

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : D : NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA No.2021 & 2019/Del/2024
Assessment Years: 2018-19 & 2020-21

DCIT,
Circle-4(2),
New Delhi.

Vs CPP Assistance Services Private
Limited,
A-370, 2nd Floor,
Nehru Place,
Kalkaji,
New Delhi – 110 019.

PAN: AADCC2489H

(Appellant)

(Respondent)

Assessee by : Shri Ajay Vohra, Sr. Advocate &
Ms Archana Kumar, CA
Revenue by : Ms Prajna Paramita, CIT-DR
Date of Hearing : 29.10.2024
Date of Pronouncement : 07.11.2024

ORDER

PER ANUBHAV SHARMA, JM:

These appeals are preferred by the Revenue against the orders dated 12.02.2024 and 22.02.2024 of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Appeal Nos.NFAC/2017-18/10019957 and NFAC/2019-20/10181022 arising out of the appeal before it against the orders

dated 05.05.2021 and 26.09.2022 passed u/s 143(3) r.w.s. 144B and u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), respectively, by the DCIT, Circle 4 (2), New Delhi (hereinafter referred to as the Ld. AO).

2. Heard and perused the record.

3. The ld. Sr. Counsel, Shri Ajay Vohra pointed out that the issues raised in the appeals of the Revenue have already been considered in AY 2017-18 by the coordinate Bench, vide ITA No.116/Del/2022, order dated 22.12.2022. The ld. DR could not dispute this submission.

4. After going through the impugned orders and the grounds raised by the Revenue, we find that the ld. DRP had merely followed the AY 2017-18 findings. The issue primarily involved is if the payment which were made by the assessee to the tune of Rs.14,56,35,000/- (A.Y. 2018-19) and Rs.14,71,82,129/- (A.Y. 2020-21) to its non-resident group company were as fee for technical services as per Article 13 of the India-UK DTAA. We find that in AY 2017-18, for the same set of services the coordinate Bench had examined the nature of services availed by the assessee company and found that the 'make available' criteria was not fulfilled. The coordinate Bench had examined the agreement between the CPP group, UK (the supplier) and the CPP Assistance Services Pvt. Ltd. (the assessee) and in the following observations in para 32-34, it was held that the 'make available test' is not satisfied:-

“32. Whereas the facts of the case in hand show that the assessee does not gain any technical knowledge, experience or skill as it is not involved in the process that service provider is following while rendering the services. The IT support services are rendered by CPP UK from UK itself and these services are rendered for the entire group and not just for CPP India.

33. The agreement between CPP group services and the assessee is perpetual and such services are provided by CPP group on recurring basis to the assessee and if the technical knowledge, skill etc. is being made available to the assessee, then there would be no need for the assessee to take recourse to the CPP UK for these services.

34. In our considered opinion, IT support services do not satisfy the make available test as no technical know-how, skill etc were transferred to the assessee. Considering the facts of the case in totality, in light of judicial decisions discussed hereinabove, we direct the Assessing Officer to delete the disallowance of Rs. 5,46,31,534/- “

5. We find no reason to differ on any question of fact or law as examined by the CIT(A), while following the decision of the coordinate Bench in the appellant’s own case for AY 2017-18 (supra). The grounds of the Revenue have no substance.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 07.11.2024.

Sd/-

Sd/-

(BRAJESH KUMAR SINGH)
ACCOUNTANT MEMBER

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Dated: 07th November, 2024.

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi