

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जगदीश, लेखासदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1134/Chny/2024
निर्धारण वर्ष /Assessment Year: 2020-21

Standard Chartered Global
Business Services Pvt. Ltd.,
No.1, Haddows Road,
Chennai – 600 006.
[PAN: AA ECS 9043E]

Vs. The Dy. Commissioner of
Income Tax,
Corporate Circle-3(2),
Chennai.

(अपीलार्थी/**Appellant**)

(प्रत्यर्थी/**Respondent**)

अपीलार्थी की ओर से/ Appellant by

: Ms. K. Amulya, C.A
Shri R. Clement Ramesh Kumar, CIT

प्रत्यर्थी की ओर से /Respondent by

:

सुनवाई की तारीख/Date of Hearing

: 23.10.2024

घोषणा की तारीख /Date of Pronouncement

: 23.10.2024

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid appeal filed by the assessee is against the order of Learned Commissioner of Income Tax, Appeal, National Faceless Appeal Centre (NFAC), Delhi [hereinafter "CIT(A)"] dated 22.02.2024 in the matter of assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s 144B of the Income Tax Act, 1961 (hereinafter "the Act") on 24.09.2012.

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2. The effective grounds of appeal in this appeal of assessee is against disallowance of expenditure relating to secondment u/s. 40(a)(i) of the Act for non deduction of TDS and computing the income ignoring the revised return of income filled .

3. The assessee has taken certain employees during the year on secondment from the group entity who worked on a full time basis for the assessee. Certain expenses like contribution to retirement, insurance schemes and other relocation related expenses in relation to their secondment were incurred by the assessee which were paid by the group entity and reimbursed to them by the assessee on cost-to-cost basis, and the assessee therefore has not deducted TDS u/s. 40(a)(i) of the Act. However, the A.O has made the disallowance u/s. 40(a)(i) of the Act of Rs. 1,70,61,375/- consisting of payment for medical insurance premium of Rs. 48,74,478/-, payment of retrials of Rs. 40,94,389/- and reimbursement of relocation related expenses of Rs. 80,92,508/-. The Ld. CIT(A) has also confirmed the addition.

4. Before us, The Ld. Authorized Representative (A.R) of the assessee has submitted that similar issue was involved in A.Y 2018-19 and the Hon'ble ITAT in ITA No.964/Chny/2022 order dated

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30.05.2024 has allowed the appeal holding that no TDS is required to be deducted as there are no income in the hand of the assessee , but directed to verify the vouchers whether these expenses are purely in nature of contribution to retirement and pension scheme and relocation expenses and therefore, similar direction may be issued in this year also. As regards to second issue, the Ld. AR has submitted that the assessee has filed return of income on 12.02.2021 and revised return u/s. 139(1) of the Act filed on 31.05.2021. However, the A.O while computing the income has started with income filled in original return , ignoring income filed in the revised return, in the order passed u/s. 143(3) of the Act. The Ld.AR has submitted that the Ld. CIT(A) has rejected the assessee's contention stating that the revised return u/s 139(5) of the Act was filed on 31.05.2022, after the date of processing u/s 143(1), which is factually incorrect as the revised return was filed on 31.05.2021 not on 31.05.2022 . Therefore, the Ld. A.O may be directed to consider the revised return filed u/s. 139(1) of the Act.

5. The Ld. Departmental Representative (DR), on the other hand, has relied on the orders of lower authorities.

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7. We have heard the rival submissions, and perused the materials available on record. On the issue of disallowance u/s. 40(a)(i) of the Act on the secondment related payment of medical insurance premium, payment of retrials and reimbursement of relocation related expenses, similar issue came in A. Y.2018-19 and this Bench has remitted back the matter back to the file of A.O with the following observations:

"5. We have heard rival contentions and gone through facts and circumstances of the case. Before us, the Id.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 Id.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:-

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

We noted, as explained by Id.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 Id.AR

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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 Id.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.

8. As the issue is identical, the matter is remitted back to the file of A.O for the limited purpose of verification as per terms noted in the order for A.Y 2018-19.

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9. As regards to the second issue, the Ld. CIT(A) has considered date of filing revised return as on 31.05.2022 in place of 31.05.2021. The A.O is therefore, directed to verify the claim of assessee that the revised return was filled on 31.05.2021 which was within due date prescribed in section 139(5) of the Act. Hence, the matter is restored back to the file of A.O. In view of the above, the appeal filed by the assessee is allowed for statistical purposes.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 23rd October, 2024.

(महवीर सिंह)
(Mahavir Singh)

उपअध्यक्ष / Vice President

(जगदीश)
(Jagadish)

लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 23rd October, 2024.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT, Chennai
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF