

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

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
and  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.2704/DEL/2024  
(Assessment Year: 2017-18)**

HCL Software Products Limited,  
806, Siddharth,  
96, Nehru Place,  
New Delhi – 110 019.

vs.

ACIT, Circle 11 (1),  
Delhi.

**(PAN : AAACI8253L)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Shri Aditya Vohra, Advocate  
Shri Shashvar Dhamega, Advocate  
REVENUE BY : Shri Tanay Sharma, Sr. DR

Date of Hearing : 03.03.2025  
Date of Order : 16.05.2025

**ORDER**

**PER S. RIFAUR RAHMAN, ACCOUNTANT MEMBER :**

1. The assessee has filed appeal against the order of the Learned Addl/JCIT (Appeals)-2, Noida ["Ld. JCIT(A)", for short] dated 31.03.2024 for the Assessment Year 2017-18.
2. Brief facts of the case are, the assessee filed its return of income on 30.10.2017 for the assessment year 2017-18 declaring total income of Rs.4,84,79,780/-. The case was selected for scrutiny through CASS for complete scrutiny on the issues mentioned therein and notices under

section 143(2) and 142(1) of the Income-tax Act, 1961 (for short 'the Act') were issued and served on the assessee through email. In response to the above notices, the assessee uploaded the submissions through online portal. Assessee is engaged in the business of providing a range of business process outsourcing services and investment advisory services. After considering the details submitted by the assessee, the Assessing Officer observed that assessee has made payments to foreign entities, namely, Dash Enterprise and Accelerated Data Systems (ADS) and found that assessee has not deducted TDS on such payments. The assessee was show caused to explain as to why on such non-deduction of TDS on such payments should not be disallowed. In response, assessee submitted the details of tax deducted with respect to ADS Inc. and however no such TDS was made relating to the payments made to Dash Enterprises. Therefore, the AO invoked the provisions of section 40(a)(ib) of the Act and observed that the assessee availed the services of Dash Enterprises not being resident and has carried out any work on behalf of assessee which in the nature of managerial services has not deducted tax. This attracts the provisions of section 40(a)(i) of the Act. Accordingly, he disallowed the payments made to Dash Enterprises to the extent of Rs.15,64,901/-.

3. Aggrieved with the above order, the assessee preferred an appeal before CIT(A)-2 Noida. It was submitted before him that the services rendered by Dash Enterprises were not FTS both under the provisions of Act as well as the India Australia DTAA. It was claimed that the services were not technical, managerial or consultancy in nature and did not involve any transfer of technology or technical expertise. In reference to invoices and service agreement, assessee contended that the services provided were in the nature of communication to assessee's customers through letters, correspondences to for debt collection for which no technical skills were required. It also submitted that the services were utilised for earning income from a source outside India and hence, the exclusions provided in section 9(1)(vii)(b) and Article 12(3)(g) of India Australia DTAA would apply. After considering the above, he held that the services provided by them are covered under the scope of managerial services and accordingly, sustained the additions made by the AO. He also rejected the plea of the assessee on the disallowance made u/s 40(a)(i) does not fall under any clauses of Explanation 1 to section 115JB of the Act, hence, it cannot be added to the book profit.
4. Aggrieved with the above order, the assessee is in appeal before us raising following grounds of appeal:

"1. That on the facts and circumstances of the case and in law, the order dated 31.03.2024 passed by the Commissioner of Income-tax (Appeals) ["CIT(A)"] in the case of the Appellant for assessment year 2017-18 is bad in

law, unsustainable and deserves to be reversed to the extent of issues raised in this appeal.

Disallowance under section 40(a)(i) in respect of payment made to non-resident

2. That the CIT(A) erred on facts and in law in sustaining the disallowance of Rs.15,64,90 1 made by the assessing officer for computing the income returned under the normal provisions, by invoking the provisions of section 40(a)(i) of the Income-tax Act, 1961.

3. That the CIT(A) erred on facts and in law in sustaining the said disallowance, not appreciating that the payment of Rs.15,64,90 1 was not chargeable to tax in India in the hands of the non-resident recipient in terms of Article 12(3) of the India-Australia DTAA and therefore, provisions of section 40(a)(i) were not attracted as there was no requirement to deduct tax at source under section 195 of the Act.

4. That the CIT(A) erred on facts and in law in sustaining the said disallowance under section 40(a)(i), without appreciating that the payment of Rs.15,64,90 1 was, even otherwise, not chargeable to tax in India in the hands of the non-resident recipient in terms of section 9(1)(vii)(b) and therefore, did not require deduction of tax at source under section 195 of the Act.

Incorrect levy of interest

5. That the CIT(A) erred on facts and in law in confirming levy of interest under section 234B of the Act.

6. That the CIT(A) erred on facts and in law in confirming levy of interest under section 234C of the Act. “

5. At the time of hearing Ld AR of the assessee submitted as under :-

“At the outset, kind attention is invited to the services provided by Dash Enterprises to the Appellant (refer page 43 of merits paper book):

- Post box, receive, sort, scan & email correspondence;
- Download/ decrypt client databases daily;
- Set up, supply 80gsm A4 stock, envelopes & Laser Print Simplex @ 600DPI page personalised letter;
- Set up & fold A4 letters to DL;
- Set up & insert folded letters into DL envelope seal & sort;
- Receiving, handling & lodgement to Australia Post daily; and
- Advise of returned mail.

- Taxability under the Act

On perusal of the aforesaid, it will be evident that the same do not partake the nature of 'managerial services', which has been lucidly explained by the Hon'ble Delhi High Court in the case of DIT vs Panalfa Autoelektrik Ltd [2014] 272 CTR 117 (Del) to be of the following nature [Refer case laws paper book Pg 1-11 @Pg 6-7]:

- discovering, developing, defining and evaluating the goals of the organization and the alternative policies that will lead toward the goals;
- getting the organization to adopt the policies;
- scrutinizing the effectiveness of the policies that are adopted; and
- initiating steps to change policies when they are judged to be less effective than they ought to be.

Similar view was taken by the Hon'ble Delhi High Court in the case of CIT vs Springer Nature Customer Services Centre GmbH [2023] 458 ITR 728 (Del) [Refer case laws paper book Pg 12-20 @ Pg 18J wherein services in the nature of global sales and marketing services, customer services, order handling, debtor management services, invoicing, etc. were held to not be 'managerial services', considering that none of these services related to discovering, developing or defining the goals of the assessee or even framed policies that lead to these goals.

It is, thus, submitted that the payments made by the Appellant were not for 'managerial services' being provided by Dash Enterprises, a non-resident company. The payments did not fall within the scope of section 9(1)(vii) of the Act and therefore, there was no obligation on the Appellant to deduct tax at source qua such payments.

- Taxability under the DTAA

Dash Enterprises is a company resident of Australia; taxability of receipts in the hands of the non-resident company has to be examined in the light of the provisions of the DTAA, to the extent more beneficial to the taxpayer [refer section 90(2) of the Act].

In this regard, it is submitted at the outset that the CIT(A) has grossly erred in holding that the provisions of the Act or the DTAA, whichever are more beneficial to the Revenue, have to be applied to determine taxability of the non-resident. The said finding, it is submitted, is in the teeth of section 90(2) of the Act and cannot be countenanced.

Reliance placed by the CJT(A) in this regard on the judgment in PILCOM (supra) is wholly misplaced and ill-conceived. The said judgment dealt with deduction of tax at source under section 194E of the Act, which lies in a very narrow compass and specifies a clear rate of tax withholding for certain types of payments only (refer case laws paper book pages 39-51 @ Pg48-51). However in the present case, the obligation to withhold tax at source has undisputedly to be seen in the context of section 195 of the Act, which

provides that tax is to be deducted on 'sum chargeable to accordance to tax' in accordance with the 'rates in force', which has been defined in section 2(37A)(iii) of the Act to mean the rate of tax as mentioned in the relevant DTAA.

Kind attention in this regard is invited to the judgment in the case of Engineering Analysis Centre of Excellence (P) Ltd vs CIT [2021] 432 ITR 471 (SC) (refer case laws paper book pages 1-38 @ Pg 38), wherein the Supreme Court explained its decision in PILCOM (supra) by observing that section 194E belongs to a set of provisions which do not make any reference to chargeability of payments under the Act while fastening the liability to deduct tax at source, as opposed to section 195 of the Act, which obligates the deductor to deduct tax at source only when income of the non-resident assessee is chargeable to tax in India.

In the present case, thus, chargeability to tax of receipts of the non-resident company has to be determined under sections 4, 5 and 9 of the Act read with the provisions of the India-Australia DTAA and accordingly, corresponding liability to deduct tax at source will be determined in the hands of the Appellant.

It is submitted that services provided by Dash Enterprises were in the nature of clerical/support services, such as helping the Appellant communicate with the customers (through letters, correspondences, etc.) in order to collect money due to them. In terms of Article 12(3)(g) of the DTAA, the services provided by Dash Enterprises as debt collection agent did not make available technical knowledge, experience, skill, know-how or processes to the Appellant, inasmuch as there was no transfer of technical knowledge, skills, know-how, etc. of the provider being absorbed by the Appellant, being the recipient of services, who would then have the capability to deploy that knowledge or skill without reference to the original provider [refer International Management Group (UK) Ltd vs CIT [2024] 466 ITR 514 (Del), case laws paper book Pg 77-108 @ Pg 103-104.

Therefore, payments made for such services were not taxable in India under the provisions of the DTAA and the Appellant was, accordingly, not required to deduct tax at source while making the said payments to Dash Enterprises.

The disallowance of Rs.15,64,901 made under section 40(a)(i) of the Act is unsustainable, unwarranted and deserves to be deleted.”

6. On the other hand, Ld DR of the Revenue relied on the findings of lower authorities.
7. Considered the rival submissions and material placed on record. We observed that the service agreement submitted before us indicate that the

functions performed by the dash enterprises involves correspondence services, maintaining client database and review of the communications daily and reply daily. It also involves payment follow up from its customers. In our considered view there is merit in the submissions of the assessee that these services too not partake the nature of managerial services. This submission is supported by the decision of Hon'ble Delhi High Court in the case of Panalfa Autoelektrik Ltd (supra) and Springer Nature Customer Services Centre GmbH (supra).

8. With regard to findings of Id. CIT (A) relating to DTAA, we observed that the services rendered by Dash Enterprises outside India and compensation paid to them for the services rendered outside India. It is fact on record that the compensation paid to Dash Enterprises is not taxable in India, hence, the provisions relating to TDS are not applicable. Therefore, the case laws relied upon by Id. CIT (A) are distinguishable. Hence, we are inclined to allow the grounds raised by the assessee. Accordingly, the appeal filed by the assessee is allowed.
9. In the result, the appeal filed by the assessee is allowed.

**Order pronounced in the open court on this 16<sup>th</sup> day of May, 2025.**

**Sd/-**  
**(SATBEER SINGH GODARA)**  
**JUDICIAL MEMBER**

**sd/-**  
**(S.RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**Dated: 16.05.2025**  
**TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals).
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI