

IN THE INCOME TAX APPELLATE TRIBUNAL ‘I’ BENCH, MUMBAI
BEFORE MS. KAVITHA RAJAGOPAL, JM AND SMT. RENU JAUHRI, AM

ITA No. 2353/Mum/2024
(Assessment Year: 2019-20)

EBZ SE Bleicherstrasse 7, 88212 Ravensburg, Germany, Not Listed, 99999	Vs.	ADIT-CPC Bangalore, Karnataka
PAN/GIR No.AADCE 1269 P		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Dilip Gupta
Respondent by	:	Shri Anil Sant
Date of Hearing	:	09.07.2024
Date of Pronouncement	:	03.10.2024

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) -56, Mumbai ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2019-20.

2. The assessee has raised the following grounds of appeal:

- 1) *That on facts and circumstances of the case and in law, the ld. A.O. has grossly erred in raising tax demand of Rs.1,17,571/-, which. The appellant crave lave to amend, alter, add or delete any of the foregoing grounds of appeal and the above grounds of appeal are mutually exclusive is subsequently confirmed by CIT(A). while do so, Ld. CIT(A) has grossly erred in*
- 2) *computing surcharge and cess of Rs.97,131/- without giving due regard to Article 12 of the India-Germany DTAA, which implies that Fee for technical services need to be taxed at a special rate of flat 10%.*
- 3) *charging surcharge and cess of Rs.97,1331/- by applying the provisions of the Act regardless of the fact that the DTAA provisions are more beneficial to the appellant.*
- 4) *charging interest u/s. 234B and 234C being consequential in nature.*

3. The brief facts are that the assessee is a Germany based foreign company which has no PE in India. The assessee had filed its return of income for the year under consideration on 28.09.2019, declaring total income at Rs.1,59,75,470/- and the same was processed u/s. 143(1) of the Act. The assessee received an intimation from CPC/learned Assessing Officer (ld. A.O. for short) dated 08.11.2020 where addition on sur charge of Rs.31,951/- and cess of Rs.65,180/- was made at a flat rate of 10% on the amount of tax computed thereby raising a demand of Rs.1,17,571/- along with interest charged u/s. 234B and 234C of the Act.

4. Aggrieved the assessee was in appeal before the first appellate authority, challenging the impugned order on the ground that the CPC/ld. A.O. had failed to consider that the assessee was entitled to special rate of flat 10% on fees for technical services as per Article 12 of India DTAA and that no additional charges are to be levied beyond that.

5. The ld. CIT(A) vide an *ex parte* order dated 13.03.2024, upheld the order of the ld.CPC/ld.A.O. for the reason that inspite of several opportunity the assessee has failed to substantiate its claim and has been non compliant throughout the appellate proceedings.

6. The assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).

7. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has challenged the additions made by the ld.

CPC/Id.A.O. before the first appellate authority but has been non compliant throughout the appellate proceeding.

8. On the above factual matrix of the case, we are of the considered view that the assessee may be given one more opportunity to present its case before the first appellate authority by adhering to the principles of natural justice for the reason that the Id. CIT(A) has not decided the issue in hand on the merits of the case, since the assessee has not made compliance before the first appellate authority. We, therefore, remand all these issues back to the file of the Id. CIT(A) for *de novo* adjudication. The assessee is directed to comply with the proceedings without any undue delay on its side and needless it is to say that sufficient opportunity of hearing is to be given to the assessee.

9. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 03.10.2024

Sd/-

(Renu Jauhri)
Accountant Member

Mumbai; Dated : 03.10.2024
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai