

आयकर अपीलीय अधिकरण “ए” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, CHENNAI

माननीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं
माननीय श्री मनोमोहन दास, न्यायिक सदस्य का समक्ष।
BEFORE HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM,
AND HON’BLE SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं./ ITA No.906/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2016-17)

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आयकर अपील सं./ ITA No.907/Chny/2023
(निर्धारण वर्ष / Assessment Year: 2016-17)

Mrs. Elizabeth Sima Puthran Prop. M/s. Puthran & Associates No.B3, 5/7, Kesavan Orchid, North Mada Street, Sri Nagar Colony, Saidapet , Chennai-600 015.	बनाम / Vs.	ITO Ward-(1) International Taxation, Chennai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAEPE-0124-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri T.Banusekar (Advocate)-Ld. AR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri AR. V. Sreenivasan (Addl.CIT)- Ld. Sr. DR

सुनवाई की तारीख/ Date of final Hearing	:	05-03-2024
घोषणा की तारीख / Date of Pronouncement	:	06-03-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. The grievance of the assessee in aforesaid appeals for Assessment Year (AY) 2016-17 is demand raised by Ld. AO u/s 201(1) / 201(1A) of the Income Tax Act In view of the fact that the assessee failed to deduct Tax at source (TDS) on certain foreign payments. In ITA No.906/Chny/2023, the assessee has assailed demand raised u/s 201(1)

whereas in ITA No.907/Chny/2023, the assessee has assailed the computation of interest u/s 201(1A) against TDS demand though only one order has been passed by Ld. Assessing Officer (AO) u/s 201 (1) / 201(1A) of the Act on 13.03.2020 which has been disposed-off by Ld. Commissioner of Income Tax (Appeals)-43, Chennai [CIT(A)] in ITA No. NFAC/2015-16/10026998 on 21.06.2023.

2. The Ld. AR advanced arguments and submitted that the assessee is a proprietrix of a law firm M/s Puthran & Associates. It availed certain services from outside India in the field of IPR, trademarks etc. The Ld. AR submitted that these services would fall under specific provisions of 'Independent professional services' as per Double Taxation Avoidance Agreement (DTAA) with respective countries. The Ld. AR submitted that though elaborate arguments, in this regard, were made before first appellate authority, the same were not considered by Ld. CIT(A). The Ld. Sr. DR, on the other hand, submitted that this plea was not taken by the assessee before Ld. AO. The Ld. Sr. DR also submitted that the services would fall under 'Fees for Technical Services'. Having heard rival submissions and upon perusal of case records, the appeals are disposed-off as under.

3. From case records of ITA No.906/Chny/23, it emerges that the assessee paid an amount of Rs.59.83 Lacs to various non-residents without deduction of tax at source (TDS). The assessee submitted that foreign law firms had no permanent establishment in India and therefore no TDS was required on such payments. The assessee, in statement recorded on 18.01.2019, pleaded that the services rendered by foreign attorneys was legal services and not in the nature of technical services.

The legal services were rendered outside India by law firms who had no place of business in India and therefore, no TDS was required. The legal services were not part of technical services under 'Fees for Technical Services' (FTS). The assessee also submitted that 'make available' clause was not satisfied. It was also pointed out that the amount of Rs.34.22 Lacs includes official filing fees paid to the Government of respective foreign countries for registration of IPR and reimbursement of expenses incurred by such non-resident professional. However, Ld. AO noted that the amount of Rs.34.22 Lacs was made to different countries which did not have 'make available' clause in DTAA. The Ld. AO concurred that if relevant DTAA provides the clause of 'independent professional services' which includes legal services, the assessee would be eligible to avail the benefit.

4. Proceeding further, applying the provisions of Sec. 9(1)(vii)(b), Ld. AO held that these services would be 'fees for technical services' which would attract TDS provisions. Finally, Ld. AO raised demand of Rs.3.42 Lacs u/s 201(1) against payment of Rs.34.22 Lacs and also levied interest u/s 201(1A) for Rs.1.81 Lacs. The aforesaid amount of Rs.34.22 Lacs excluded the remittance made to 3 countries viz. Bangladesh, Switzerland & Hong Kong where DTAA provided the clause of independent professional services which include legal services.

5. The Ld. CIT(A), without considering the plea of the assessee qua independent professional services, concurred with the stand of Ld. AO and upheld the demand. Aggrieved, the assessee is in further appeal before us.

6. The Ld. AR has tabulated each of the impugned payment of Rs.34.22 Lacs as made by the assessee to various payees. The Ld. AR submitted that these payments include reimbursements of expenses which do not require any TDS. The Ld. AR also submitted that all these payees are covered under DTAA which has independent professional service clause in their DTAA. In support, the extract from respective DTAAs has been placed in the paper-book. We find that Ld. AO has already allowed benefit of such clause with respect to three countries. Considering the plea of Ld. AR and keeping in mind the fact that the issues raised by the assessee, in this regard, were not addressed by Ld. CIT(A), we set-aside the impugned order and restore the issue back to the file of Ld. AO qua disallowance against impugned payment of Rs.34.22 Lacs. The Ld. AO is directed to consider this claim of the assessee and revise the TDS demand and interest u/s 201(1) / (1A), if required, after meeting the plea raised by Ld. AR. The assessee is directed to substantiate its case. The appeal in ITA No.907/Chny/2023 has been rendered infructuous. No other ground has been urged by Ld. AR before us.

7. In the result, ITA No.906/Chny/2023 stand allowed for statistical purposes whereas ITA No.907/Chny/2023 is dismissed as infructuous.

Order pronounced on 06th March, 2024.

(MANOMOHAN DAS)
न्यायिक सदस्य / JUDICIAL MEMBER

(MANOJ KUMAR AGGARWAL)
लेखा सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated : 06-03-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF