

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A", HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA Nos.260 to 262/Hyd/2023**
(निर्धारण वर्ष / Assessment Years: 2009-10, 2011-12 and 2014-15)

Netosis Private Limited, 9-14, Isnapur Village, Pashamylaram IDA, Sangareddy – 502307, Medak, Telangana. PAN : AAACC8221G.	Vs.	ACIT, Circle 8(1), Hyderabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारित द्वारा/Assessee by: Shri Sashank Dundu,
Advocate.
राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, Sr.AR

सुनवाई की तारीख/Date of hearing: 23.11.2023
घोषणा की तारीख/Pronouncement on: 23.11.2023

ORDER

PER BENCH:

The captioned appeals are filed by the assessee feeling aggrieved by the separate orders of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi dt.16.03.2023 invoking proceedings under sections 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short, "the Act"), respectively.

2. First we take the appeal of assessee in ITA No.260/Hyd/2023 for A.Y. 2009-10. In this appeal, though the assessee has raised as many as nine grounds, out of them, grounds 3, 4 and 6 are only the effective grounds. Grounds 3 and 4 are with respect to passing of exparte order by the Id.CIT(A) and ground no.6 is with respect to disallowance u/s 40(a)(ia) of the Act at Rs.3,54,62,432/- on Royalty and SAP maintenance expenditure.

3. In the other two appeals of assessee i.e., ITA Nos.261 and 262/Hyd/2023, though assessee has raised many grounds, however, all the grounds are similar to that of the grounds of ITA No.260/Hyd/2023 except the amounts involved. Hence, we are not reproducing all those grounds for the sake of brevity.

4. As the facts and issues in all the three appeals are same, we are reproducing the facts of appeal in ITA No.260/Hyd/2023 for the sake of brevity.

5. The brief facts of the case are that assessee is engaged in the business of manufacture of Welded Stainless Steel Tubes. Assessee filed its return of income on 29.09.2009 admitting loss of Rs.1,00,16,981/-. The case was selected for scrutiny and notices were issued u/s 148 and 143(2) of the Act. In reply thereto, assessee submitted the information. During the course of scrutiny, the Assessing Officer has examined the claim of expenditure of Rs.2,52,08,526/- on account of Royalty and Rs.1,02,53,906/- on account of SAP maintenance expenses which were debited to the Profit and Loss account and subjected the same to disallowance u/s 40(a)(ia) of the Act and thereafter passed assessment order u/s 143(3) r.w.s. 147 of the Act.

6. Feeling aggrieved with the orders passed by the assessing officer, assessee filed the captioned appeals before the ld.CIT(A), who dismissed the appeals of assessee.

6.1 Aggrieved with the orders of ld.CIT(A), assessee is now in appeal before us.

7. Before us, ld. AR submitted that the ld.CIT(A) has not considered the impact of the DTAA between India and France by virtue of which the income is chargeable on receipt basis and TDS was required to be deduced based on that only. It was also submitted that as per Para 5 of ld.CIT(A), the case was decided exparte as the assessee failed to comply notice dt.24.12.2020 and 23.02.203. Para No.5 of the order of ld.CIT(A) reads as under :

“5. The following notices were given to appellant. The detailed chart regarding this is given as under :

<i>Notice issued u/s 250</i>	<i>Issued Date</i>	<i>Fixing for hearing</i>	<i>Remarks</i>
<i>ITBA/NFAC/F/APL_1/2020-21/1029218356(1)</i>	<i>24.12.2020</i>	<i>08.01.2021</i>	<i>Uncompiled by the appellant / assessee</i>
<i>ITBA/NFAC/F/APL_1/2022-23/1050037042(1)</i>	<i>23.02.2023</i>	<i>02.03.2023</i>	<i>Uncompiled by the appellant / assessee</i>

In response to the “Notice of Hearing” neither appellant nor his representative filed / forwarded any submissions.”

8. Per contra, ld. DR submitted that the assessee has not appeared before the lower authorities. Further, it was submitted that the provisions of DTAA will only come into play when the assessee prepared the accounts on the basis of receipt basis rather than accrual basis. It was submitted that the assessee has prepared the accounts on account of accrual basis and therefore,

the assessee was required to deduct the tax on the basis of accrual basis as per the mandate of law. Further, it was submitted that since the assessment was exparte before the lower authorities, Revenue has no objection if the matter is remanded back to the file of lower authorities.

9. We have heard the rival submissions and perused the material on record. In view of the submissions of both the parties, we feel it appropriate to remand back the matter to the file of Id.CIT(A) as sufficient opportunity was not granted by the Id.CIT(A), with a direction to consider all the submissions made by the assessee and shall also consider the inter-play of DTAA and the domestic laws vis-à-vis the account treatment given by the assessee for the expenditure incurred towards the payments of Royalty and SAP maintenance expenditure by the assessee and the impact of non- deduction of TDS on such income. The Id.CIT(A) is expected to apply his mind and also consider the binding decisions of the Tribunal and Hon'ble High Courts / Hon'ble Supreme Court on this issue and accordingly, decide the issue. With these directions, the appeal of assessee is remanded back to the file of Id.CIT(A) with a direction to pass a fresh speaking order after giving due opportunity of hearing to the assessee, in accordance with law. The assessee shall be at liberty to file documents, if any, as required for proving its case and the Id.CIT(A) shall consider such evidences, if any, filed by the assessee. Needless to say the Id.CIT(A) shall examine those documents / evidence filed by the assessee and also the other documents available on record. Accordingly, the appeal of assessee is allowed for statistical purposes.

10. In the result, the appeal of assessee in ITA No.260/Hyd/2023 is allowed for statistical purposes.

11. As far as the other appeals of assessee i.e., ITA No.261 and 262/Hyd/2023 are concerned, in view of the submissions of both the parties that the issues raised in ITA No.260/Hyd/2023 are identical to the issues raised in other appeals, except the amounts involved, we for the reasons stated hereinabove while deciding the appeal in ITA No.260/Hyd/2023 and for similar reasons, allow the appeals of assessee for statistical purposes.

12. In the result, the appeals of assessee in ITA No.261 and 262/Hyd/2023 are also allowed for statistical purposes.

13. To sum up, all the appeals of assessee are allowed for statistical purposes. A copy of the same may be placed in the respective case files.

Order pronounced in the Open Court on 23rd November, 2023.

Sd/-

Sd/-

(R.K. PANDA) VICE PRESIDENT	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 23rd November, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Netosis Private Limited, 9-14, Isnapur Village, Pashamylaram IDA, Sangareddy – 502307, Medak, Telangana.
2	The Assistant Commissioner of Income Tax, Circle – 8(1), Hyderabad.
3	Pr.CIT, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order