

आयकर अपीलीय अधिकरण “सी” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, PUNE
(Through Virtual Court)

**BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER**

आयकर अपील सं. / ITA No.502/PUN/2020
निर्धारण वर्ष / Assessment Year : 2009-2010

Dy. Commissioner of Income Tax,
Circle – 1(1), Pune

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. Barclays Global Services Centre Pvt. Ltd.,
(as a successor to Barclays Shared Services Pvt. Ltd.),
Ground to 7th Floor, Wing 3, Cluster A, EON,
Free Zone, Off Airport Road, MIDC,
Pune – 411002

PAN : AADCR6251L

.....प्रत्यर्थी / Respondent

प्रत्याक्षेप सं. / CO No.07/PUN/2021
निर्धारण वर्ष / Assessment Year : 2009-10

M/s. Barclays Global Services Centre Pvt. Ltd.,
(as a successor to Barclays Shared Services Pvt. Ltd.),
Ground to 7th Floor, Wing 3, Cluster A, EON,
Free Zone, Off Airport Road, MIDC,
Pune – 411002

PAN : AADCR6251L

.....अपीलार्थी / Appellant

बनाम / V/s.

Dy. Commissioner of Income Tax,
Circle – 1(1), Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Mutha
Revenue by : Shri Avadhesh Kumar

सुनवाई की तारीख / Date of Hearing : 02-06-2021
घोषणा की तारीख / Date of Pronouncement : 02-07-2021

आदेश / ORDER**PER S.S. VISWANETHRA RAVI, JM :**

Above said appeal and cross objection by the Revenue and assessee, respectively against the common order dated 11-03-2020 passed by the Commissioner of Income Tax (Appeals)-13, Pune ['CIT(A)'] for assessment year 2009-10.

2. Upon hearing, we note that the issues raised in appeal and cross objections are similar basing on the same identical facts. Therefore, with the consent of both the parties, we proceed to dispose off above said appeal and cross objections together and to pass a consolidated order for the sake of convenience.

3. First, we shall take up the appeal by the Revenue in ITA No. 502/PUN/2020 for the A.Y. 2009-10.

4. The Revenue raised 3 grounds amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in deleting the disallowance made u/s. 40(a)(i) of the Act by holding that the expenses involved therein as reimbursement cost towards communication and connectivity charges in the facts and circumstances of the case.

5. Brief facts relating to the issue are that the assessee M/s. Barclays Shared Services Pvt. Ltd. *for short hereinafter referred to as 'BSS'* a subsidiary of Barclays (H&B) Mauritius Limited was incorporated on 01-06-2007. It is engaged in the business of providing Information Technology Enabled Services *for short hereinafter referred to as 'ITES'* to

Barclays Bank PLC, London *for short hereinafter referred to as 'BBPLC'*. In pursuance thereto the assessee (BSS) made payment in respect of information technology support services such as multi-protocol label switching (MPLS), Telephony, pocket e-mail Information Technology Service Desk, Back-end Infrastructure Support Services, Firewall Support etc. to an extent of Rs.11,16,25,424/-. According to AO, the assessee shown said payment towards communication and connectivity charges in Form 3CEB and in scrutiny proceedings it was stated that the said payment is in the nature of reimbursement of cost allocation.

6. We note that the case of the AO was that the assessee failed to deduct TDS u/s. 195 of the Act and proceeded to disallow above said sum for violation of provisions u/s. 40(a)(i) of the Act. Accordingly, the AO/TPO disallowed Rs.11,16,25,424/- u/s. 40(a)(i) of the Act vide this order dated 18-03-2013 passed u/s. 143(3) r.w.s. 92CA of the Act.

7. Aggrieved by the order of AO/TPO, the assessee filed an appeal before the CIT(A). The assessee contended that the payment made to BBPLC cannot be brought to tax in India under the provisions of Double Taxation Avoidance Agreement between India and UK and also Ireland. The payment made to BBPLC for the services rendered by the assessee is a consideration for IT support services and is not for the use of any intellectual property or any information. BBPLC does not impart any information concerning industrial, commercial or scientific experience to assessee (BSS). The said payment cannot be treated as Royalty under Article 13(3)(a) of the India-UK DTAA. Further, it was contended that the AO/TPO completely ignored the above said contentions made by the assessee during the course of assessment proceedings. The CIT(A) considering the above said submissions of the assessee observed that there

was no adverse inference by the TPO during the course of determination of Arm's Length Price (ALP) and held the cost allocation made by the BBPLC in respect of providing IT support services to the assessee (BSS) does not constitute real income in the hands of the BBPLC and deleted the disallowance made by the AO/TPO vide this order dated 11-03-2020.

8. Not satisfied with the order of CIT(A), now, the appellant Revenue is before us by raising above mentioned grounds of appeal.

9. The ld. DR, Shri Avadhesh Kumar submits that the assessee during the course of scrutiny proceedings stated that the above said payment was in the nature of reimbursement towards cost allocation and the AO found, the said transaction was shown as payment to BBPLC, London towards communication and connectivity charges. He submits that the said payment is not as reimbursement but in respect of availing information technology support services from BBPLC. Further, he submits that the CIT(A) did not discuss the issue in detail and no reasons were recorded in support of deletion of said disallowance and prayed to allow the grounds raised by the appellant Revenue. The ld. AR, Shri Nikhil Mutha fairly conceded that the CIT(A) recorded limited reasons in respect of finding rendered by him.

10. Heard both parties and perused the material available on record. We note that in the statements of facts before the CIT(A), it was submitted that the payments made by the BSS to BBPLC cannot be classified as Royalty as the possession of equipment and the associated risk therein lies with BBPLC and the equipments are used by BBPLC itself for its international connectivity and arranging the same for BSS. It was also contended that the AO ignored the fact that the payment is not for the use of any

intellectual property or any information, but for the IT support services. We note that the assessee made its contentions before the CIT(A) vide its submissions dated 07-06-2017 wherein the CIT(A) reproduced the relevant part of such submissions in his impugned order at Page No. 5 but however the CIT(A) did not discuss the same in detail while recording reasons for holding such payment cannot be considered as fees for technical services. He simply held the said payment was in the nature of reimbursement of cost allocation made by the BBPLC in respect of providing IT support services to assessee i.e. BSS so therefore, as rightly contended by the Id. DR, Shri Avadhesh Kumar as agreed by the Id. AR, Shri Nikhil Mutha, we find no reasons recorded by the CIT(A) in support of his finding in deleting the disallowance made by the AO u/s. 40(a)(i) of the Act is not justified. Thus, in the facts and circumstances of the case involving the issue raised before us we deem it proper to remand the matter to the file of CIT(A) for its fresh adjudication. The assessee is liberty to file evidences, if any, in support of its claim. Thus, the grounds raised by the Revenue are allowed for statistical purpose.

11. In the result, the appeal of Revenue is allowed for statistical purpose.

12. Now, we shall take up the cross objection filed by the assessee. In the cross objection it was contended that if at all the disallowance u/s. 40(a)(i) of the Act is sustained, without prejudice to such disallowance the assessee contended that it is entitled for enhanced deduction to the extent of disallowance u/s. 10A of the Act. Since, we have taken our view in the aforementioned paragraphs in remanding the matter to the file of CIT(A) for its fresh adjudication in respect of the issue u/s. 40(a)(i) of the Act, in our opinion, the issue raised in cross objection does not survive before this Tribunal but however the liberty is afforded to the assessee to raise the

same before the CIT(A). The CIT(A) shall take up the issue while deciding the issue u/s. 40(a)(i) of the Act and pass order in accordance with law.

13. In the result, the cross objection filed by the assessee is dismissed.

14. To sum up, the appeal of Revenue is allowed for statistical purpose and the cross objection of the assessee is dismissed.

Order pronounced in the open court on 02nd July, 2021.

Sd/-
(R.S. Syal)
VICE PRESIDENT

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 02nd July, 2021.

RK

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-13, Pune
4. The Pr. CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune