go by the meaning of “tax”, defined under section 2(43) of the Act, as it only refers to tax paid under the provisions of the Act. It is also worth mentioning, the State taxes paid by the assessee in DTAA countries are not eligible for relief under section 90 of the Act. Therefore, the issue which arises is, whether it can be allowed as deduction under section 37 of the Act. No doubt, in assessee’s own case in assessment year 2005-06, the Tribunal in the order referred to above following its own decision in DCIT v/s Tata Sons Ltd., [2011] 43 SOT 27 (Mum.), has held that the State taxes paid overseas cannot be allowed as deduction in view of the provisions of section 40(a)(ii) of the Act. However, the aforesaid legal position has substantially changed after the decision of the Hon’ble Jurisdictional High Court in Reliance Infrastructure Ltd. (supra). While interpreting the provisions of section 2(43) of the Act, vis-a- vis section 40(a)(ii) of the Act, the Hon’ble Court held that the tax which has been paid abroad would not be covered within the meaning of section 40(a)(ii) of the Act, since, the meaning of the word “tax” as defined under section 2(43) of the Act would mean only the tax chargeable under the Act. Thus, as per the aforesaid decision of the Hon’ble Jurisdictional High Court, taxes levied overseas which are not eligible for relief either under section 90 or 91 of the Act, would not come within the purview of section 40(a)(ii) of the Act. It is the specific plea of the assessee that the State tax is not covered either under Indo-US or Indo-Canada tax treaty, hence, not eligible for any relief under section 90 of the Act. Pertinently, unlike section 91 read with Explanation-(iv), section 90 does not provide for inclusion of tax levied by any State/ local authority of that country within the expression ‘income tax’. In view of the aforesaid, we direct the Assessing Officer to verify whether the State taxes paid by the assessee overseas are eligible for any relief under section 90 of the Act and if it

is not found to be so, assessee's claim of deduction should be allowed. In view of our decision above, no separate adjudication of grounds no.1.2 is required."

Thus, the Co-ordinate Bench restored the issue to the Assessing Officer to verify whether State Taxes paid overseas are eligible for any relief u/s. 90 of the Act.

6. The Assessing Officer in Order Giving Effect after examining the DTAA between India and USA and the provisions of the Act concluded that the State Taxes are not eligible for relief u/s. 90 of the Act and allowed the assessee's claim of deduction. We find that the issue in present appeal is pari-materia to the issue already decided by the Co-ordinate Bench in assessee's own case in Assessment Year 2009-10. We further observe that similar disallowance was made by the Assessing Officer in 2012-13 and 2013-14. The assessee carried the issue in appeal before the Tribunal in ITA No.797/Mum/2018 for Assessment Year 2012-13 and ITA No.1769/Mum/2018 for Assessment Year 2013-14. The Co-ordinate Bench vide order dated 11/04/2022, common for both the Assessment Years disposed off the issue following the order in ITA No.5713/Mum/2016 (supra). As pointed earlier, the Assessing Officer has already examined the issue while giving effect to the Tribunal order for Assessment Year 2009-10 and has given a categorical finding that, "*since the State Taxes are not eligible for relief u/s. 90 of the Act, the claim of deduction is allowed.*" No meaningful purpose would be served to again send the issue back to Assessing Officer, especially when no material is placed on record by the Department to show any distinction in the impugned assessment year. We see no reason to send the issue back to the file of Assessing Officer. We find

no infirmity in the impugned order on this issue, consequently, appeal of the Revenue is dismissed being devoid of any merit.

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

Order pronounced in the open court on Wednesday the 27th day of September, 2023.

Sd/-

(PADMAVATHY. S)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 27/09/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt.Registrar)/Sr. Private Secretary ITAT,
Mumbai