

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. C. N. PRASAD, JUDICIAL MEMBER
(THROUGH VIDEO CONFERENCING)**

ITA No.4325/Del/2018
Assessment Year: 2014-15

Turner Broadcasting System Asia Pacific Inc. C/o Pricewaterhouse Coopers Pvt. Ltd. Sucheta Bhawan, Gate No.2, 1st Floor, 11-A, Vishnu Digamber Marg, New Delhi-110002 PAN No.AABCT6254F	Vs	DCIT (International Taxation), Circle – 3 (1) (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Shri Ravi Sharma, Advocate
Respondent by	Smt. Anupama Anand, CIT DR

Date of hearing:	06/12/2021
Date of Pronouncement:	08/12/2021

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 27.04.2018 framed u/s. 144C(13) r.w.s. 143 (3) of the Act pertaining to A.Y. 2014-15.

2. The assessee has raised following grounds of appeal :-

“1. That on the facts and circumstances of the case and in law, the impugned assessment order passed by the Learned Deputy Commissioner of Income-tax, Circle 3(i)(i), Intl. Taxation, New Delhi (“Ld. AO”) pursuant to the directions issued by the Learned Dispute Resolution Panel-II (‘Ld. DRP’) under Section 143(3) read with section 1440(13) of the Income-tax Act, 1961 (‘the Act’) is wrong and bad in law.

2. That on the facts and in circumstances of the case and in law, the Ld. AO as well as the Ld. DRP grossly erred in treating the amount derived by the Appellant on account of distribution revenue from Turner International India Private Limited (‘TI IPL’) as royalty under Section 9(i)(vi) of the Act and also as per the provisions of India-USA Double Taxation Avoidance Agreement (‘DTAA’).

3. That on the facts and circumstances of the case and in law, the Ld. DRP and the Ld. AO erred in treating TI IPL as the Permanent Establishment (‘PE’) of the Appellant in India under Article 5(4) of the DTAA.

4. That without prejudice to the grounds above, on the facts and circumstances of the case and in law, the Ld. AO/Ld. DRP, having held that the Appellant has a PE in India, ought to have taxed the distribution revenue under Article 7 of the DTAA instead of royalty, in terms of Article 12(6) of the DTAA.

5. That without prejudice to the grounds above, on the facts and circumstances of the case and in law, the Ld. AO/ Ld. DRP, erred in disregarding the resolution arrived at between the competent authorities of India and the USA for earlier years with regard to the taxability of distribution revenue as business profits.

6. That on the facts and circumstances of the case and in law, the Ld. AO erred in not allowing credit of tax deducted at source to the extent of INR 18,82,488/- duly withheld on revenue offered to tax in India.

7. That on the facts and circumstances of the case and in law, the Ld. AO/Ld. DRP erred in not allowing credit of taxes deducted at source of INR 65,641/- wrongly withheld on revenue not chargeable to tax in India as per Section 9 of the Act.

8. That on the facts and circumstances of the case and in law, the Ld. AO erred in initiating penalty proceedings under section 271 (1) (c) of the Act.”

3. Ground No.1 is of general in nature and needs no separate adjudication.

4. Ground No. 2 to 5 are interlinked and taken up together. At the very outset the counsel for the assessee stated that while disposing of the objections raised by the assessee, the DRP dismissed the objections by observing “the subject matter of objection have been considered and decided by the DRP in its directions for A.Y.2010-11, 2012-13 and 2013-14 wherein the draft assessment orders of the Assessing Officer have been upheld. In the DRP directions dated 03.03.2017 for A.Y.2013-14 the DRP has upheld the AO’s draft order”.

5. The Counsel drew our attention to the decision of this Tribunal dated 30.09.2020 in ITA No.1343Del/2014, 631/Del/2015, 4087/Del/2016, 2610/Del/2017 for A.Y. 2009-

10, 2010-11, 2012-13 and 2013-14 and pointed out that the quarrel has been settled in favour of the assessee and against the revenue by the coordinate bench.

6. Per contra the DR could not bring any distinguishing decision in favour of the revenue.

7. We have given a thoughtful consideration to the orders of the authorities below. We have carefully perused the order of the coordinate Bench (supra). We find force in the contention of the counsel. This Tribunal in assessee's own case has considered identical grounds of appeal and has decided in favour of the assessee. The relevant findings read as under :-

54. Thus, we hold that the distribution revenue earned by the appellant-assessee cannot be taxed as royalty albeit as a business income. Since, assessee has already offered income as business income in terms of the MAP, therefore, the income as declared by the assessee in accordance with the MAP and accepted by the Department in the earlier years has to be accepted. Accordingly, the additions made by the Assessing Officer are deleted.

8. Respectfully following the findings of the coordinate bench we direct the AO to delete the impugned additions.

9. Ground No.2 with its related grounds is allowed.

10. Ground No.6 relates non allowance of the credit of tax deducted at source to the extent of Rs.18,82,488/-duly withheld on revenue offered to tax in India.

11. Facts on record show that the AO has not given full credit of tax deducted at source. We accordingly direct the AO to consider the claim of the credit of TDS and if found correct, allow the same to the assessee.

12. Ground No.6 is treated as allowed for statistical purpose.

13. Ground No.7 relates to non allowance of the credit of taxes deducted at source of Rs.65,641/- wrongly withheld on revenue not chargeable to tax in India as per Section 9 of the Act.

14. Facts on record show that the assessee derived revenue from Apalya Technologies Pvt. Ltd. and Parragon Publishing India Pvt. Ltd. during the year on which taxes were withheld at source. When the assessee claimed the credit of TDS the same was denied by the AO and the DRP by holding that since the assessee has not offered the revenue as its income during the year in its return of income the credit for TDS cannot be given.

15. The assessee raised objections before the DRP and the DRP while dismissing the objections raised by the assessee observed as under :-

2.2.2 The facts of the matter is similar to that arising in AY 2013-14. The DRP, in its Directions dt. 03/03/2017 for AY 2013-14, after considering the matter and the arguments of the assessee, upheld the action of the AO with the following observations:

"b. The fact of the matter is that payments were received in India from entities based locally and the programmes/broadcasts were availed by this entity in India to service its client base. This postulation emerges from the fact of the 'administrative wherewithal being in India' and 'the managerial controls also being local'. It has been submitted by Ld AR that the revenue stream of those entities is outside India. But the source of these payments for the assessee is 'an Indian entity' making payment 'in India'. The domestic accrual of such incomes has not been examined in the assessment proceedings. The panel is refraining from constructively considering this aspect due to limited scope of the dispute in respect of credit of TDS/TCS in this respect only. The assessee is free to avail of the relevant tax credits in appropriate tax jurisdictions as per the extant local law.

c. The Panel is not in agreement with the contentions of the assessee. Tax credit cannot normally be claimed unless concurrent revenue stream is demonstrated. As the assessee has not declared the income in this regard, the credit for related TDS/TCS cannot be allowed in respect of this transaction set. The assessee has also not unambiguously demonstrated that such receipts and taxes were not due in India. It is further noted that the assessee also did not seek order/certificate under section 195 of the Income Tax Act. Ld AR also sought to invoke section 199 in this regard. The same is untenable in absence of concomitant revenues.

d. The objection is dismissed without any further delving in this regard, in view of the discussions supra and facts as per the draft order and assessee submissions."

16. Before us the counsel vehemently stated that since the taxes have been withheld by the payers and even if the corresponding income has not been shown as taxable in India, the credit of the TDS cannot be denied by the AO and the DRP and the same should be allowed to the assessee.

17. When the bench asked the counsel the fate of A.Y.2013-14 the counsel stated that the Tribunal did not adjudicate the ground raised before it. The Bench again asked the Counsel what action has been taken by the assessee on the non adjudication of

the ground raised before the Tribunal, the counsel stated that due to the smallness of the amount no further action was taken.

18. We do not find any force in this contention of the Counsel. The ground No.7 of appeal in A.Y.2013-14 read as under :-

“That on the facts and circumstances of the case and in law, the Ld. AO/DRP erred in not allowing credit of taxes deducted at source of Rs.175334/- wrongly withheld on revenue not chargeable to tax in India as per section 9 of the Act.”

19. It can be seen from the quantum involved in A.Y. 2013-14 it is more than two times the quantum involved in the year under consideration.

20. Be that as it may, the undisputed fact is that the revenue derived from Apalya Technologies Pvt. Ltd. and Parragon Publishing India Pvt. Ltd. are not taxable in India as per Section 9 of the Act. It is also not in dispute that since the income does not form part of the total income of the assessee the credit of TDS was denied. The credit was also denied in A.Y.2013-14 as mentioned elsewhere. The assessee can claim the credit of TDS in the country in which the related income is offered to tax. We, therefore, do not find any reason to interfere with the findings of the DRP. Ground No.7 is accordingly dismissed.

21. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 08.12.2021.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

NEHA

Date:- 08.12.2021

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	08.12.2021
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	