

**IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI**

BEFORE SHRI PRASHANT MAHARISHI, AM  
&  
SHRI RAHUL CHAUDHARY, JM

**ITA No. 1974/Mum/2023**

(Assessment Year 2018-19)

The Deputy Commissioner of  
Income tax  
Circle 16 (2)  
Room No 625, Ayakar Bhavan  
M K Road  
Mumbai 400020

Vs.

KPMG Assurance & consulting  
Services LLP  
8<sup>th</sup> Floor Tower B  
DLF Building No 10  
Gurgaon, Haryana

**(Appellant)**

**(Respondent)**

**PAN No. AAAPK1415H**

**Appellant by** : Shri Anil Sant, SR DR  
**Respondent by** : Shri Ajit Jain & Sailesh  
Nayampalli, ARs

<b>Date of hearing:</b>	23.08.2023
<b>Date of pronouncement :</b>	30.10.2023
<b>Date of Corrigendum</b>	29.11.2023

**CORRIGENDUM ORDER**

01. Order dated 31.10.2023 passed in the above matter has some typographical errors as under :-

a) On page 9, last line of para 9, the word "allowed" to be substituted by "upheld".

b) On page 11, last line of para 12, the word "allowed" to be substituted by "dismissed."

02. Accordingly, Para No 9 and 12 are read as under :-

9. With respect to the second issue in the appeal of payment of ₹ 434,019,511 paid to KPMG corporate Switzerland he submitted that this issue has been decided by the coordinate bench in assessee's own case for assessment year 2001 - 02 is per order dated 7 April 2017 and therefore this issue is also squarely covered in favour of the assessee, same has not been challenged by the learned assessing officer before the higher forum. Accordingly, he submitted that the order of the learned CIT - A on the second issue also deserves to be allowed upheld

12. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that ground number 1 - 4 of the appeal of learned assessing officer is with respect to the deduction of tax at source on professional fees paid to various outside consultants outside India amounting to ₹ 79,915,590/- on which the tax has not been deducted by the assessee and therefore same has been disallowed. While deciding the issue the learned CIT - A has referred to the several judicial precedent of BSR and Co LLP on identical issue wherein it has been held that no tax is required to be deducted at source on various payments to the foreign consultant because of the reason that the services do not 'make available' those services to the assessee. Wherever the Double Taxation Avoidance Agreement did not contain the article of Fees For Technical Services, we are of the opinion that it cannot go to the article of 'other income' only because of the reason that FTS article is not there in the Double Taxation Avoidance Agreement. To bring it under article " other Income " , it has to be established first that income stream does not fall in any other article

of DTAA. Undisputedly, all the recipient are in the business of the services. Therefore their income first classifies under article of Business income. In absence of permanent Establishment, it cannot be taxed in source country [India]. Therefore it goes out of the residuary article of 'Other income'. Revenue could not point out that those entities' income is not business income. Revenue also could not show that why those decisions do not apply to the facts of the case of the assessee wherein the identical jurisdiction and identical services are involved. In view of this ground number 1 – 4 of the appeal of learned AO is ~~allowed~~ dismissed.

The Order dated 31.10.2023, is modified to this extent only.

Sd/-  
(RAHUL CHAUDHARY)  
(JUDICIAL MEMBER)

Sd/-  
(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated: 29. 11.2023

*Sudip Sarkar, Sr.PS*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

True Copy//

Asst. Registrar  
Income Tax Appellate Tribunal, Mumbai