IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'H' : NEW DELHI)

BEFORE SHRI S.V. MEHROTRA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.6378/Del./2012
(ASSESSMENT YEAR : 2008-09)

M/s. YRC Logistics India Pvt. Ltd., (Now MIQ Logistics India Pvt. Ltd.) 705, Eros Apartments, 56, Nehru Place, New Delhi – 110 019.	vs.	ITO, Ward 18 (4), New Delhi.
(PAN : AAACU4937F)		
(APPELLANT)		(RESPONDENT)

ASSESSEE BY : Shri Vikram Mehta, CA
REVENUE BY : Shri V.R. Sonbhadra, Senior DR

Date of Hearing : 02.03.2016
Date of Order : 26.04.2016

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. YRC Logistics India Pvt. Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 19.10.2012 passed by the DRP/TPO/AO qua the assessment year 2008-09 on the grounds inter alia that :-

> "1. The learned assessing officer has made an addition of Rs.9,37,139/- booked as an expense on account of lease line connectivity charges due to non-deduction of tax at source. The charges were paid to an overseas entity. No tax needs to

> be deducted at source on this expense booking as it does not fall under the purview of section 195, section 9(1)(i), section 9(1)(vi) and section 9 (1)(vii) of the Income Tax Act. The expense claimed should be allowed in full.
>
> 3. The assessee company craves leave to add to amend the above objections at the time before or during the hearings."

2. Briefly stated, the facts of this case are : during the scrutiny of return of income filed by the assessee qua the assessment year 2008-09. Assessee made payment of Rs.10,22,179/- for interconnectivity charges and usage of leased line to M/s. Verizon Hong Kong Ltd., a resident of Hong Kong, being charges for the access of leased line and managed services thereon. The assessee was called upon to explain as to why the said amount be not disallowed under Section 40(a)(i) of the Income-tax Act, 1961 (hereinafter 'the Act') as TDS was not deducted on this amount as per provisions of section 195 of the Act. Assessee relied upon the order passed by the ITAT, Bangalore in the case of **Wipro Ltd. vs. ITO – (2003) 80 TTJ (Bang) 191** in not deducting the TDS. However, the Assessing Officer has declined to accept the contentions raised by the assessee and by relying upon the decision rendered by ITAT, Chennai in case of **Verizon Communications Singapore Pte Ltd. vs. ITO (International Taxation), Chennai** came to the conclusion that assessee was liable to deduct the TDS

u/s 195, section 9(1)(i), section 9(1)(vi) and section 9(1)(vii) of the Act and thereby made an addition of Rs.9,37,139/-.

3. The assessee carried the matter before DRP who has affirmed the findings returned by the AO. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. The ld. AR for the assessee challenging the impugned order contended inter alia that the assessee company was not liable to deduct the tax at source on the expenses booked as it does not fall within the purview of section 195; that sections 9(1)(i), 9(1)(vi) and 9 (1)(vii) are not applicable in this case as the assessee has only reimbursed the leased line interconnectivity charges to its group entity in Hong Kong and relied upon the order passed by ITAT, Bangalore Bench in the case of **Wipro Ltd.** (supra) and **Director of Income Tax vs. WNS Global Services (UK) Ltd. – (2013) 32 taxmann.com 54 (Bombay)**. On the other hand, ld. DR relied upon the order passed by the AO/DRP.

6. Now, the question arises for determination in this case is **"as to whether the amount in question has been booked as expenses on account of interconnectivity charges and usage of leased line to M/s. Verizon Hong Kong Ltd., a resident of Hong Kong, was to be classified either as royalty or income attributed to a Permanent Establishment in India?"**

7. Identical issue has come up before ITAT, Bangalore 'C' Bench in the case cited as **Wipro Ltd.** (supra). Operative part of which is reproduced for ready reference as under :-

> "Income deemed to accrue or arise in India-Fees for technical services/ royalty-Payment for transmission of data and software through up link and down link services-Assessee engaged, inter alia, in the business of development of software providing on line software services through customer based circuits with the help of VSNL and foreign telecom companies outside India-As per the agreements with such telecom companies assessee is to. use the standard facility having standard pricing patterns-There is nothing to show that assessee was provided with any technology or technical services-Therefore, the amounts paid by assessee-company to non-resident telecom companies for downlinking and transmitting of data to the assessee's customers located outside India cannot be considered as fees for technical services' under s. 9(1)(vii), moreso when similar services offered by VSNL is not regarded as technical services-Further, no process has been made available to the assessee-Hence, there is no question of applicability of s. 9(1)(vi) too-So long as the amount paid is not taxable under the Act, the clause in the DTAA cannot bring the charge-Hence, there was no liability to deduct tax under s.195."

8. Undisputedly, the assessee has paid the amount in question for services in accordance with the agreement to use standard

facility provided as set out in the master service agreement. The ld. AR for the assessee contended that the standard format refers to menu of services which can be utilized by the customers, available on internet and can be downloaded by anyone and its pricing patterns are also standard with an offer for bulk discount. Ld. AR further contended inter alia that invoices by AT&T are charges for utilization of customer based circuits and are periodical in nature and each invoice has a different amount indicating varying volume of services utilized at various point of time; that there is no evidence on record that the assessee was provided with any technology or the technical services for encapsulation or amplification or conversion of light signal into magnetic signal or vice versa or any evidence for hiring or utilization of satellite by the appellant.

9. When the aforesaid contentions of the ld. AR of the assessee are examined in the light of the assessment order passed in this case by the AO, it is apparently proved that the AO has not based his finding on any evidence available on record to reach out the conclusion that the assessee was provided with any technology or technical services for encapsulation or amplification or conversion of light signal into magnetic signal or vice versa or any evidence for hiring or utilization of satellite by the appellant, rather proceeded

to decide against the assessee by relying upon Article 12(3)(b) of the India Singapore Tax Treaty and under section 9(1)(vi) and 9(1)(viii) of the Act. For facility of reference, the findings returned by the AO are reproduced as under :

> "3. Payment for teased line connectivity : During the financial year the assessee made payment of Rs.10,22,179 for Inter 'Connectivity charges & usage of leased line to M/s Venzon Hongkong Ltd, a resident of Hongkong. The payment included charges for the access of leased line & managed services thereon. The assessee was asked to show cause as to why shouldn't this amount be disallowed u/s 40(a)(i) as TDS was not deduction on this amount as per provisions of Sec 195. In reply to which the assessee submitted that such payment does not fall in purview of Sec 195 & submitted judgement of Hon'ble ITAT Bangalore in case of Wipro (2003) 80 TTJ 191.
>
> The contention of the assessee was not tenable. The assessee has failed to appreciate a recent decision of Hon'ble ITAT Chennai in case M/s Verizon Communications Singapore Pte Ltd. Vs ITO (International Taxation), Chennai wherein it was held that amounts received by the appellant from the Indian customers for the provision of international connectivity services outside India is royalty for the use of equipment and related services under Article 12(3)(b) of the India Singapore Tax Treaty and under section 9(1)(vi) of the Income Tax Act, 1961. In the case of the assessee the liability to deduct TDS is more strict as in absence of any DTAA with Hongkong only the provisions of Sec 9 of Income Tax Act, 1961 will apply. Therefore, all income to any non-resident accruing or arising whether directly or indirectly through or from any business connection in India, or through or from any property or through or from any asset or source of income in India shall be taxable in India. In this case the leased line payment is source of Income for the payee in India
>
> These receipts for the payee even fall u/s 9(1)(vii) as they are for technical services given by the payee and which are being utilized in India. The Hon'ble ITAT Mumbai held on 21 May 2010 that the mere utilization of services in India is sufficient to attract tax liability in India and that the actual rendering of services in India IS no longer required (Ashapura

> Minichem Ltd. v. AOIT). Thus the assessee was liable to withhold tax on such payments and in absence of which such payment was held liable to disallowance u/s 40(a)(i).
>
> The DRP rejected the contention of the assessee on this issue, however direction was given to recompute the amount to be disallowed. The amount disallowed In original order was Rs.10,22,179. However, on verification it is observed that the total comes to Rs.9,37,139. Therefore, this sum is being disallowed u/s 40(a)(i).
>
> Since the assessee has furnished inaccurate particulars of his income & concealed actual income, penalty proceedings u/s 271(1)(c) of the Income Tax Act,1961 are being initiated separately."

10. Ld. DRP has also not insisted upon any evidence to support the findings returned by the AO to reach at the conclusion that the assessee was provided with any technical services by the payee rather the assessee has made reimbursement of the amount in question to the group company as leased line interconnectivity charges. Furthermore, since there was no contract or the agreement between the assessee and M/s. Verizon Hongkong Ltd., a resident of Hongkong, and the leased line interconnectivity charges were reimbursed to Meridian IQ Asia Limited, Hongkong, which was invoiced by M/s. Verizon Hongkong Ltd., the same is not chargeable to tax in India and as such, no tax is required to be deducted at source.

11. Following the order passed by the coordinate Bench of the Tribunal in the judgment cited as **Wipro Ltd.** (supra), we are of

the considered view that the services offered and availed by the assessee company cannot be termed as technical services by any stretch of imagination and the amount in question paid by the assessee is not taxable, hence, the assessee has no liability to deduct the tax at source under section 195 of the Act.

12. In view of what has been discussed above, we hereby allow the present appeal filed by the assessee.

Order pronounced in open court on this 26th day of April, 2016.

Sd/-	**sd/-**
(S.V. MEHROTRA)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 26th day of April, 2016
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Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT-VI, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.