INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA Nos. 1372 to 1377/Del/2024
(Assessment Years: 2013-14 to 2018-19)

Income Tax Officer (International Taxation), Ward-2(1)(1), New Delhi (Appellant)	Vs.	HCL Technologies Ltd, 806, Siddharth, 96 Nehru Place, New Delhi (Respondent)

PAN:AAACH1645P

Assessee by :	Shri Ajay Vohra, Sr. Adv Shri Neeraj Jain, Adv Shri Aditya Vohra, Adv Shri Arpit Goyal, CA
Revenue by:	Shri T. James Singson, CIT DR
Date of Hearing	06/08/2024
Date of pronouncement	16/08/2024

O R D E R

PER M. BALAGANESH, A. M.:

1. These appeals arose out of independent orders by the ld CIT(A) against the order passed by the Income Tax Officer (International Taxation), Ward-2(1)(1), New Delhi u/s 201/201(1A) of the Income Tax Act, 1961 (hereinafter for short the "Act").

2. Identical issues are involved in all these appeals and hence, they are taken together and disposed of by this common order for the sake of convenience.

3. We have heard the rival submissions and perused the material available on record. The assessee is a Public Limited company engaged in the business of providing IT/ ITES Services. The assessee is engaged in 3 lines of businesses i.e. software services (including engineering services), infrastructure services and business processing outsourcing (BPO). The case of the assessee was taken up for verification on the basis of information received from systems for verification of Form 15CA/ 15CB with respect of various remittances made to different subsidiary companies in different countries without deduction of tax at source u/s 195 of the Act. Ultimately an assessment was framed u/s 201(1)/ 201(1A) of the Act for all the assessment years by the ld AO treating the assessee as 'assessee in default' on the ground that the remittances made by the assessee to various subsidiary companies in different countries would be liable for deduction of tax at source in India. Since the said remittances were made without deduction of tax at source by the assessee, the AO treated the assessee as 'assessee in default' and hence tax was sought to be collected from the assessee u/s 201(1) of the Act and consequentially interest u/s 201(1A) of the Act and accordingly orders u/s 201(1) / 201(1A) of the Act stood passed for each of the abovementioned assessment years in the name of the assessee company.

4. We find that the ld AO held originally that the remittances made by the assessee company to its subsidiary companies in different countries would be taxable in the hands of the respective subsidiary companies in India on the ground that the same tantamount to income deemed to accrue or arose in India within the meaning of Section 9 of the Act. Accordingly, the remittances made by the assessee were duly subjected to Income Tax assessment in India in the hands of the subsidiary companies. Those assessment orders were duly confirmed by the ld CIT(A). Then those matters travelled to this Tribunal. This Tribunal in the hands of the subsidiary companies had categorically held that the remittance received by them from Indian company i.e. HCL Technologies Ltd (assessee herein) would not be taxable in India as per the provisions of the

Income Tax Act as well as under the Double Taxation Avoidance Agreement (DTAA).

5. The ld CIT(A) in the appeal preferred against the order passed u/s 201(1)/ 201(1A) of the Act had indeed vehemently relied on the aforesaid Tribunal order dated 20.12.2023 which is reported in 158 Taxmann.com 45 and granted relief to the assessee by summarizing the findings of the Tribunal as under:-

> ***"Re: (1) HCL group entities operate as independent contractors; services not rendered by one entity to another but rather it is a case of revenue sharing arrangement***
>
> *1. On perusal of the MSA between the Assessee and foreign AEs, it was held that the said agreement is the foundation defining the scope of services to be performed by the foreign AEs and by the Assessee, duly defining their respective obligations to the overseas customers. It was concluded by the Hon'ble Tribunal:*
>
> *1. That the Master Service Agreement entered into between the Assessee and the foreign AEs is in the nature of a business arrangement, by which the dominant intention of the parties to come together and serve the overseas customers is fulfilled;*
>
> *2. That the Assessee was merely distributing the receipt of payment from the overseas customer to the group entities for their share of the work, and*
>
> > *1. That the payment received by the foreign AEs from the Assessee was only in the nature of revenue sharing and cannot be construed to mean that services were provided by the foreign AEs to the Assessee. (Para no.15, Page No.35-37)*
> >
> > *2 The Hon'ble Tribunal further held that both the Assessee and the foreign AEs are jointly rendering services to the customers located outside India, billing is done on a consolidated basis on the customer by the Assessee (including the services rendered by the foreign AEs to the customer located outside India); payments are received by the Assessee from the customer located outside India and thereafter, revenue is shared by the Assessee with the foreign AEs for the proportionate volume of services rendered by the foreign AEs to the customer. (Para no.22, Page No.45)*
> >
> > *3. The Hon'ble Tribunal further noted that the assessing officer erred in holding that the services were rendered by foreign AEs to the Assessee and the said findings of the AO are contrary to the binding directions of the DRP in para 3.7 of the order wherein DRP held that major part of*

module development and writing of codes on software application is carried out by the Assessee and only some of it is being done by foreign AEs; that both the Assessee and foreign AEs are working together on the server of the client to develop the final product. (Para no.23, Page No.45-46)

Re: (II) Assessing officer erred in cherry-picking statements recorded of employees of the Assessee during survey proceedings

1. The Hon'ble Tribunal after analyzing the statements of employees recorded in survey proceedings held that the same actually support the contentions of the foreign AEs. The Hon'ble Tribunal held that on analysis of the statements in a holistic manner, it was clear that that both onsite and offsite personnel of the foreign AEs and the Assessee respectively were responsible for writing the code; that the respective teams of the foreign AEs and the Assessee work directly with the foreign customer's managers; that in majority of the projects, the entire development environment is owned by foreign customer; that the code and test scripts are worked on from foreign customers' servers and provided directly on the said servers, that the integration is normally done through customer build machines that integrate the various units of code into a solution. It was, accordingly, held that payments made by the Assessee foreign AEs could not be construed as FTS. (Para no.33, Page No.66) to the

Re: (i)Income of the foreign AEs not taxable in India und) thection 9(1)(vi) of the Act due to exclusions contained in sub-clause (b)

Services utilized in a business carried on outside India by the Assessee, l.e., the payer

1. The Hon'ble Tribunal has noted that if the contention of the Aoriste amount paid to the foreign s ryb Assessee is to be considered towards onsite software services provided by the Assessee in the course of carrying on its business of onsite services, provided by the Assessen then such business of providing ons tu services is carried were to be accepted, even then h onsite services are performed outside India and are also deliverediadirectly to the customers outside India. the Assessee as a corollary also delivered directly having avalled the services of the foreign AEs outside India in respecte fansidor the purpose of business of providing such onsite services to the customers outside India and therefore, in terms of first limb of the exception carved out in clause (b) of section 9(1)(vii) of the Act, the amount paid by the Assessee to the foreign AEs for the services utilized for business of onsite services carried on by the Assessee outside India would not be taxable in India. (Para no.24, Page No.46)

Payment made by the Assessee to foreign AEs was for making or earning income from a source outside India

1. Thereafter, the Hon'ble Tribunal categorically held that agreements with customers were concluded outside India, services were rendered directly on the customer's server located outside India and payment was also received in foreign exchange from outside India; therefore, onsite software services represent a separate and independent function of the overall business of the

Assessee. As a corollary, the payments received by the foreign AEs from the Assessee for performance of the above onsite services are essentially fees for services utilized for the purpose of earning income from a source outside India by the Assesseeand thus, the receipts cannot be taxed in the hands of the foreign AEs in terms of second limb of exception under section 9(1)(vii)(b) of the Act. (Para no. 25-27, Page No.46-50)

Re: (IV)Taxability under the DTAAs - No findings returned

1. The Hon'ble Tribunal held that since receipts of the foreign AEs from the Assessee are held to be not taxable in India under the provisions of the Act, the grounds raised qua taxability of the impugned receipts under the DTAAs were rendered academic in nature, no findings were returned and the same were left open for determination. (Para no.35, Page No.67)

Re: (V) Receipts in connection with Infrastructure Services

1. The Hon'ble Tribunal noted that they have already held receipts of foreign AEs from the Assessee to be not taxable in India. It was further held that the receipts towards Infrastructure Services were also not chargeable to tax in India since no technical knowledge, experience, skill, knowhow or process is made available by the foreign AEs to the Assessee and in absence of Permanent Establishment of the foreign AEs in India, payments received by them could not be brought to tax in India even as per the applicable DTAA. (Para no.42, Page No.73)

5.5 Accordingly, in the light of the foregoing discussion and keeping in view of conclusive finding returned by the Hon'ble Delhi Bench of the Tribunal in the appellate order dated 20.12.2023 (in HCL Singapore PTE. Ltd. and Others vs. Asst. CIT Circle International Taxation 2(1) (1) New Delhi, in ITA No. 537/Del/2021)holding the income paid to foreign associated enterprises / group companies of the Assessee as not chargeable in India the Assessee was not liable to deduct tax at source from such payments. The levy of penalty under section 201(1) of the I.T. Act and interest under section 201(1A) on the Assessee in the impugned order is hereby deleted and the grounds of appeal raised by the Assessee are hereby allowed.

6. In the result, appeal is partly allowed."

6. Since the remittance made by the assessee to the foreign subsidiary companies have been held to be not taxable in India in the hands of the recipient company, there would be no obligation for the payer i.e. assessee company to deduct tax at source u/s 195 of the Act. This proposition is already settled by the Hon'ble Supreme Court in the case of GE India Technology India Ltd Vs. CIT reported in 327 ITR 456 (SC).

7. In view of the aforesaid observations and respectfully following the judicial precedents relied upon herein above, we do not find any infirmity in the order of the ld CIT(A) for each of the assessment year under consideration. Accordingly, the grounds raised by the revenue for all the assessment years are dismissed.

8. In the result, the appeal of the revenue are dismissed.

Order pronounced in the open court on 16/08/2024.

-Sd/-	-Sd/-
(SAKTIJIT DEY)	**(M. BALAGANESH)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated:16/08/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi