आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ,चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 964/CHNY/2022**

निर्धारण वर्ष/Assessment Year: 2018-19

Standard Chartered Global Business Services Pvt. Ltd., No.1, Haddows Road, Chennai – 600 006.	vs.	**The Deputy Commissioner of Income Tax,** Corporate Circle 3(2), Chennai.
PAN: AAECS 9043E (अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Sriram Seshadri, CA

राजस्व की ओर से /Revenue by : Shri R. Clement Ramesh Kumar, CIT

&

आयकर अपील सं./**ITA No.: 124/CHNY/2023**

निर्धारण वर्ष/Assessment Year:2018-19

The Assistant Commissioner of Income Tax, Corporate Circle 3(1), Chennai.	vs.	**Standard Chartered Global Business Services Pvt. Ltd.,** No.1, Haddows Road, Chennai – 600 006.
(अपीलार्थी/Appellant)		**PAN: AAECS 9043E** (प्रत्यर्थी/Respondent)

निर्धारिती की ओर से/Assessee by : Shri Sriram Seshadri, CA

राजस्व की ओर से /Revenue by : Shri P.Sajit Kumar, JCIT

सुनवाई की तारीख/Date of Hearing : 28.05.2024

घोषणा की तारीख/Date of Pronouncement : 30.05.2024

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These cross appeals by the assessee and Revenue are arising out of the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in ITBA/NFAC/S/250/2022-23/1045558359(1) dated 16.09.2022. The assessment was framed by the National Faceless Assessment Centre, Delhi for the assessment year 2018-19 u/s.143(3) r.w.s. 144B of the Income Tax Act (hereinafter the 'Act') vide order dated 28.09.2021.

Assessee's Appeal in ITA No.964/CHNY/2022

2. The first issue in this appeal of assessee is as regards to the order of CIT(A)-NFAC confirming the action of the AO in disallowing the assessee's payment made to its overseas group entities towards reimbursement of costs other than salary related to relocation of its secondment employees without deduction of TDS u/s.195 of the Act, thereby invoking the provisions of section 40(a)(i) of the Act, disallowed a sum of Rs.2.59 crores. For this, assessee has raised the following Ground Nos.2 to 4:-

> *2. The Lower Authorities erred in in disallowing the Appellant's payment of INR 2.59 Crores to its overseas Group entities, towards reimbursement of costs (other than Salary) related to relocation of its seconded employees (Relocation costs'), under section 40(a)i) of the Act.*

3. The Lower Authorities erred in holding that the provisions of section 195 of the Act are applicable in respect of the payments towards the Relocation costs, without appreciating they are in the nature of 'reimbursements' of actual costs and do not constitute income in the hands of the recipient entities. The Lower Authorities have approached this issue, as if they are dealing with the salary costs of the Seconded employees, which are not the facts of this case.

4. The Lower Authorities erred in concluding that the seconded-employee costs partake the nature of fees for technical/ Included services (FTS'/ FIS) despite the narrower provisions of Article 12 of the Agreements for Avoidance of Double Taxation (DTAA) entered into by India with the US/ UK and also by alleging that the seconded employees constitute a Service PE for overseas group entities as per provisions of the relevant DTAA.

3. Brief facts are that the AO noted as per schedule 23 of the audited accounts of the assessee, the assessee has paid salary, wages and bonus to its employees of secondment and debited the same to Profit & Loss account as cost of employees on secondment. The AO noted that the assessee admitted vide its letter dated 16.09.2021 that the payment of Rs.2,58,90,031 to persons belonging to SCB UK, SCB Korea, SCB USA and SCB Singapore. According to AO, the assessee also admitted that such persons served and services are rendered in India as they are working as CEO and Heads of various Departments of the assessee company. The AO noted that these expatriate employees continues to be in the payroll of SCB UK and SCB USA and such non-resident companies were making pension contributions in overseas location to such

expatriate employees. But payment is made without deduction of TDS and hence, he disallowed this sum of Rs.2,58,90,031/- by invoking the provisions of section 40(a)(i) of the Act. Aggrieved, assessee preferred appeal before CIT(A).

4. The CIT(A)-NFAC also treated the nature of payment as a reimbursement of salary cost paid to such group entities and therefore, he also under wrong notion noted that these payments are salary cost liable to TDS u/s.192 of the Act and therefore, he invoking the provisions of section 40(a)(i) of the Act, confirmed the disallowance.

5. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the ld.AR for the assessee stated that the AO & CIT(A) both have misunderstood the issue and stated that the assessee has clarified this issue before AO vide letter dated 16.09.2021 wherein the assessee has given bifurcation of salary, reimbursement of medical insurance and reimbursement of expenses like relocation, travel, immigration, accommodation, etc. The ld.AR drew our attention to page 259 & 260 of assessee's paper-book wherein copy of this letter is enclosed, wherein the letter

clearly explains the nature of cost of secondment employees and the relevant reads as under:-

Nature of Expenses	*Amount*
Salary and Perquisites that are reimbursed on which tax under Sec 192 is deducted and paid to the Government of India	*25373661.00*
Reimbursement of Medical insurance on seconded employees	*3301795.00*
Reimbursement of expenses like relocation, travel, immigration, accommodation etc	*22588236.00*

We noted, as explained by ld.AR, that the salary and perquisites paid are already suffered TDS u/s.192 of the Act and there is no dispute about it. The remaining amount of Rs.33,01,795/- being reimbursement of medical insurance and sum of Rs.2,25,88,236/- being reimbursement of expenses like relocation, travel, immigration, accommodation, etc., are simpliciter reimbursement. The ld.AR explained that apart from salary where the assessee has deducted TDS, the two payments aggregate to Rs.2,58,90,031/- is not liable for TDS as all are pure reimbursement. The ld.AR stated that these two components of expenses being reimbursement to SCB entities on account of secondment are in the nature of contribution to retirement and insurance schemes and certain SCB entities have made pension contributions in the overseas locations to ensure continuance of retiral benefits to the employees. Further,

SCB USA had contributed to other welfare schemes such as disability insurance. He further stated that the contributions made to statutory authorities by SCB UK/USA have been charged back without any additional mark up. Therefore, the need to deduct taxes on the said contributions does not arise. Further, payment in the nature of relocation expenses being payment where SCB UK centrally enters contracts with all the vendors and pays vendor costs directly. SCB UK also bears the cost of relocation of the expatriates/employees to India. The expenses incurred were in the nature of payment for airfare, packers and movers engaged to aid in the movement of expatriates and their family to India. Since the expenses were purely of internal business in nature, no taxes are required to be deducted on the same. Further, such receipt is not liable to tax in the hands of the employees since it was not an income that accrued to them for services rendered. The payment made to SCB entities are pure reimbursements and hence, not taxable. We noted that neither the AO nor the CIT(A)-NFAC has verified these payments and just simpliciter in mistaken notion considered these payments as salary to secondment employees. On principle, these being purely reimbursement and there is no mark up on these payments, no TDS is required to be deducted because these are not income in the hands of the assessee. But for limited

purpose of verification, whether these are purely payment in the nature of contribution to retirement and pension scheme and relocation expenses, the AO will verify the vouchers and accordingly, allow the claim of assessee. In term of the above, this issue is remitted back to the file of the AO for limited purpose verification and allowed for statistical purpose.

6. Coming to second issue of this appeal by assessee, is as regards to the lower authorities not giving credit to DDT paid to the extent of Rs.28.1 crores u/s.115O of the Act whereas, the assessee has duly remitted within the prescribed timelines. For this, assessee has raised the following Ground No.5:-

> *5. The Lower Authorities erred in not giving credit to DDT paid to the extent of INR 28.1 Crores under section 115-0 of the Act, which was duly remitted within the prescribed timelines.*

7. We have heard rival contentions and gone through facts and circumstances of the case. We have heard ld. Senior DR and ld.AR. We noted that we have no details and mechanism for verification and hence, we direct the AO to verify the amount duly remitted within the prescribed timelines u/s.115O of the Act and claim of assessee that it has paid DDT to the tune of Rs.28.1 crores and accordingly, after verification allow the claim of assessee as per law. This issue is also remitted back to the file of the AO.

8. The next issue in this appeal of assessee is as regards to the issue not adjudicated neither by AO nor by CIT(A)-NFAC. For this, assessee has raised the following Ground No.6:-

> *"6. The DDT liability of the Appellant under section 115-O of the Act, in respect of the dividends declared/paid by it during the Impugned AY to Standard Chartered Bank, PLC, a tax resident of the UK, shall be restricted to the applicable rate of tax on dividends prescribed under Article 11 of the India-UK DTAA."*

9. We have heard rival contentions and gone through facts of the case. We noted that this issue of DDT liability of the assessee u/s.115O of the Act in regard to dividend declared/paid by it during the relevant assessment year is to be adjudicated by lower authorities. We have gone through the assessment order and the order of CIT(A)-NFAC and find that this issue has not been adjudicated at all. Hence, we remit this issue to the file of the AO, who will decide this issue *denovo* after allowing reasonable opportunity of being heard to the assessee. Accordingly, the appeal filed by the assessee is allowed for statistical purposes, as directed above.

Revenue's Appeal in ITA No.124/CHNY/2023

10. At the outset, it is noticed that this appeal of Revenue is barred by limitation by 78 days. The order of the CIT(A)-NFAC

dated 16.09.2022 was received in the office of the Principal Commissioner of Income Tax on 16.09.2022 as per Form 36. The appeal was filed before the Tribunal on 01.02.2023 with a delay of 78 days. The Revenue has filed affidavit for condonation of delay of 68 days wherein it was stated that the delay has occurred due to change in incumbency on account of leave. It was also stated that the delay was unintentional and was beyond the control of AO. In view of the above reason, we condone the delay and admit the appeal.

11. The only issue in this appeal of Revenue is as regards to the order of CIT(A)-NFAC allowing lease rental payments being financial lease and allowance of depreciation. For this, Revenue has raised the following Ground Nos.2 & 3:-

> *2. The Ld.CIT(A) erred in failed to appreciate the fact that the principal portion included in the lease rental payments, being capital expenditure is not deductible as per the provisions of Sec.37(1) of the Income tax Act.*
>
> *3. The Ld.CIT(A) erred in holding that the entire financial lease amount can be claimed for Income-Tax purpose.*

12. Brief facts are that the assessee in its computation of statement claimed deduction of sum of Rs.1,63,01,535/- on account of 'lease rental considered as revenue expenditure'. The AO noted that as per printed annual accounts, the lease financials is secured

against hypothecation of assets taken under finance lease. The assessee company claimed depreciation on motor vehicles on finance lease as the assessee took motor vehicle on finance lease and amount represents finance charges and principal repayment, both were computed separately in such lease. According to AO, the assessee entered into lease agreement with financing companies for finance lease of vehicles and for that for all practical purposes, the company treated it as finance lease as evidence from the annual account audited by statutory auditors and approved by Directors. Hence, the AO concluded that the lease transaction is categorized as financial/operating lease and in the audited accounts even the chartered accountant in Form No.3CA does not make any remark that vehicle taken on finance lease were actually operating lease. Hence, the AO treated the same as finance lease and disallowed the claim of deduction of Rs.1,63,01,535/-. Aggrieved, assessee preferred appeal before CIT(A).

13. The CIT(A)-NFAC allowed the claim of assessee by observing in para 5.2.5 & 5.2.6 as under:-

> *5.2.5 The appellant made the short submission in the 'Statement of Facts', in this regard, that the A.O. failed to appreciate the fact that the expenses incurred on account of, lease rental was not a Capital expenditure and that as per lease agreement the ownership of the vehicles always rested with the lessor and not with the lessee (the appellant company, for*

example). Therefore, the appellant could not claim depreciation on the assets. The Ld.A.O. should have considered various rulings by the courts of Law including Hon'ble Supreme Court in the case of I.C.D.S which decided on similar matter which supported the stand taken by the appellant.

5.2.6 The appellant further, continued that the A.O. failed to consider the departmental circular No.02/2001 dated 09.02.2001 which while clarifying the applicability of Accounting Standard 19 on Leases stated that Accounting Standard would have no implication on allowance of depreciation on assets under the provisions of Income Tax Act."

14. We have heard rival contentions and gone through facts and circumstances of the case. At the outset, the ld.Senior DR before us stated that the findings of CIT(A)-NFAC is flawed for the reason that he has relied on a wrong Circular and he filed one copy of Circular, which is contrary to the mention by CIT(A)-NFAC in its order. The ld.Senior DR filed copy of Circular No.29-D(X1X-14) [F.No.45/239/65-ITJ], dated 31.08.1965, wherein entirely different issue whereas during the course of hearing, the ld.AR for the assessee drew our attention to assessee's paper-book at page 216 wherein the relevant Circular No.2/2001 dated 09.02.2001 is enclosed. The relevant Circular reads as under:-

"1. Under the Income-tax Act in all leasing transactions, the owner of the asset is entitled to the depreciation if the same is used in the business, under section 32 of the Income-tax Act. The ownership of the asset is determined by the terms of contract between the lessor and the lessee.

2. The Central Board of Direct Taxes vide Instruction No. 1978 dated 31st December, 1999 [F.No. 225/190/98/IT(A-II)] has laid down the line of investigation in such cases. In cases where assets are factually non-existent,

having been created by hawala transaction, the question of allowance of depreciation does not arise. In cases of sale and lease-back of assets without any alteration in the situation of assets and its working, the denial of depreciation claimed has to be considered keeping in view the principle laid down by the Supreme Court in the case of McDowell & Co. Limited.

3. It has come to the notice of the Board that the New Accounting Standard on 'Leases' issued by the Institute of Chartered Accountants of India require capitalization of the asset by the lessees in financial lease transaction. By itself, the accounting standard will have no implication on the allowance of depreciation on assets under the provisions of the Income-tax Act."

The ld.AR stated that this circular is directly applicable to finance lease agreements and para 3 of the circular categorically states that the Accounting Standard will have no implication i.e., Accounting Standard 19 on the allowance of depreciation of assets under the provisions of the Act. The ld.AR further stated that AS-19 are for accounting of the company but for income-tax purposes, the assessee has computed the income and relevant computation is enclosed at page 196 of paper-book wherein the disallowable expenses or depreciation are disallowed and allowed expenses are claimed as allowable including lease rentals and depreciation. The ld.AR stated that the entire depreciation charge as per the books of account is disallowed u/s.32 of the Act while determining the taxable income. Thus, the depreciation on assets taken on finance lease form part of this disallowance. The assets taken on finance lease are not capitalized in the block of asset dealing with motor cars.

The principal component of lease rentals amounting to Rs.1,63,01,535/- is claimed as deduction while computing taxable income. The interest component is not separately claimed as deduction as the same is duly considered while arriving at the 'profit before tax 'figure on the basis of which the income tax computation is prepared. Apart from this, the confusion created by the AO in regard to lease rental of Rs.1,63,01,535/- is explained as above. We noted that the facts of the case are crystal clear and assessee is eligible for claim of deduction in regard to depreciation on assets. Hence, we confirm the order of the CIT(A)-NFAC and accordingly, this issue of Revenue's appeal is dismissed.

15. In the result, the appeal filed by the assessee in ITA No.964/CHNY/2022 is allowed for statistical purposes and the appeal filed by the Revenue in ITA No.124/CHNY/2023 is dismissed.

Order pronounced in the open court on 30th May, 2024 at Chennai.

Sd/-	Sd/-
(जगदीश)	(महावीर सिंह)
(JAGADISH)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 30th May, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. निर्धारिती /Assessee
2. राजस्व /Revenue
3. आयकर आयुक्त /CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.