

**आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“C” BENCH, CHENNAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकरअपील सं./ ITA No.1039/Chny/2024**  
**(निर्धारण वर्ष / Assessment Year: 2014-15)**

|   |                      |  |
|---|----------------------|--|
| <b>M/s. Cheran Machines India Pvt. Ltd.</b><br>142/3, Main Road, Bharathi Street,<br>Chinnavedempatti,<br>Udayampalayam Main Road,<br>Coimbatore-641 049. | <b>बनाम</b><br>/ Vs. | <b>DCIT</b><br>Corporate Circle-1<br>Coimbatore. |
| स्थायीलेखासं./जी आइ आरसं./PAN/GIR No. <b>AACCC-3388-E</b>   |                      |  |
| (अपीलार्थी/ <b>Appellant</b> )  | :                    | (प्रत्यर्थी / <b>Respondent</b> )                |

|  |   |                                   |
|--|---|-----------------------------------|
| अपीलार्थीकीओरसे/ <b>Appellant by</b>   | : | Shri Bhupendran (Advocate)-Ld. AR |
| प्रत्यर्थीकीओरसे/ <b>Respondent by</b> | : | Ms.R. Anita (Addl.CIT)-Ld. DR     |

|   |   |            |
|---|---|------------|
| सुनवाईकीतारीख/ <b>Date of Hearing</b>       | : | 29-08-2024 |
| घोषणाकीतारीख / <b>Date of Pronouncement</b> | : | 18-11-2024 |

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1. The sole grievance of the assessee in captioned appeal for Assessment Year (AY) 2014-15 is demand raised u/s 201(1) / (1A) for want of tax deduction at source (TDS) on certain payments to non-resident for the services rendered by that individual. The same is contained in additional grounds of appeal as filed by the assessee which read as under: -

1. Without prejudice to other grounds of appeal, the First Appellate Authority and the Assessing Officer erred in not properly construing the scope of "Fees for Technical Services" appearing in Section 9 of the Income Tax Act, given the context and the nature of transaction carried out by the Appellant with the non-resident.
2. Without prejudice to other grounds of appeal, the First Appellate Authority and the Assessing Officer erred in blindly relying on the decision of the Madras High Court in 'Regen Power Tech' Case. when the said decision itself very clearly conveys that the result of the decision was arrived purely on the peculiar set of facts of the case.
3. Without prejudice to other grounds of appeal, the First Appellate Authority erred in endorsing the views of the Assessing Officer, without considering and appreciating that the provisions of the India-Sri Lanka DTAA were not properly and fully applied.

The Ld. AR has not pressed for main grounds of appeal. The additional grounds, being substantive grounds, are admitted. The impugned order has been passed by learned Commissioner of Income Tax (Appeals)-16, Chennai [CIT(A)] on 12-02-2024 in the matter of an order passed by learned Assessing Officer u/s 201(1) / 201(IA) of the Act on 31-03-2021. The Registry has noted a delay of 3 days in the appeal, which stands condoned. In the order, Ld. AO has raised a demand of Rs.4.97 Lacs against the assessee. Having heard rival submissions, the appeal is disposed-off as under.

2. The assessee is engaged in export of various textile machineries. The assessee paid installation, commissioning and maintenance charges to a non-resident individual by the name PGDA Krishantha (foreign national of Sri Lanka). However, no tax was deducted at source on these payments. As per contractual terms, Shri PGDA Krishantha was to install and maintain various machineries sold by the assessee to its vendors at Sri Lanka. The assessee submitted that it exported goods directly to respective parties. Shri PGDA Krishantha had business place at Sri Lanka and it did not have any Permanent Establishment (PE) / business connection in India. He was looking after overall supervision of imported machinery and maintenance part of machinery at Sri Lanka. He was

engaged for the purpose of order procurement, maintenance, rectification of defects and to render support services to assessee's clients. For these services, payments were made to him. Since he did not have PE in India, the said payments were not taxable in India and hence, no TDS was required on the same u/s 195. However, Ld. AO held that the services were technical services and the payment was nothing but 'fees for technical services'. The work of payee would require technical expertise and therefore, the same would be taxable u/s 9(1). The same would also be covered under Article 12(2) of India Sri Lanka DTAA. Reference was made to the decision of Hon'ble High Court of Madras in the case of **Regen Powertech Pvt. Ltd. (110 Taxmann.com 55)**. Finally, the impugned demand was raised against the assessee. Upon further appeal, Ld. CIT(A) confirmed the same against which the assessee is in further appeal before us.

3. From assessee's submissions before lower authorities, it could be seen that payee has rendered various services like procurement of order, supervision, installation, commissioning and maintenance etc. The assessee has supplied machineries to assessee's vendors at Sri Lanka and the payee has, *inter-alia*, undertaken the installation of the machineries. The Ld. AR has placed on record operators' manual for CF2002 / 2003 Heat Transfer Machine as well as for CF0606-Cute Machine to drive home the point that minimum technical expertise was required to install the machineries as supplied by the assessee and therefore, the payments could not be termed as 'fees for technical services'. Drawing attention to various instructions given in the operators' manual, Ld. AR explained that installation procedure of the machinery is quite simple which do not require any technical expertise to install the

same. The machineries are in a ready-to-use state and first, the machines has to be dismantled from the crates then screwed on the frames and thereafter, power connections are made to bring the same to use. Therefore, the installation procedure does not involve any technical expertise. Reference has been made to the decision of Hon'ble High Court of Madras in the case of **M/s Evolv Clothing Company Pvt. Ltd. (TCA No.572 of 2013 dated 14-06-2018)** which is stated to be rendered on similar facts. The Ld. Sr. DR, on the other hand, maintained that the payment were fees for technical services.

4. After going through the operators' manual, we would concur that installation procedure of the machinery do not require much technical expertise to make them ready for use. For the same, not much technical expertise would be required. The impugned payments are not only for installation, commissioning of machineries but also for procurement of order, overall supervision and maintenance etc. which would show that the services are general in nature. Therefore, the ratio of decision of **M/s Evolv Clothing Company Pvt. Ltd. (supra)** would apply. In this case, the payee rendered services for marketing the products of the company, to procure orders and undertake market research. The Hon'ble Court decided the issue in assessee's favor and held that no tax would be required against the same considering the decision of Hon'ble Apex Court in the case of **GE India Technology Centre Pvt. Ltd. (327 ITR 456)**. The facts in the case law of **Regen Powertech Pvt. Ltd. (supra)** were that the payee was engaged in installation & repairing of wind turbines which was held to be highly technical work requiring deployment of technical staff. The same is not the case here. Considering the facts of the case, we would hold that the payments as made by the assessee

could not be held to be 'fees for technical services' warranting TDS on the part of the assessee. Consequently, the impugned demand as raised against the assessee stand deleted.

5. The appeal stand allowed in terms of our above order.

*Order pronounced on 18<sup>th</sup> November, 2024.*

Sd/-

**(MAHAVIR SINGH)**

उपाध्यक्ष / **VICE PRESIDENT**

Sd/-

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated : 18-11-2024  
DS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF