

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1799/Mum/2022
Assessment Year: 2019-20

CADMATIC OY 72, Itainen Rantakatu Turku Finland, 208100 C/o Suresh Joshi & Co., Chartered Accountant 4 th Floor, Kamer Building 38, Cawasji Patel Street Fort Mumbai - 400001 [PAN: AA ECC1385P]	Vs	ACIT, Circle-2(1)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Suresh Joshi, A/R
Revenue by :	Shri Arun Kumar, Sr. D/R

सुनवाई की तारीख/**Date of Hearing** : 07/11/2024
घोषणा की तारीख/**Date of Pronouncement** : 07/11/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 08/06/2022 framed u/s 143(3) r.w.s. 144C(13) of the Act, pertaining to AY 2019-20.

2. The grievance of the assessee reads as under:-

"1. The AO erred in making an addition of Rs.3,94,86,608/- being amount received on sale of software to Indian Companies by treating the same as fees for technical services without appreciating the fact that the assessee has not rendered any technical services by selling the software to the Indian Companies. Thus, the said amount received on sale of software is not chargeable to tax in India. Therefore, the addition of Rs.3,94,86,608/- made by the AO is unjustified and the same may be deleted.

2. The AO failed to appreciate that the assessee is a Non-Resident Company and not having any business operations in India. Thus, the amount received on sale of software to the Indian entities is not taxable in India. The said amount has duly been disclosed by the assessee while filing the return in Finland and the taxes have been paid on the

same. Hence, taxing a sum of Rs. 3,94,86,608/- again in the hands of the assessee would amount to double taxation and the same is not justified.

3. The AO failed to appreciate that the amount received by the appellant from the Indian Companies on sale of software is not a fee for technical services and the same does not attract TDS provisions as per section 195 of the Act. Thus, the said payment cannot be treated as Income taxable in India merely because the Indian Companies have deducted and paid TDS out of abundant caution on such payment and the appellant has claimed refund of the same. Therefore, the AO is not justified in making addition of Rs.3,94,86,608/- in the hands of the appellant and the same may be deleted.

4. The AO failed to appreciate that the appellant's claim is supported by the decision of Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence (P.) Ltd vs. CIT [2021] 432 ITR 471 (SC) wherein it has been held that the amounts. paid by resident Indian Company to non-resident computer software manufacturers/suppliers, as consideration for the resale/use of the computer software is not the payment of royalty for the use of copyright in the computer software, and that the same does not give rise to any income taxable in India. Thus, the addition of Rs.3,94,86,608/- made by the AO is not justified and the same may be deleted.

5. The assessee reserves its rights to raise additional grounds, amend or alter or revise any of the above grounds."

3. At the very outset, the ld. Counsel for the assessee stated that the impugned quarrel has been decided by this Tribunal in ITA No. 567/Mum/2023 for AY 2020-21.

Per contra the ld. D/R could not bring any distinguishing decision in favour of the revenue.

4. We have given a thoughtful consideration to the orders of the authorities below *vis-à-vis* the grounds of appeal. We have also considered the decision of the Tribunal in ITA No. 567/Mum/2023 for AY 2020-21 in assessee's own case. We find force in the contention of the ld. Counsel. The issues raised in the grounds have been considered by the Co-ordinate Bench in its order and after considering the facts and the submissions, the Co-ordinate Bench set-aside the assessment with directions. The relevant findings of the Co-ordinate Bench, read as under:-

"13. It is pertinent to note that in respect of certain Indian clients, the assessee may have mentioned only one maintenance charge in its invoice, however there is no further examination of whether the same is for any routine installation or up-gradation of the software, or it was for maintenance service provided at the request of the client. Further, there may also be a case wherein the assessee has sold the software in the previous year and has only rendered maintenance services during the year under consideration. However, it is evident from the record that all these aspects were not examined by the lower authorities, and income earned by the assessee from the sale of software as well as from the provision of maintenance charges is being taxed under one head by considering the same to be intrinsically linked to each other. It is worth noting that multiple instances of provision of maintenance services cannot be equated with standalone service. Thus, the nature of the maintenance service is also required to be examined before coming to the conclusion that the income received in respect of the same is Fees for Technical Services. In this regard, the terms of the agreement between the parties are also required to be analysed vis-a-vis the actual transaction for which the invoice has been raised. Therefore, in the present case, it is necessary to examine all these aspects, and for the same, we restore this issue to the file of the jurisdictional AO for de novo adjudication and direct the assessee to provide complete information including the agreements entered with the clients and all the invoices raised in respect of the income earned during the year under consideration. The assessee is also directed to furnish all correspondence with its clients for a complete understanding of the transaction. The assessee is also directed to furnish any other information as may be required by the AO for a thorough examination and complete adjudication of this issue. Further, the AO is directed to examine all the information as may be submitted by the assessee and determine the taxability of the income received by the assessee from the sale of software and provision of maintenance services to its clients in India, as per law. Since the issue is restored to the file of the AO for fresh consideration, the assessee shall be at liberty to raise any plea in support of its claim. As a result, the impugned final assessment order is set aside and the grounds raised by the assessee are allowed for statistical purposes."

5. Finding parity of facts, respectfully following the decision of the Co-ordinate Bench, we direct accordingly.
6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 7th November, 2024 at Mumbai.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 07/11/2024

SC S.P.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai