

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
'A' BENCH, CHENNAI

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 771/CHNY/2019  
निर्धारण वर्ष / Assessment Year: 2014-15

**M/s. Sundaram Business  
Services Limited,**  
No.21, Patullos Road,  
Chennai – 600 002.

**The Income Tax Officer,**  
v. Corporate Ward 6(3),  
Chennai.

**PAN: AAJCS9232J**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri Vikram Vijayaraghavan,  
Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri G. Chandrababu, Addl.CIT

सुनवाई की तारीख/Date of Hearing

: 22.02.2021

घोषणा की तारीख/Date of Pronouncement

: 19.03.2021

**आदेश /O R D E R**

**Per G. MANJUNATHA, AM:**

This appeal filed by the assessee is directed against order of learned Commissioner of Income Tax (Appeals)-16, Chennai, dated 17.01.2019 and pertains to assessment year 2014-15.

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

1. The order of The Commissioner of Income tax (Appeals) is contrary to law, facts and in the circumstances of the case.
2. The Commissioner of Income tax (Appeals) erred in confirming the action of the assessing officer in disallowing the legal and consultancy payment to K&L Gates and retainer fee payment to TWBCA for non deduction of tax under section 195 disregarding the fact that the payment is not chargeable to tax in India as services were rendered outside India and hence no withholding tax ligation in this case.
3. The Commissioner of Income tax (Appeals) ought to have appreciated that M/s.K&L Gates is a law firm providing professional services and the retainer fee for rendering professional services is not taxable in India as it does not make available any technical knowledge in India.
4. The Commissioner of Income tax ought to have appreciated that TWB, CA was a Chartered Accountant firm, where services were utilized for filing statutory returns in Australia. Payment for such services is not taxable in India as it does not make available any technical knowledge to the Appellant in India.
5. The Commissioner of Income tax (Appeals) erred in confirming the disallowance of internet charges and professional charges for non deduction of tax under Section 194J disregarding the fact that the TDS is deducted and paid in subsequent year before the due date specified in sub-section (1) of Section 139.
6. The Appellant craves leave to file additional grounds at the time of hearing.

3. The brief facts of the case are that the assessee company is engaged in the business of providing IT enabled services, outsourcing services filed its return of income for the assessment year 2014-15 on 27.11.2014 declaring a total loss of Rs.2,73,84,295/-. During the year under consideration, the assessee has paid professional charges to two offshore entities i.e., (1) TWB Pty Ltd., a Chartered Accountant company and (2) KL Gates, a law firm for rendering professional services without

deduction of tax at source on the ground that professional charges paid to offshore entities does not come under the provisions of section 195 of the Income Tax Act, 1961 (hereinafter the 'Act') and consequently requirement of deduction of tax at sources does not arise. The case was taken up for scrutiny and during the course of assessment proceedings, the AO on the basis of evidences filed by the assessee opined that TDS is required to be deducted even though the payment is made to the offshore entities as per the provisions of section 195 of the Act, and accordingly for non-deduction of tax at source, expenditure cannot be allowed as deduction u/s.40(a)(i) of the Act. Accordingly, made disallowance of Rs.28,34,926/- towards professional charges paid to TWB CA and KL Gates. Similarly, the AO has made additions towards provision for expenses being internet charges and professional charges u/s.40(a)(ia) of the Act, for non-deduction of tax at source u/s.194J of the Act. The assessee carried the matter in appeal before the first appellate authority and could not succeed.

4. The Id.CIT(A) for the reasons stated in his appellate order dated 17.01.2019 confirmed additions made by the AO towards

disallowance of professional charges paid to offshore entities for non-deduction of TDS u/s.195 of the Act and has also upheld additions made towards provision for expenses u/s.40(a)(ia) of the Act, for non-deduction of tax at source u/s.194J of the Act. Aggrieved by the CIT(A) order, the assessee is in appeal before us.

5. The first issue that came up for our consideration from Ground No.2 to 4 of assessee appeal is disallowance of legal and consultancy charges paid to M/s. KL Gates and retainer fee paid to M/s. TWB CA for non-deduction of tax at source u/s.195 of the Act. The Id.AR submitted that the Id.CIT(A) has erred in confirming additions made by the AO towards professional charges paid to offshore entities without appreciating the fact that payment is not eligible to tax in India as services were rendered outside India and hence no withholding tax as per the provisions of section 195 of the Act. The Id.AR for the assessee referring to various documents including professional bill submitted by the parties, argued that as per the provisions of Article 14 of Double Taxation Avoidance Agreement between India and Australia, independent professional services by an

individual or a firm of individuals other than a company who is a resident of one of the Contracting States in respect of professional services or other independent activities of a similar character shall be taxable only in that State unless the individual or firm has a fixed base in India. The Id.AR further submitted that even professional charges paid to a company of Chartered Accountants is outside the scope of provisions of section 195 of the Act, because as per Article 7 of DTAA between India and Australia, the profits of an enterprise of one of the Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. In this case, TWB CA does not have any permanent establishment in India and professional services are rendered outside India in connection with filing of statutory returns and hence, the same cannot be liable for tax in India. The Id.AR for the assessee referring to Article 12 of DTAA between India and Australia submitted that even assuming for a moment, payment to a Chartered Accountant firm is in the nature of fees for technical services, but it does not come under the definition of royalties because rendering of any services which does not make available technical

knowledge cannot be included under the definition of royalties. Therefore, the AO as well as the CIT(A) were erred in disallowing professional charges paid to offshore entities for non-deduction of tax at source u/s.195 of the Act.

6. The Id.DR on the other hand strongly supporting order of the Id.CIT(A) submitted that the assessee has failed to file any evidences to prove that payment to offshore entities is not in the nature of technical fees to exclude from the definition of royalties as defined u/s.9(1)(vi) of the Act and hence, the AO as well as the Id.CIT(A) were right in disallowing expenses u/s.40(a)(i) of the Act for failure to deduct tax at source u/s.195 of the Act.

7. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. The facts borne out from record clearly indicate that the assessee has paid a sum of Rs.27,11,631/- to M/s. KL Gates, a legal firm for rendering professional services in connection with dispute with Tranzact Financial Services and such payment has been made without deduction of tax at source u/s.195 of the Act. Similarly, the assessee has paid professional charges to M/s. TWB

CA for filing of statutory returns and liaising with legal statutory authorities without deduction of tax at source u/s.195 of the Act. The AO has disallowed both payments u/s.40(a)(i) of the Act, for non-deduction of tax at source u/s.195 of the Act. We have considered arguments of the assessee in light of facts brought out by the AO and find that professional services rendered by an individual or a firm of individuals [other than a company] who is a resident of one of the Contracting States is taxable only in that State unless individual or firm has a fixed base in India. In this case, on perusal of details filed by the assessee, we find that M/s. KL Gates has rendered professional services in connection with dispute with Tranzact Financial Services and such services are in the nature of independent professional services as defined under Article 14 and hence are outside the scope of definition of royalties as defined u/s.9(1)(vi) of the Act, and thus, outside the scope of provision of section 195 of the Act. Therefore, we are of the considered view that the assessee is not liable to deduct tax at source u/s.195 of the Act, when payment is made to offshore entity for rendering independent professional services which covered under Article 14 of DTAA between India and Australia, consequently not liable for

withholding tax. Therefore, the same cannot be disallowed u/s.40(a)(i) of the Act.

8. As regards professional charges paid to M/s. TWB Pty Ltd., a company of Chartered Accounts, although payment made to said company is not covered under Article 14, but said payment is covered under Article 7 of DTAA between India and USA because the business profits of an enterprise of one Contracting State shall be taxable only in that State unless the enterprise carries on business in other Contracting State through a permanent establishment situated therein. In this case, evidences filed by the assessee clearly proves that M/s. TWB CA does not have any permanent establishment in India and services are rendered outside India in connection with filing of statutory returns and liaison with statutory authorities. Therefore, said payment is outside the scope of provisions of section 195 of the Act, because it is neither in the nature of royalties as defined u/s.9(1)(vi) of the Act nor in the nature of fess for technical services because the nature of services rendered by the company of accountants does not make available technical knowledge, expertise, skill, know-how or processes to the assessee. Therefore, said payment

is also outside the scope of provisions of section 195 of the Act and thus, the assessee is not liable to deduct tax at source u/s.195 of the Act. Therefore, we are of the considered view that the AO as well as the CIT(A) has erred in disallowing professional charges paid to offshore entities for non-deduction of tax at source u/s.195 of the Act. Hence, we direct the AO to delete additions made towards legal and professional charges paid to M/s. TWB CA and M/s. KL Gates.

9. The next issue that came up for our consideration from Ground No.5 of assessee appeal is disallowance of internet charges and professional charges u/s.40(a)(ia) of the Act for non-deduction of tax at source u/s.194J of the Act. The Id.AR for the assessee submitted that although the assessee has furnished necessary evidences to prove that tax has been deducted at source as required under the Act before the due dates of furnishing of return of income u/s.139(1) of the Act, the AO has disallowed the impugned payments disregarding evidences filed by the assessee. Hence, the issue may be set aside to the file of the AO to verify the fact with regard to deduction of tax at source on the said payment.

10. The Id.DR on the other hand fairly agreed that the issue may be set aside to the file of the AO to verify the fact with regard to deduction of tax at source on impugned payments.

11. We have heard both the parties, perused the materials available on record and gone through the orders of the authorities below. Admittedly if any payment is made without deduction of tax at source, then said payment cannot be allowed as deduction u/s.40(a)(ia) of the Act. Further, if the assessee does not deduct tax at source within the due dates specified in respective provisions of the Act, but tax deducted at source has been deducted on or before furnishing return of income u/s.139(1) of the Act, then such payment cannot be disallowed u/s.40(a)(ia) of the Act. In this case, the AO has disallowed provision for expenses like internet charges and professional charges on the ground that the assessee has failed to deduct tax at source u/s.194J of the Act. It is a case of the assessee that it has deducted TDS on impugned payments in subsequent financial year, but before the due dates specified in sub-section (1) of section 139 of the Act. If the claim of the assessee is correct, then the impugned payments cannot be disallowed u/s.40(a)(ia)

of the Act. Therefore, to verify the facts the issue has been set aside to the file of the AO for the limited purpose of verification with regard to ascertaining the fact of deduction of TDS on or before the due date of furnishing return of income u/s.139(1) of the Act. In case, the assessee files necessary evidences to prove that it had deducted TDS on or before due date specified u/s.139(1) of the Act, then the AO is directed to delete disallowance of expenses u/s.40(a)(ia) of the Act.

12. In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the court on 19<sup>th</sup> March, 2021 at Chennai.

Sd/-

(वी दुर्गा राव)

**(V. Durga Rao)**

न्यायिक सदस्य/Judicial Member

Sd/-

(जी. मंजुनाथ)

**(G. Manjunatha)**

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 19<sup>th</sup> March, 2021

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाइल/GF.            |