

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri Laliet Kumar, Judicial Member
And
Shri Manjunatha, G. Accountant Member

आ.अपी.सं / **ITA No.725/Hyd/2024**
(निर्धारण वर्ष / Assessment Year: 2015-16)

Dy. C.I.T (IT)-II Hyderabad	Vs.	SEW Infrastructure Ltd Secunderabad PAN:AADCS4061P
(Appellant)		(Respondent)
राजस्व द्वारा/Revenue by: Shri B Bala Krishna, CIT(DR)		
निर्धारिती द्वारा/Assessee by: Shri S. Rama Rao, Advocate		
सुनवाई की तारीख/Date of hearing: 22/10/2024		
घोषणा की तारीख/Pronouncement: 28/10/2024		

आदेश/ORDER

Per Manjunatha, G. A.M

This appeal filed by the Revenue is directed against the order dated 02/05/2024 of the learned CIT (A)-10, Hyderabad relating to A.Y.2015-16.

2. The brief facts of the case are that the assessee is engaged in the business of providing infrastructure facilities. During the previous year relevant to A.Y 2015-16, the appellant has availed services of Singapore based foreign entity for its business and paid fees for technical services after deducting TDS @ 10% in terms of DTAA between India & Singapore. The

Assessing Officer passed order u/s 154 of the I.T. Act, 1961 and opined that the remittances made to non-resident service provider after deducting 10% TDS as per DTAA is contrary to provisions of section 206AA of the I.T. Act, 1961 and thus, computed short deduction of TDS by applying TDS @ 20% on total remittances made to non-resident in terms of provisions of section 206AA of the Act for non-furnishing of the PAN of the non-resident recipients. According to the Assessing Officer, the TDS rates are determined as per the provisions of Chapter XVIIB which deals with the TDS on payments made to both resident and non-residents. Further section 206AA clearly overrides other provisions which is evident from non-obstante clause provided therein and accordingly observed that the DTAA derives its strength and authority only from section 90 & 91 of the I.T. Act, 1961. Therefore, opined that the assessee is liable to deduct TDS as per the provisions of the Act, which was at 20% on remittances made to non-resident service providers and accordingly computed short deduction of TDS.

3. The assessee filed appeal against the order passed by the Assessing Officer and challenged the application of provisions of section 206AA of the Act. The learned CIT (A) after considering the relevant provisions and also by following the decision of the ITAT Special Bench in the case of Nagarjuna Fertilizer & Chemicals Ltd vs. ACIT (55 ITR (Trib.)1, (Hyd S.B) deleted the addition made by the Assessing Officer by holding that the foreign entities are not required to have PAN in India and therefore, provisions of section 206AA would not apply to them. Further, the rates of TDS specified in DTAA would be applicable to the

appellant as the provisions under DTAA have overriding effect on domestic law.

4. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

5. The learned CIT (DR) submitted that section 206AA begins with non-obstante clause thereby overriding of other provisions of I.T. Act, 1961. Further, section 206AA is also non-obstante clause which was inserted later in time within section 90(2) of the Act, and therefore, ought to take precedent over section 90(2) of the Act. Therefore, he submitted that once the provisions of section 206AA is applicable for non-production of PAN of the non-resident payees, the assessee ought to have deducted TDS as per domestic tax laws. The learned CIT (A) without appreciating the relevant facts simply deleted the addition made by the Assessing Officer. In this regard, he has filed written submission dated 22/10/2024 which is reproduced as under:

“i. Section 206AA begins with a non-obstante clause thereby overriding all other provisions of the Income-tax.

ii. Section 206AA of the Act is also a non-obstante clause which was inserted later in time than section 90(2) of the Act and therefore ought to take precedence over section 90(2) of the Act.

iii. The requirement for deduction of TDS at a higher rate of 20% u/s. 206AA of the Act for non-production of Permanent Account Numbers of the non-resident payees. The section 206AA of the Act cannot be overridden by the DTAA s by virtue of Section 90(2) of the Act.

iv. The DTAA s provide for rate of levy of tax and not provide for any away mechanism/rates for tax deduction at source.

v. Section 2(37A) of the Act provides that the rate of TDS will be the rate of levy of tax as provided for in the relevant Finance Act.

vi. DTAA's only assign the right to tax between two countries but do not take the right of source/resident country to regulate such amounts/incomes or to impose obligations to better administer the tax regime.

vii. Section 260AA requires that PAN be furnished to the deductor and requires deduction at a higher rate of tax only in the event of default in furnishing PAN and is therefore a provision which contemplates the enforcement of PAN and is not a charging section as sought to be made out.

viii. Section 206AA is a machinery provision and therefore it cannot be overridden by the DTAA's by virtue of section 90(2) of the Act.

ix. Section 206AA is substantive provision for enforcing PAN obligations and not merely a procedural/ machinery provision.

x. The role of the payer/Assessee is limited to deducting tax at source as per the Act on sums chargeable to tax and that the Assessee does not have locus standi to challenge the rate of TDS applicable.

xi. CBDT Circular No.5 of 2010 setting out explanatory notes to Finance (No.2) Bill, 2009 clearly explains the scope of section 206AA extending it to non-residents.

xii. The non-residents as non-residents are not required to obtain PAN as per section 139A(8) r.w. rule 114C of the Income Tax Rules, 1962, however section 206AA was introduced later in time than section 139A (8) r.w. rule 114C of the Income Tax Rules, 1962 and begins with a non-obstante clause, thus overriding all other provisions of the Act.

xiii. Reading down section 206AA would lead to an anomalous circumstance where general provision and a rule would override a specific and unambiguous provision of law.

xiv. While section 139A prescribes an obligation to obtain and quote PAN, section 139A(8) read with rule 114C provided an exemption which exemption was deemed to have been expressly withdrawn by the insertion of the overriding section 206AA.

xv. Non-residents having income above taxable limits were bound to obtain and furnish PAN and if there was failure to do so, the Assessee was liable to withhold tax at the higher rate of 20%.

xvi. PAN was required to be quoted even for making a declaration u/s 197A for claiming exemption from TDS.”

6. The learned Counsel for the assessee, on the other hand, supporting the orders of the learned CIT (A) submitted that this issue is squarely covered in favour of the assessee by the decision of the ITAT Special Bench in the case of Nagarjuna Fertilizer & Chemicals Ltd vs. ACIT (Supra) where it has been clearly held that the TDS rate as per DTAA is applicable in respect of non-resident even though the provisions of section 206AA specified higher rate of TDS for non-furnishing of PAN of non-resident. Further, this issue is also covered by the decision of the Hon'ble Delhi High Court in the case of CIT vs. Air India Ltd. (2022) 456 ITR 117 (Del.) where it has been clearly held that the provisions of section 206AA cannot have overriding effect on DTAA and in case of payment made to non-resident, the rates prescribed under DTAA are applicable. The Hon'ble Supreme Court has dismissed the SLP filed by the Revenue and upheld the order of the Hon'ble Delhi High Court. Therefore, he submitted that the law is now settled by the Hon'ble Supreme Court on this issue and thus, the order of the learned CIT (A) in allowing the appeal of the assessee should be upheld.

7. We have heard both the parties, perused the material available on record and gone through the orders of the authorities below. The appellant has availed services of non-resident and paid fees for technical services after withholding 10% tax as per DTAA

between India and Singapore. The Assessing Officer invoked the provisions of section 206AA and computed short deduction of TDS by applying 20% TDS on payment made to non-resident for non-furnishing of PAN Number of recipient. We find that although provisions of section 206AA deals with higher rate of TDS in case of non-furnishing of PAN of recipient, but in the case of non-resident recipient, obtaining PAN is not mandatory and thus, for non-furnishing of PAN of the recipient, the provisions of section 206AA cannot be invoked and higher rate of TDS cannot be applied on remittances made to non-resident service providers. Further, it is a well settled position of law that the treaty provision would prevail over the provisions under the domestic laws as they are beneficial to the assessee. This position is further clarified by the CBDT vide Circular No.,728 dated 30/10/1995 and clarified that in case of a remittance to a country with which DTAA is in force, the tax should be deducted at the rate provided in the Finance Act, of the relevant year or at the rate provided in the DTAA whichever is more beneficial to the assessee. This fact is further strengthened by the decision of the Hon'ble Delhi High Court in the case of CIT vs. Air India (Supra) where it has been clearly held that provisions of section 206AA cannot have overriding effect on DTAA and in case of payment to non-resident, rates prescribed under DTAA are applicable. The Hon'ble Supreme Court dismissed the SLP filed by the Revenue against the order of the Hon'ble Delhi High Court and upheld the findings of the Delhi High Court and from the above, now the law is well settled that the treaty provisions would prevail over the provisions under the domestic laws. Further, ITAT Special Bench in the case of Nagarjuna Fertilizer & Chemicals Ltd vs., ACIT (Supra) also

clearly held that foreign entities are not required to have PAN in India and therefore, the provisions of section 206AA would not apply to them. The sum and substance of the ratio laid down by the Hon'ble Delhi High Court and upheld by the Hon'ble Supreme Court is that wherever treaty benefits are available, the rates prescribed under DTAA would apply instead of rate prescribed under domestic laws. In the present case, the appellant paid FTS to Singapore based non-resident service provider for rendering technical services and deducted TDS @ 10% as per DTAA between India and Singapore. Therefore, we are of the considered view that the Assessing Officer is completely erred in applying provisions of section 206AA and computing higher rate of TDS on remittances made to non-resident service providers. The learned CIT (A) after considering relevant facts has rightly deleted the addition made by the Assessing Officer. Thus, we are inclined to uphold the findings of the learned CIT (A) and dismiss the appeal filed by the Revenue.

8. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the Open Court on 28th October, 2024.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (MANJUNATHA, G.) ACCOUNTANT MEMBER
---	---

Hyderabad, dated 28th October, 2024

Vinodan/sps

Copy to:

S.No	Addresses
1	Dy.CIT (IT)-II, Aayakar Bhavan, Room No.,506, 5 th Floor, Aayakar Bhavan, Basheerbagh, Hyderabad
2	SEW Infrastructure Ltd 6-3-871 Snehalatha Greenlands Road, Secunderabad 500016
3	Pr. CIT – Hyderabad/CIT (IT&TP) Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order