

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D': NEW DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

ITA No.1444/Del/2023,A.Y.2016-17

ALSTOM SA FRANCE 48, Rue Albert Dhalenne, 93482, Saint-Quin Cedex, France PAN : AAICA8752G	Vs.	Deputy Commissioner of Income Tax, Circle 1(1)(1), International Taxation, New Delhi
(Appellant)		(Respondent)

Appellant by	Shri Ketan Ved, CA
Respondent by	Sh. Vijay B Vasanta, CIT DR

Date of Hearing	17/10/2024
Date of Pronouncement	17/10/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM

This appeal for the Assessment Year (hereinafter, the 'AY') 2016-17 filed by the assessee is directed against the order dated 10.03.2023 passed by the Commissioner of Income Tax (Appeal), Delhi-42, [hereinafter, the 'CIT(A)'].

2. The following grounds are raised in this appeal:

“1. Higher income considered as against actual income earned

1.1 *The learned Commissioner of Income Tax (Appeals) ('CIT(A)') and the learned Assessing Officer (AO') have erred in law and on facts in not*

considering the actual income earned by the Appellant for the subject year;

- 1.2. *The learned CIT(A) and the learned AO ought to have appreciated that the total income earned by the Appellant during the year amounted to Rs. 38,33,88,085 only i.e.*
 - a. *Rs.6,76,67,646 from Alstom Transport India Limited;*
 - b. *Rs.12,65,65,639 from GE Power India Limited; and*
 - c. *Rs.18,93,54,804 from GE T&D India Limited.*
- 1.3. *The learned CIT(A) and the learned AO ought to have appreciated that the time-limit for filing the revised return had lapsed and hence revised return could not be filed reflecting the actual income earned;*
- 1.4. *The learned CIT(A) and the learned AO ought to have appreciated that several judicial rulings including the jurisdictional High Court have held that it is open for the AO and the CIT(A) to consider the revised claims made by the Assessee by way of revised computation during the course of assessment proceedings since the due date for filing revised return had lapsed;*
- 1.5. *The learned CIT(A) and the learned AO erred in assessing excess income of Rs. 19,09,00,395 by not considering the submissions made by the Appellant providing the details of the actual income earned during the course of the assessment proceedings and appeal proceedings;*
- 1.6. *The learned CIT(A) and the learned AO erred in concluding that the books of accounts of the Appellant cannot be relied upon during the captioned AY without appreciating the fact that th Appellant is a non-resident entity and is not required to maintain books of accounts in India.*
2. *Short grant of TDS Credit against the actual income earned*
 - 2.1. *The learned CIT(A) erred in not granting the correct credit towards taxes deducted at source the Appellant against the actual income earned by it.*
3. *Erroneous Levy of interest under Section 234C*

3.1. *The learned AO erred in levying interest under section 2348 of the Act, which is consequential to the impugned adjustments made in the assessment order.*

4. *Erroneous Levy of interest under Section 234C*

4.1. *The learned AO erred in levying interest under section 234C of the Act, which is consequential to the impugned adjustments made in the assessment order.*

Each of the above ground is independent and without prejudice to the other grounds of appeal preferred by the Appellant.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds, at any time before or at the time of hearing of the appeal. Each of the above objections is independent and without prejudice to the other grounds preferred by the appellant.”

2.1 In nut shell, the appellant/assessee has challenged the assessment of income at INR 574,289,200 as against the actual income of INR 383,388,085. Further, it also raised the issues of (i) non-allowance of credit of withholding tax/tax deducted at source (TDS) and (ii) the chargeability of interest under sections 234B and 234C of the Income Tax Act, 1961 (hereinafter ‘the Act’).

3. The relevant facts giving rise to this appeal are that the appellant/assessee filed its Income Tax Return (hereinafter, the ‘ITR’) on 30/11/2016 declaring income of INR 574,289,200/-. The case was scrutinized and the income declared in the ITR was accepted. Alstom Transport India Limited (hereinafter, the ‘ATIL’), one of the Associated Enterprises of the assessee used to pay substantial sum to the assessee

in lieu of services rendered by the assessee. During the course of scrutiny assessment proceedings, the assessee claimed that it had filed its ITR based on the data available in 26AS of the appellant/assessee. However, ATIL who had made substantial payments to the assessee revised its TDS statement which resulted substantial decrease in the revenue of the appellant/assessee from INR 220,069,300 to INR 6,74,67,646/-. It was claimed that the ATIL had wrongly reported the payment of INR of 220,069,300/- instead of INR 6,74,67,646/- in its original TDS Statement. This revision of TDS statement by the ATIL resulted consequential decrease in income of the appellant/assessee by INR 152,601,653/-. This revision of TDS statement by ATIL was brought to the notice of the Assessing Officer (hereinafter, the 'AO') during the assessment proceedings vide submission dated 30.10.2019 of the assessee. However, the AO did not take cognizance of the same.

3.1 Aggrieved, the assessee preferred appeal before the CIT(A), who, placing reliance on the decision of the Hon'ble Supreme Court in the case of Wipro Ltd. [2022] 140 taxmann.com 223, dismissed the appeal on the reasoning that the assessee could not take contrary stand later and put new claim to substitute the original ITR beyond the time limit prescribed under section 139(5) of the Act. Further, the Ld. CIT(A) also held that there was no merit in the contention of the assessee that it

filed its ITR based on 26AS and not on books of account as reconciliation of the same would have been done before finalizing the books of account and filing of the ITR. It was also opined by the Ld. CIT(A) that such huge difference in income that too with the AE seemed suspicious and raised doubts on the accounting of the assessee.

4. Before us, the Ld. Authorized Representative (hereinafter, the 'AR') submitted that the ATIL, after noticing the error in reporting higher payments to the appellant/assessee, revised its Withholding Tax/TDS Statement showing actual payments made to the appellant/assessee. This revision of the Withholding Tax/TDS Statement by the ATIL had lessened the receipts in the hands of the appellant/assessee. However, the AO did not take cognizance of the same and gave effect thereof even after specific request of the appellant/assessee. The Ld. AR therefore, requested for allowance of the consequential relief due to revision of the Withholding Tax/TDS Statement by the ATIL. He requested for specific direction to the AO for giving consequential effect of the revision of Withholding Tax/TDS Statement of the ATIL after due verification. Further, he also requested that the AO should be directed to allow credit of withholding Tax/TDS after due verification.

5. On the other hand, the Ld. Commissioner of Income Tax-Departmental Representative (hereinafter, the 'CIT-DR'), placing reliance on the impugned order, submitted that there was no mistake in the original assessment order and impugned order as the income had been assessed based on the income disclosed on the original ITR and any revision in the income would have been done within the time limit prescribed under section 139(5) of the Act. Further, he argued that there was no merit in the contention of the assessee that it filed its ITR based on 26AS without reconciliation of the same with the books of account. He further contended that the revision of the Withholding Tax/TDS Statement by the ATIL had been rightly held as suspicious and doubtful by the Ld. CIT(A) because it was not verifiable that whether the claim of expenditure as per the original Withholding Tax/TDS Statement of the ATIL was revised resulting more income for tax by the ATIL as the revision of income of the appellant/assessee would result consequential increase in the income of the ATIL. In view of the above, he requested for dismissal of appeal on this issue. However, he was in agreement with the Ld. AR on the issue of allowance of credit of withholding Tax/TDS after due verification.

6. We have heard both the parties at length and perused the material available on record. In view of the above, it is evident that the

issue of effect of revision of Withholding Tax/TDS Statement of the ATIL was not examined by the AO. The reasoning of revision of Withholding Tax/TDS Statement of the ATIL; prima-facie, appears unconsidered while finalizing the assessment as the AO has not touched the issue at all. This is not a case of additional claim of deduction and allowance of set off of losses of the appellant/assessee. The facts of the case in hands are different than that of Wipro Ltd. (supra). Therefore, this case law is held distinguishable and not applicable here. The appellant/assessee and the ATIL are associated concerns. We find merit in the arguments of the Ld. CIT-DR that the revision of Withholding Tax/TDS Statement by the ATIL will have effect on income of both concerns and unilateral effect of the same had rightly been not given by the AO. The effect of revision of Withholding Tax/TDS Statement on income of the ATIL is not the issue emerged from this appeal. We are therefore, refraining from commenting on that.

7. In view of the above, we direct the AO to verify and reconcile the data of 26AS due to the revision of withholding Tax/TDS Statement by the ATIL vis-à-vis the respective accounting entries in books of account of the appellant/assessee and consequentially, revise the income of the appellant/assessee after proper verification and reconciliation. Further, the AO is also directed to give credit of withholding Tax/TDS after due

verification of the same. Subject to above, these two issues are remitted back to the AO for denovo consideration.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced in open Court on 17th October, 2024.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(AVDRESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated:03/01/2025

Binita, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI