

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
AND  
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No.237/Del/2024  
Assessment Year: 2015-19

DCIT, Circle-7(1), Delhi	<b>Vs.</b>	ERM India Pvt. Ltd., B-1 1770, Vasant Kunj, Delhi - 110070
<b>PAN: AAACE1502C</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. S.K. Aggarwal, CA
Department by	Sh. Ram Kishan Meena, Sr. DR

Date of hearing	07.11.2024
Date of pronouncement	14.11.2024

**ORDER**

**PER PRADIP KUMAR KEDIA, AM**

The captioned appeal has been filed at the instance of the Revenue against the order of National Faceless Appeal Centre (NFAC), Delhi, dated 29.11.2023 pertaining to assessment year 2015-16.

2. Grounds of appeal raised by the Revenue reads as under:

- “1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the additional evidences submitted u/s 46A by the assessee whereas sufficient opportunities were given by the AD during the assessment proceedings to submit the same and the assessee failed to do so?*

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition made by the AO on account of disallowance of group cost amounting to Rs. 8,14,65,901/- relying upon the remand report for A.Y. 2013-14 and ignoring the fact that each assessment year is separate and doctrine of Res judicata does not apply in this matter?*
3. *Whether on the facts and circumstance of the case and in law the Ld. CIT(A) has erred in allowing the claim of TDS amounting to Rs. 85,59,590/- u/s 199 of the Act ignoring the fact that this issue had not been raised by the assessee during the assessment proceedings due to which correctness of claim of the assessee remained unverified?*
4. *The assessee craves to leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.”*

3. When the matter was called for hearing, the learned Senior DR for the Revenue relied upon the assessment order and submitted that the assessee, in course of assessment, did not corroborate the expenses towards intragroup services incurred, amounting to Rs.8,14,65,901/-and, therefore, the onus which lay upon the assessee to support the expenses claimed, was not discharged. Hence, the Assessing Officer was left with no other recourse but to disallow the expenses claimed. The learned Senior DR pointed out that the CIT(A),while granting the relief, has merely relied upon the remand report of the Assessing Officer concerning assessment years 2013-14 and 2014-15 for determination of the issue in favour of the assessee. The CIT(A) failed to appreciate that the assessment year 2015-16 in question

is independent of other assessment year and the issue requires to be examined qua the facts of the particular assessment year in question. The learned Senior DR also supported the action of the Assessing Officer towards denial of TDS credit to the extent of Rs.85,59,590/-.

4. Per contra, learned counsel for the assessee supported the process of reasoning and finding thereon in the first appellate order. The learned counsel adverted to ground no. 1 of the Revenue's appeal (supra) and submitted that the ground raised by the Revenue challenging admission of additional evidences by the CIT(A) in violation of Rule 46A of the IT Rules is totally misconceived and opposed to the material on record. The learned counsel pointed out that no additional evidences were filed towards intragroup services before the CIT(A) insofar as assessment year 2015-16 is concerned. The additional evidences were although filed in the preceding assessment years 2013-14 and 2014-15 for which remand report was called from the Assessing Officer by the then CIT(A). However, in the assessment year 2015-16, the documents were filed to support the claim of intragroup services before the AO itself. To support such claim,

the learned counsel referred to the tabular statement in paragraph 8 of the first appellate order wherein the documents towards nature of services, deduction of TDS, invoices, service segments towards intragroup services and other voluminous documentary evidences were shown to have filed before the Assessing Officer. Thus, objection towards admission of additional evidences is without any foundation. The learned counsel further pointed out that the assessee has obtained various intragroup services and made payments of an amount of Rs.8,14,65,901/- towards its share of group cost to M/s. ERM Europe Limited, UK, which are similar to earlier years, viz., 2013-14 and 2014-15.

5. As contended, the assessee has filed documentary evidences to support expenses incurred in order to avail support services in the form of financial services, tax services, information technology services, legal services, strategy services, global human resources, global management system etc. from its Associated Enterprises (AEs). The payment of Group Cost was subjected to scrutiny of the Transfer Pricing Officer (TPO) and the TPO did not draw any adverse inference in the transfer pricing assessment under

section 92CA(3) of the Act. The Assessing Officer, however, while framing the assessment has invoked the provisions of section 37 to disallow the entire amount of such intragroup services without any justification. For the purposes of disallowance, the Assessing Officer has merely followed the additions made on this score in preceding two assessment years i.e. assessment year 2013-14 and 2014-15.

5.2 At this stage, learned counsel highlighted the fact that in course of appellate proceedings of assessment years 2013-14 and 2014-15, the CIT(A), in the first appeal, called for the remand report. The CIT(A), after examining the evidences, additional evidences and obtaining remand report from the Assessing Officer duly found such expenses to be allowable as business expenditure in assessment year 2013-14 as well as in assessment year 2014-15. In these assessment years, the CIT(A) unequivocally held that such intragroup services were availed by the assessee for carrying on business and such group costs were incurred for business purposes. The Revenue has not challenged the first appellate order in both these preceding assessment years. In the assessment year 2015-16 in question, the CIT(A) has

examined the relevant evidences and details filed before the Assessing Officer and adopted the findings of the first appellate order in assessment years 2013-14 and 2014-15 in absence of any material variance in the factual position.

5.3 On being inquired by the Bench, the learned counsel adverted to the statement of profit and loss for the assessment years 2015-16 and 2014-15 and contended that there is hardly any variation in the quantum of services. The Revenue has duly accepted the rendition of services to the assessee for furtherance of its business.

5.4 As regards ground no. 3 of the Revenue appeal, the learned counsel pointed out that the Assessing Officer has not passed any speaking order towards denying the TDS credit. The Assessing Officer, for the first time in the computation sheet, has short granted TDS credits. The CIT(A), on the other hand, after examining the evidences, such as, ledger account, invoices etc. allowed TDS credit of Rs.85.51 lakhs on the ground that corresponding income has been included in the total income for assessment year 2015-16 as per mercantile basis of accounting in tune with section 199 of the Act.

5. The learned counsel thus submitted that no interference with the order of the CIT(A) is called for in any of the three grounds raised on behalf of the Revenue.

6. We have carefully considered the rival submissions. As claimed on behalf of the assessee that no additional evidences were filed before the CIT(A) towards intragroup services, the objection raised by the Revenue as per the ground no.1 of the appeal is a *damp squib*. Ground no. 1 is thus dismissed.

7. Ground no. 2 concerns disallowance of intragroup service charges. The CIT(A) has dealt with the issue as under:

*“6.4 Findings and Decision:*

*I have carefully considered the arguments of the appellant as well as various decisions/judgments cited by the appellant. I find force in the arguments taken by the appellant. The appeal of the Assessee has been allowed by the CIT(A)-15, New Delhi on this issue for the assessment years 2013-14 and 2014-15. Further in the remand report dated 02.04.2019, in this respect, the AO has submitted as under*

*7.4 Based on the examination of additional evidence filed under Rule 46A and the discussion held, I am satisfied that the services against which the payment of Group Cost was incurred were availed by the assessee and such Group Cost was incurred wholly and exclusively for the purpose of its business*

*7.5 Separately, on the factual enquiry regarding submission of service agreement during the course of assessment proceedings, it is hereby confirmed that the assessee submitted such agreement vide submission dated 25 November 2016. Same can also be corroborated with Para 4.3 of the assessment order.*

*Respectfully following the said order, the disallowance of Rs.8,14,65,901/- made by the AO on account of group cost is hereby deleted. The grounds of appeal no. 2 (2.1, 2.2, 2.3, 2.4) are allowed.”*

8. On perusal of the first appellate order and the submissions made on behalf of the assessee, it is observed that identical controversy came up for adjudication in assessment year 2013-14 as well as assessment year 2014-15. The issue stood concluded in favour of the assessee by the CIT(A) based on factual matrix presented in those years. The Revenue has accepted the first appellate order without any further challenge. As emerging from the record, the factual matrix in the assessment year 2015-16 are broadly similar without any significant variation. This being so, we see no substantive reason to assail the view expressed by the CIT(A). Hence, we decline to interfere. Ground no. 2 of the appeal is dismissed.

9. As per ground no. 3 of its appeal, the Revenue has challenged relief on account of TDS credit to the extent of Rs.85,59,590/-. The CIT(A) has dealt with the issue as under:

**“7.3 Findings and Decision: -**

*The AO has granted credit for Rs. 2,04,65,578/- out of Rs.2,90,27,168/-, and the balance Rs.85,59,590/- has been denied. The appellant has clearly detailed its method of accounting and the basis for recognition of revenue. The method followed by the appellant in in conformity with the section 199 and rule 37BA of the Act. In a recent judgement SUPREME COURT OF INDIA in the case of Principal Commissioner of Income-tax, Mumbai v. Tata*

*Communications Ltd., [2019] 111 taxmann.com 259 (SC), held as under:-*

*Section 199 of the Income-tax Act, 1961 Deduction of tax at source Credit for tax deducted (Availability of) In appellate proceedings, revenue objected to assessee's claim of Tax Deducted at Source from payments made on ground that there was mis-match in TDS certificate issued by deductors and aggregate amounts arrived at as appearing in Form 26-A Tribunal opined that, in case, deductor failed to upload correct details in Form 26-A, benefit of TDS should be given to assessee on basis of evidence produced before Department Resultantly, Tribunal directed Assessing Officer to verify correct facts and give credit of TDS to assessee High Court upheld Tribunal's order - Whether, on facts, SLP filed against order of High Court was to be dismissed-Held, yes [Para 4] [In favour of assessee)*

*Accordingly, in light of the above judgment, the AO is hereby directed to give credit for TDS of Rs 85,59,590) to the appellant. This ground of appeal is thus allowed.”*

10. The CIT(A) found that the claim towards TDS credit is matched by corresponding recognition of Revenue in conformity with section 199 read with Rule 37BA of the Act. The Revenue has failed to point out any inconsistency in the action of the CIT(A). Hence, we decline to interfere.

11. Ground no. 3 of the Revenue appeal is dismissed.

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

***Order pronounced in the open court on 14<sup>th</sup> November, 2024***

***Sd/-***  
**(VIMAL KUMAR)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

Dated: 14<sup>th</sup> November, 2024.  
RK/-

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi