

**IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT(IT)A Nos. 1080 & 1081/Bang/2023
Assessment Years : 2014-15 & 2015-16

M/s. Lemnisk Pvt. Ltd., 3 rd Floor, 3 rd Main Road, No. 45, Chennamanakere Achukattu, Banashankari 3 rd Stage, Bangalore – 560 085. PAN: AACCV8881B	Vs.	The Deputy Commissioner of Income Tax (International Taxation), Circle 2(2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri K. Sheshadri, CA & Shri Bharadwaj Sheshadri, Advocate
Revenue by	:	Shri D.K. Mishra, CIT DR

Date of Hearing	:	31-01-2024
Date of Pronouncement	:	31-01-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeals arises out of the separate orders both dated 17.10.2023 passed by the Ld.Addl./JCIT (A)-2, Chennai for A.Ys. 2014-15 and 2015-16.

Grounds raised by the assessee for A.Y. 2014-15

<u>Sl. No.</u>	<u>Grounds of Appeal</u>	<u>Tax Effect in rupees</u>
1	The impugned order of the learned Additional/JCIT(A)2, Chennai [hereafter, "the JCIT(A)"] is bad in law, suffers from non-application of mind, is violative of the principles of natural justice, and deserves to be quashed.	7,73,45,604
2	The learned JCIT(A) erred in dismissing the appeal on the mistaken presumption that the Appellant had opted for Vivad Se Vishwas Scheme 2020.	7,73,45,604
3	The learned JCIT(A) erred in not disposing of the appeal on merits with a speaking order.	7,73,45,604
4	The learned JCIT(A) erred in not setting aside the order of the AO holding the appellant as assessee in default u/s 201(1) of the Act.	7,73,45,604
5	The learned JCIT(A) erred in not setting aside the order of the AO that online advertisement charges are liable for TDS under section 195.	5,78,91,378
6	The learned JCIT(A) erred in not setting aside the order of the AO holding that web hosting charges are liable to TDS under section 195.	1,81,19,552
7	The learned JCIT(A) erred in not setting aside the order of the AO holding that professional charges are liable to TDS under section 195.	13,34,674
8	The learned JCIT(A) erred in not considering the beneficial provisions of DTAA between India and respective countries.	7,73,45,604
9	The learned JCIT(A) ought to have noted that the AO failed to appreciate that the appellant was not liable to deduct the tax at source under section 195 under the facts and circumstances of the case.	7,73,45,604
10	The learned JCIT(A) erred in not deleting and correcting the interest under section 201(1A).	Not quantified in the order
11	The Appellant craves leave to add to, amend, alter, vary and/ or	7,73,45,604
	withdraw any or all of these grounds of appeal which are without prejudice to one another. For these and other grounds that may be adduced at the time of hearing, the impugned order of the JCIT(A) may be set aside in the interests of justice.	
	Total Tax Effect	7,73,45,604 plus unquantified interest under section 201(1A)

Similar grounds have been raised by assessee for A.Y. 2015-16 also.

2. Brief facts of the case are as under:

2.1 The assessee is a private limited company incorporated under the provisions of the Companies Act, 1956 and is engaged in the business of retargeting, i.e., targeting the customers based on their movements on the customers website, social media, etc. The customers of the assessee are located at different geographical locations across the world. It is submitted that the assessee incurred certain expenses towards online advertising, Web hosting Charges and professional charges during the impugned FY 2014-15 and the payments in respect of the same were made to the foreign vendors.

2.2 It is submitted that the assessing officer issued notices u/s 201(1) & 201(1A) of the Act and the assessee was asked to provide details/documents. In response to the notice, the assessee submitted the required details / documents / information from time to time. It is submitted that after considering all the submissions by the assessee, the Ld.AO concluded the proceedings vide order u/s 201 & 201(1A) of the Act dated 30/03/2021 and 26/02/2022 for A.Ys. 2014-15 and 2015-16 respectively. The Assessing officer held the Assessee Company as Assessee deemed to be in default u/s 201(1) for non-deduction of tax at source u/s 195.

2.3 Aggrieved by the order of the Ld.AO, the assessee filed appeals before the Ld.CIT(A).

2.4 The Ld.CIT(A) while considering the issues dismissed the appeal as withdrawn by holding as under:

“2. During the pendency of appeal proceedings, the appellant has opted for Vivad Se Viswas Scheme (VSVS), 2020 and has since been issued order in Form No.5 for full and final settlement of tax arrears under section 5(2) read with section 6 of the Direct Tax Vivad Se Viswas Act, 2020 (3 of 2020) by PCIT vide Acknowledgement No.244670150080221 dated 08.02.2021 certifying therein that a sum of Rs.0 has been paid by the declarant towards full and final settlement of tax arrears determined in the order No.220290010190121 dated 19.01.2021.

3. Keeping the above facts in view, appeal filed by the appellant against the order dated 30.03.2021 passed u/s 201 of the Income-tax Act, 1961 by DCIT (IT) CIRCLE 2 (2) BANGALORE or the A.Y.2014-15 is deemed to have been withdrawn by the appellant in terms of the VSVS and accordingly, the appeal is hereby dismissed as withdrawn.”

Identical order was passed for A.Y. 2015-16 also.

2.5 Aggrieved by the orders of the Ld.CIT(A), the assessee preferred appeals before this *Tribunal*.

3. The Ld.AR submitted that, the assessee preferred Vivad Se Vishwas Act, 2020 scheme benefits for issues alleged in *IT(TP)A Nos. 2635 & 2636/Bang/2019* for A.Ys. 2014-15 and 2015-16, whereas the present appeals are against the proceedings u/s. 201 and 201(1A) of the Act. It is submitted that these appeals deserves to be remanded to the Ld.CIT(A) to consider the issues on merits as the issues alleged herein have not been settled by the assessee under Vivad Se Vishwas Act, 2020.

3.1 The Ld.DR supported the argument of the Ld.AR

We have perused the submissions advanced by both sides in the light of records placed before us.

4. We note that this *Tribunal* passed the order dismissing the appeal wherein assessee has settled different issues under Vivad Se Vishwas Act, 2020 vide order dated 21.01.2021, a copy of the said order has been placed on record for perusal. The issues raised by the assessee in present appeals are in respect of penalty and interest levied u/s. 201 and 201(1A) of the Act for non-deduction of TDS u/s. 195.

5. Further, the Ld.CIT(A) did not consider the issues on merits and dismissed the appeals as withdrawn under Vivad Se Vishwas Act, 2020 under mistaken fact. It is necessary therefore to remand these appeals back to the Ld.CIT(A) for readjudicating the issues contested on merits by the assessee. The Ld.CIT(A) is directed to pass a detailed order on merits by granting proper opportunity of being heard to the assessee.

Accordingly, the grounds raised by the assessee stands allowed for statistical purposes.

6. Applying the same *mutatis mutandis*, the grounds raised by the assessee for Assessment Year 2015-16 also stands allowed for statistical purposes.

In the result, both the appeals filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 31st January, 2024.

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(BEENA PILLAI)
Judicial Member

Bangalore,

Dated, the 31st January, 2024.

/MS /

Copy to:

- | | |
|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore