

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH : "D" NEW DELHI]**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 435/DEL/2020 (A.Y 2018-19)

Heidrick and Struggles Inc., C/o. Heidrick and Struggles (India) Pvt. Ltd., 10 th Floor, Building No. 9-B DLF Cyber City, Phase-III, Gurgaon [Haryana]-122002 PAN No. AACCH4893D (APPELLANT)	Vs.	DCIT, CPC, Bangalore. (RESPONDENT)
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Assessee by :	Shri K.M. Gupta, Advocate; & Ms. Shruti Khimta, A.R.
Department by:	Ms. Sapna Bhatia, [CIT] – D. R.;

Date of Hearing	08.08.2022
Date of Pronouncement	26.08.2022

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee for assessment year 2018-19 against the order of the Id. Commissioner of Income Tax (Appeals)-42, New Delhi, dated 29.11.2019.

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

“1. On the facts and peculiar circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals)- 42 [‘CIT (A)’] has erred in disregarding the principles of natural justice and holding that relief could be claimed only by filing revised return for which statutory timeline has already expired. While doing so, the Ld. CIT(A) has erred in:

1.1 disregarding the CBDT circular No 14 (XL-35V1955 wherein the CBDT has clarified that Department must not take advantage of ignorance of assessee to collect more tax than what is legitimately due;

1.2 not comprehending Article 265 of the Constitution of India which provides that no tax shall be levied or collected except by the authority of law;

1.3 holding that demand raised is only on account of wrong reporting and there is no mistake in the processing of the tax return by CPC, Bangalore.

2. On the facts and peculiar circumstances of the case and in law, the Ld. CIT(A) erred in confirming the tax liability while processing of return of income by CPC, Bangalore without going into the merits of the case and not appreciating that the service receipts are not even taxable in the hands of the Appellant by applying the beneficial provisions of Article 12 of the India-USA Double Taxation Avoidance Agreement as held in the payer’s case wherein the similar payments disallowed under section 40(a)(i) of the Act were deleted by the Ld. CIT(A) in preceding years;

3. *On the facts and peculiar circumstances of the case and in law, the Ld. CIT(A) erred in not directing the CPC, Bangalore to grant TDS credit of INR 27,810,114 (not allowed in the rectification order) as claimed in the tax return form resulting into a tax demand of INR 40,816,220 against the initial tax demand of INR 8,058,200 raised vide intimation u/s 143(1) dated June 14, 2019.*

That the above grounds of appeal are mutually exclusive and without prejudice to each other.”

3. Brief facts of the case are that, the assessee is a tax resident of USA. The assessee filed its return of income declaring total income of Rs. 23,60,54,860/- and claiming refund of Rs. 53,56,620/-. The return was processed, intimation issued u/s 143(1) of the Act, the Central Process Centre, Bangalore, raised tax demand of Rs. 80,58,000/- for the reason that service income of Rs. 2,84,40,475/- received from Heidrick and Struggles India Pvt. Ltd. considered as taxable 40% and also levied consequential surcharge, education cess and interest u/s 243 B and Section 234C of the Act vide order dated 14/06/2019.

4. As against the order dated 14/06/2019 passed by CPC, Bangalore, the assessee filed a rectification application. The CPC vide order dated 22/08/2019, increased demand of Rs. 4,08,16,220/- and not granted TDS credit of Rs. 2,78,10,114/- which was allowed u/s 143(1) of the Act. The assessee has filed one more rectification application on 15/10/2019, the CPC vide its rectification order dated 24/10/2019 raised a demand of Rs. 1,06,73,750/- by taxing the service receipt of Rs. 2,84,40,475/- at 40% along with applicable surcharge and cess. Further, denied TDS Credit of Rs.22,54,771/-.

5. As against the order dated 14/06/2019, the assessee has preferred an Appeal before the CIT(A), New Delhi. The Ld.CIT(A) vide order dated 29/11/2019 dismissed the Appeal.

6. Aggrieved by the order of the Ld.CIT(A) dated 29/11/2019, the assessee has preferred the present Appeal on the grounds mentioned above.

7. The Ld. counsel for the assessee vehemently submitted that the Ld.CIT(A) has disregarded the principle of natural justice in holding that the relief can be claimed only by filing revised return for statutory time line as already expired. The Ld.CIT(A) has also not considered the Circular of the CBDT not comprehended Article 265 of the Constitution. The Ld.CIT(A) has not gone into the merit of the case and also ignored the beneficial provision of the Article 12 of the India US Double Taxation Avoidance Agreement. Therefore, submitted that, the order of the Ld.CIT(A) requires interference.

8. Per contra, the Ld. DR submitted that the return filed by the assessee has been processed by the CPC, the demand has been raised considering the details furnished by the assessee himself in its return Form. Therefore, the assessee cannot find fault with processing the order or with the rectification order of the CPC. The assessee as per Section 139(5) of the Act can revise the return if at all any mistakes in the return of income. But the assessee has failed to do so within the time prescribed u/s 139(5) of the Act. The relief sought by the assessee is not found in the return of the income filed by the assessee, therefore, the Ld. A.O and CIT(A) were right in holding against the assessee.

9. We have heard the parties, perused the material on record and gave our thoughtful consideration. It is admitted fact that the assessee has filed its return claimed service income of Rs. 2,84,40,475/- received from Heidrick and Struggles Pvt. Ltd. as income from other sources. As per India US Tax

Treaty, the service rendered by the assessee do not specify the 'make available clause of India US Tax Treaty'. It is also emerges from the record that for the Assessment Year 2018-19 a similar adjustment i.e. taxing a service receipt 40% was levied by CPC, Bangalore in the case of assessee's group company i.e. Heidrick and Struggles Pvt. Ltd. Singapore, Heidrick and Struggles Pvt. Ltd. UK, the said assessee has preferred an application for rectification wherein the rectification applications have been allowed by the CPC on 27/02/2020 and 30/01/2020 which are found place in the paper book Page No. 300 -307 and 361 to 368. Further, it is not in dispute that as per India US Tax Treaty the impugned income is not chargeable to tax as per the provisions of Article 12 of India USA Tax Treaty.

10. As per the Central Board of Direct Taxes, CBDT Circular No. 14 reads as follows:-

"Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars be fore them indicate that some re fund or relief is due to him. This attitude would, in the long run, benefit the Department for it would inspire confidence in him that he may be sure of getting a square deal from the Department. Although, therefore, the responsibility for claiming refunds and reliefs rests with assessee on whom it is imposed bu law, officers should

(a) *Draw their attention to any refunds or reliefs to which they appear to be clearly entitled but which they have omitted to claim for some reason or other;*

(b) Freely advise them when approached by them as to their rights and liabilities and as to the procedure to be adopted for claiming refunds and reliefs."

11. Further, in the case of Madhabi Nag Vs ACIT (ITA No. 512/KOI/2015) (Kolkata), the Hon'ble Tribunal held that the revenue authorities ought not to have rejected the application u/s 154 of the Act on the ground that the assessee has not filed the revised return of income. Further in the case of CIT v. Bharat General Reinsurance Co. Ltd. 81ITR 303 (Del) (Hon'ble Delhi High Court), the Hon'ble High Court held that merely because the assessee wrongly included the income in its return for a particular year, it cannot confer jurisdiction on the department to tax that income in that year even though legally such income did not pertain to that year.

12. In our opinion, the addition has been made only due to wrong reporting of income by the assessee which cannot be sustained. Therefore, in our opinion, the Ld.CIT(A) has committed an error in dismissing the appeal filed by the assessee. Accordingly, we allow the Assessee's Grounds of Appeal No. 1 and 2.

13. As regards Ground No. 3 regarding not directing the CPC to brand TDS Credit of Rs. 27,810,114/-. The Ld. Counsel for the assessee submitted that the assessee is eligible for claiming TDS credit amounting to Rs. 2,78,10,114/- as appearing in the Form No. 26AS of the Company. During the recall order dated 24/10/2019, the assessee was granted TDS credit of Rs. 2,55,55,337/- only vis-à-vis the TDS Credit claim in the assessee return of income Rs. 2,78,10,114/-. In our opinion, the issue involved in Ground No. 3 deserves to be set aside to the file of CPC, Bangalore with a direction to grant eligible TDS credit in accordance with law. Accordingly, Ground No. 3 is allowed for statistical purpose.

14. In the result, the Appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open court on : **26/08/2022.**

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated : 26/08/2022

R.N, Sr. PS

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI.