

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, BANGALORE**

**BEFORE SHRI NARENDER KUMAR CHODHRY, JUDICIAL MEMBER AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No. 804 & 805/Bang/2024
Assessment Years: 2016-17 & 2017-18

M/s IG Petro Chemicals Limited, D-4, Jyothi Complex, 134/1, Infantry Road, Bangalore – 560 001.  <b>PAN – AAACI 4115 R</b>	Vs.	The Dy. Commissioner of Income Tax, Circle – 3(1)(1), Bangalore.  .
APPELLANT		RESPONDENT

Assessee by	:	Shri S Parthasarathi and Smt. Pratibha R, Advocates
Revenue by	:	Shri Shivanand H Kalakeri, CIT (DR)

Date of hearing	:	04.08.2025
Date of Pronouncement	:	13.08.2025

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

These appeals filed by the assessee are against the order passed by the NFAC, Delhi vide order dated 05/03/2024 assessment years 2016-17 and 2017-18.

***First, we take-up ITA No. 804/Bang/2024, an appeal by the assessee for the asst. year 2016-17.***

2. The only issue raised by the assessee is that the Id. CIT(A) erred in confirming the addition made by the AO on certain expenses incurred outside India on account of non- deduction of TDS u/s 195 r.w.s. 40(a)(i) of the Act.

3. The necessary facts are that the assessee in the present case is a Public Limited Company and engaged in the business of manufacturing and sale of Phthalic Anhydride and Benzoic Acid. The AO during the assessment proceedings found that the assessee has incurred certain expenses outside India, the details of the same is extracted below:

<b><u>S. No.</u></b>	<b><u>Expenses</u></b>	<b><u>Amount (Rs.)</u></b>
1.	Foreign Export Commission	Rs. 23,23,928/-
2.	Legal and Professional Charges	Rs. 10,81,645/-
3.	Subscription Expenses	Rs. 14,60,295/-

4. As per the AO, the above expenses were subject to the provisions of TDS u/s 195 of the Act, which the assessee failed to do so. Therefore, the AO invoked the provisions of sec. 40(a)(i) of the Act and added the same to the total income of the assessee.

5. On appeal, the Id. CIT(A) found that the ITAT in the own case of the assessee in ITA Nos. 1955, 1956, 1957 and 207/Bang/2018 for the asst. years 2010-11, 2011-12, 2012-13 and 2013-14 has upheld the disallowance on account of non-deduction of TDS. Accordingly, the Id. CIT(A) respectfully following the order of the Tribunal in the own case of the assessee upheld the disallowance made by the AO.

6. Being aggrieved by the order of the Id. CIT(A), the assessee is in appeal before us.

7. The Id. AR before us filed a paper book running from pages 1 to 150 and contended that the assessee has filed various documents during the appellate proceedings along with the judicial pronouncement, justifying that the expenses in dispute were not subject to provisions of sec. 195 of the Act. Therefore, as per the Id. AR, the income in the hands of the recipient, based in foreign countries was not chargeable to tax in their respective hands. Therefore, the same cannot be made subject to the provisions of sec. 195 of the Act w.r.t sec. 40(a)(i) of the Act.

8. The Id. AR fairly admitted that this Tribunal in the own case of the assessee in the earlier assessment years has decided the issue against the assessee but as per the Id. AR the facts of the case of the earlier year are distinguishable with the facts of the case on hand. Accordingly, the Id. AR contended that no support can be drawn from the order of the ITAT in the cases of earlier years. It was also pointed out by the Id. AR that this Tribunal in the own case of the assessee in the earlier asst. years 2014-15 and 2015-16 in ITA Nos. 2309 and 2310/Bang/2018 have set aside the issue to the file of the Id. CIT(A) for fresh adjudication. Accordingly, the Id. AR prayed that the matter can be set aside to the lower authority i.e. AO so as to avoid the time to be taken by the Id. CIT(A) in calling for the remand report from the AO.

9. On the other hand, the Id. DR did not raise any objection if the matter is set aside to the file of the AO as per the provisions of law.

10. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the order of the Id. CIT(A), we note that there were many documents filed by the assessee along with the judicial pronouncement but the Id. CIT(A) without pointing out any defect in the submission filed by the assessee has dismissed the appeal of the assessee on the reasoning that the ITAT in the earlier years has taken a view against the assessee. It is admitted position of law that the issue of each case has to be decided on its own merits after considering the submission of the assessee. Admittedly, in the case on hand, the assessee has filed numerous details but the Id. CIT(A) has not considered the same.

11. At this juncture, we also note that the ITAT in the own case of the assessee in the earlier asst. years has set aside the issue to the file of Id. CIT(A). The relevant extract of the ITAT in ITA Nos. 2309-2310/Bang/2018 is extracted as under:

*“6. We have heard the rival submissions and perused the materials available on record. At the time of hearing, the Ld. D.R. brought to our notice earlier order of the Tribunal in assessee’s own case for assessment year 2011-12 & 2013-14 in ITA No.1955 to 1957/Bang/2016 and ITA No.207/Bang/2012 vide order dated 18.3.2022 in which it was decided as under:-*

*“6.5 We have heard rival submissions and perused the material on record. The A.O. has held that the said services (Commission payment, legal fees, survey fees, book and periodicals) rendered by commission agents are actually in the nature of technical services. Accordingly, it was held that the assessee ought to have deducted tax at source in respect of these payments. Considering that the assessee has not furnished any specific information to the contrary to substantiate that the services rendered were not in the nature of technical and consulting services, the CIT(A) upheld the order of the A.O.*

6.5.1 *Even before us, the assessee has not furnished any additional evidence or any explanation to controvert the finding of subordinate authorities with respect to applicability of TDS provisions. The learned AR has reiterated the submissions made before the Income Tax Authorities. The assessee had more than three opportunities to submit detailed explanations on applicability of TDS provisions, the same has not been utilized. Mere reference to the invoices cannot lead to any inference on the actual nature of services rendered / availed. The onus was on the assessee to prove that the amount is not exigible to tax in India and therefore, there is no need to withhold taxes. Since the onus has not been discharged, we are forced to confirm the orders of the Income Tax Authorities. It is ordered accordingly.*

6.5.2 *In the result, the disallowance u/s 40(a)(i) of the I.T.Act, raised for assessment years 2011-2012 to 2013-2014 is rejected.”*

7. *Ld. D.R. requested that this issue was decided against the assessee in aforesaid order as above and the same to be followed.*

8. *Admittedly, the same issue came for consideration before this Tribunal in assessee's own case in assessment year 2011-12 & 2013- 14 cited (supra). However, the assessee has filed the additional evidence before Ld. CIT(A) explaining the circumstances under which assessee is not liable to deduct TDS. The additional evidence was not considered by the Ld. CIT(A) on the reason that assessee has not filed petition for admission of additional evidence. In our opinion, the additional evidence furnished by assessee is very important to consider so as to render substantial justice. Accordingly, in the interest of justice, we admit the additional evidence and remit all the additional evidence back to the file of Ld. CIT(A) to consider the same and decide the issue afresh in the light of Tribunal order cited (supra) along with the additional evidence. If required, he has to call for remand report from the AO to decide the issue. Accordingly, this issue in both the appeals is remitted back to Ld. CIT(A) for fresh consideration.*

12. The facts of the case on hand are identical to the facts of the case cited above, therefore, respectfully following the order of this Tribunal, we are inclined to set aside the matter for fresh adjudication as per law.

13. The controversy also arises whether the appeal should be set aside to the file of the Id. CIT(A) or AO for fresh adjudication as per law. Admittedly, in the earlier asst. year the issue has been set side to the file of the Id. CIT(A) for fresh adjudication as per the provisions of law.

However, for the year under consideration, we note that there are numerous additional documents/submissions were filed before the Id. CIT-A which were not considered by the Id. CIT(A). Likewise, it is also important to note that these additional documents filed by the assessee were also not considered by the AO, therefore, we deem it fit, in the interest of justice and fair play and to avoid unnecessary time to be consumed in delivering justice to the assessee, to set aside the issue to the file of the AO for fresh adjudication as per the provision of law. Hence, we set aside the issue to the file of the AO for fresh adjudication as per the provisions of law.

14. It is needless to mention that the assessee shall co-operate during the proceedings before the AO and avoid unnecessary adjournment. In the event of non-co-operation from the side of the assessee, the AO shall be at liberty to take decision based on the facts available on record and as per law. Hence, the appeal of the assessee is allowed for statistical purposes.

15. In the result, the appeal of the assessee is hereby allowed for statistical purposes.

**Now coming to ITA 805/Bang/2024, an appeal by the assessee for the asst. year 2017-18**

16. The facts of the case on hand are identical to the facts of the case discussed above, therefore, respectfully following the same, we set aside the issue to the file of the AO for fresh adjudication as per the provision of law. Hence, the ground of appeal of the assessee is hereby allowed for statistical purposes.

17. In the result, the appeal of the assessee is hereby allowed for statistical purposes.

18. In the combined result, both the appeals filed by the assessee are hereby allowed for statistical purposes.

Order pronounced in court on 13<sup>th</sup> day of August, 2025

Sd/-

**(NARENDER KUMAR CHODHRY)**  
Judicial Member

Sd/-

**(WASEEM AHMED)**  
Accountant Member

Bangalore  
Dated, 13<sup>th</sup> August, 2025

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore