

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA Nos. 1453 & 1454/Bang/2015
Assessment years : 2009-10 & 2010-11

The Income-tax Officer, Ward – 11(1), Bangalore.	Vs.	M/s. OSB India Private Limited, (Formerly known as M/s. Easiprocess Private Limited) No. 134/1, 134/2, B-Block, 7 th Floor, Brigade Tech Park, Pattandur Agrahara, Village, Whitefield Road, Bangalore – 560 066. PAN: AABCE 4049B
APPELLANT		RESPONDENT

Appellant by	:	Smt. Swapna Das, JCIT(DR)
Respondent by	:	Shri Chavali S. Narayan, CA

Date of hearing	:	14.02.2017
Date of Pronouncement	:	22.02.2017

ORDER

Per Laliet Kumar, Judicial Member

The present appeals are arising out of the order passed by the CIT(A)
on 24/09/2015 on the following grounds.

"1. The learned CIT(A) has erred in law and on facts by confirming the order of the learned AO in considering payment towards outsourced contract fee and network maintenance amounting to Rs. 4,93,699 and Rs. 35,52,698 respectively to be in the nature of fees for technical services;

2. *The learned CIT(A) / AO has failed to appreciate that the payees in the instant case are residents of United Kingdom and hence entitled to avail treaty benefits under India United Kingdom Double Tax Avoidance Agreement;*

3. *The learned CIT(A) / AO has failed to appreciate that the services rendered by the payees does not make available its services to the Appellant under India United Kingdom Double Tax Avoidance Agreement and therefore the learned CIT(A) has erred in concluding that the payment is taxable and subject disallowance under section 40(a)(ia) of the Act;*

4. *The learned CIT(A)/AO has failed to appreciate that the payee(s) has no presence in India and therefore the payments made by the Appellant would fall within the purview of the Business Profits as defined under India United Kingdom Double Tax Avoidance Agreement and therefore not taxable since the payee(s) has no presence in India;*

5. *The learned CIT(A) has erred in law and in fact in stating that the Appellant should approach tax authorities under section 195(2) for non-deduction of tax without appreciating the fact that the sum is not chargeable to tax at all;*

6. *The learned CIT(A) / AO has not considered the judicial precedents relied upon by the Appellant during the course of Assessment Proceedings and Appellate Proceedings;*

7. *Whether prejudice to the above, the learned CIT(A) has erred in law and in fact by not considering that, if any disallowance is made under section 40(a)(ia) of the Act, the same should be considered as eligible 'profits of the undertaking' in computing deduction under section 10A of the Act."*

2. It is pointed out by the Id. AR for the assessee that the assessee has raised ground no. 6 before the CIT to the following effect.

"Without prejudice to the above, the learned Assessing Officer has erred in law by not considering that, if any disallowance is made under section 40(a)(i) of the Act, the same should be considered towards 'profits of the undertaking' in computing the eligible deduction under section 10A of the Act."

3. It was submitted by the Ld AR for the assessee that the ld. CIT while passing the order has not decided this ground. However, the CIT(A) has dealt with the disallowances u/s 40(a) (ia) in para 4 of the assessment order.
4. The ld. DR for the revenue has submitted that though from the bare perusal of the order, it is clear that the ld. CIT has not decided the ground but considering the proposition of law that section 40 (a) (ia) provides that if any such sum on which tax is deductible at source and such tax has not been deducted then such amount shall not be deductible in computing the income chargeable under profit and gains of business or profession, therefore it was submitted that this issue is not required to be separately decided by the CIT(A).
5. We have heard the rival contention of the parties and gone through the record. Perusal of the record and order passed by the CIT (A) clearly shows that the CIT(A) has failed to exercise his jurisdiction vested in him and has not decided the issue raised by the assessee in ground 6 to referred herein above , in the grounds of Appeal. It is the incumbent duty of the CIT(A) to decide the grounds raised by the assessee on merit, in accordance with the law. Therefore we deem it appropriate to remand these appeals, to the file of CIT(A)

for deciding the issue referred herein above in accordance with law after giving the notice of an opportunity of hearing to the assessee. We are not deciding the objections raised by the Id. DR for the revenue and leaving it open to be adjudicated by the CIT(A) at the time of passing of the order.

6. In the light of the above, the appeals are allowed for statistical purposes.

Pronounced in the open court on this 22nd day of February, 2017.

Sd/-
(A.K. GARODIA)
Accountant Member

Sd/-
(LALIET KUMAR)
Judicial Member

Bangalore,
Dated, the 22nd February, 2017.

/ MS/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.