

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**  
**& SHRI WASEEM AHMED, ACCOUNTANT MEMEBR**

आयकर अपील सं./I.T.A. Nos. 1169/Ahd/2017, 1666/Ahd/2018 &  
 356/Ahd/2020

(निर्धारण वर्ष / Assessment YearS :2012-13, 2013-14 & 2014-15)

<b>ADF Foods Limited</b> 83-86 GIDC Industrial Estate, Kamla Road, Nadiad - 387001	<b>बनाम/ Vs.</b>	<b>The Assistant Commissioner of Income Tax</b> Kheda Circle, Aaykar Bhavan, Nadiad - 387002
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCA2270K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

&

आयकर अपील सं./I.T.A. No. 509/Ahd/2020  
 (निर्धारण वर्ष / Assessment Year : 2014-15)

<b>Jt.CIT(OSD)</b> Kheda Circle, Aaykar Bhavan, Nadiad - 387002	<b>बनाम/ Vs.</b>	<b>ADF Foods Limited</b> 83-86 GIDC Industrial Estate, Kamla Road, Nadiad - 387001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCA2270K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Assessee by :	Shri Bhavin Marfatia, A.R.
राजस्व की ओर से/Revenue by :	Shri Purshottam Kumar, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	02/05/2022
घोषणा की तारीख /Date of Pronouncement	26/05/2022

## ORDER

### PER MAHAVIR PRASAD, JM:

All four appeals (three by assessee & one by Revenue) have been preferred against the orders of the Commissioner of Income Tax (Appeals)-2, Vadodara ('CIT(A)' in short) vide Appeal Nos. CAB/(A)-2/93/15-16 dated 14.02.2017 in A.Y. 2012-13 & CIT(A) /Vadodara-2/10358/15-16 dated 18.05.2018 in A.Y. 2013-14 arising in the assessment order dated 24.03.2015, 29.02.2016 & 09.03.2020 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AYs. 2012-13, 2013-14 & 2014-15.

2. Since, in all appeals facts & circumstances & issues are common, therefore, for the sake of brevity, we would like to dispose of these matters by way of a common order. ITA No. 1169/Ahd/2017 for A.Y. 2012-13 is taken as lead case for disposal of the above appeals.

3. The ground of appeal raised by assessee reads as under:

- “1. *The learned Commissioner of Income Tax (Appeals) - 2, Vadodara [“the CIT(A)”] erred in fact and in law in confirming the action of the learned Assistant Commissioner of Income Tax, Kheda Circle, Nadiad (“the AO”) in not allowing expenditure of Rs. 70,805/- despite the fact that it was incurred for the purpose of business.*
2. *The learned CIT(A) erred in fact and in law in confirming the action of the AO in disallowing interest of Rs.3,13,000 charged u/s. 220(2) of the Act on delayed payment of tax though the same is not in the nature of penalty.*
3. *The learned CIT(A) erred in fact and in law in confirming the action of the AO in disallowing an amount of Rs.1,37,87,905/- invoking section 40(a)(i) for non-deductibility of TDS u/s. 195 r.w. Explanation 2 of the Act without appreciating the fact that the amount was not chargeable to tax in India.*
4. *The learned CIT(A) erred in fact and in law in confirming the action of the AO in treating the following payments as Fees for Technical Services*

*("FTS") considering the services rendered as managerial and consultancy in nature.*

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount (Rs.)</i>
1.	<i>Trademark Registration, Listing Fees and Legal Charges</i>	<i>7,00,883</i>
2.	<i>Expenses paid to Non-Residents</i>	<i>96,92,838</i>
3.	<i>Advertising &amp; Exhibition Fees and reimbursement of sales promotion expense to Non-Residents</i>	<i>33,94,184</i>

5. *The learned CIT(A) erred in fact and in law in confirming the action of the AO without properly considering the Double Tax Avoidance Agreements ("DTAA") with various countries.*
6. *The learned CIT(A) erred in fact and in law in confirming the action of the AO in charging interest u/s. 234B of the Act.*
7. *The learned CIT(A) erred in fact and in law in confirming the action of the AO in charging interest u/s. 234C of the Act.*
8. *The learned CIT(A) erred in fact and in law in confirming the action of the AO in initiating penalty u/s. 271 (1)(c) of the Act."*

4. Ground Nos. 1 & 2 have not been pressed by the learned AR Shri Bhavin Marfatia.

5. Now, we deal with Ground No.3 wherein assessee has challenged disallowance of Rs.1,37,87,905/- invoking Section 40(a)(i) for non-deduction of TDS under S.195 r.w. Explanation 2 of the Act without appreciating the fact that the amount was not chargeable to tax in India.

6. In the course of assessment proceedings, assessee was asked to submit details in respect of payments made in foreign currency and whether TDS was deducted on the same. In this regard, assessee submitted the following details of the expenses incurred in foreign currency which are:

foreign travelling expenses	-	Rs.1,56,68,591/-
foreign advertisement	-	Rs.1,02,99,779/-

legal & professional fees	-	Rs.1,03,93,721/-
business promotion	-	Rs.33,94,184/-
sales commission	-	Rs.38,79,422/-
claims	-	Rs.58,22,416/-
freight & forwarding charges	-	Rs.2,00,000/-, and
repairs to machinery	-	Rs.11,17,678/-

The assessee claimed that the payments are covered under the provisions of s.5 ,9, 195 of the Act and also under DTAA, hence TDS was not applicable. As assessee is engaged in the business of processing and, packaging various food items and its turnover is mainly from exports to to foreign countries. Hence, to improve its international market it had appointed various persons as 'Country Managers' in different countries. They were non residents and they provided all business & marketing related services abroad. It was submitted that the appointment of these country managers were reduced to in writing, stating: the terms & conditions and was a contract between the assessee and the country managers. The activities were governed by the various clauses of the contract which included liaisoning with existing distributors, appointing new distributors, take every step to increase the market share and develop sales, sign contract deeds etc. with the central and state governments & other authorities. For the various services rendered as per the terms of the contract the assessee company used to pay monthly retainer ship fees, commission on sales and reimbursement of various expenses. These expenses were booked under the head legal & professional fees. As payments were made in foreign currency and its persons are foreign resident and services rendered in foreign country, therefore, assessee cannot be held liable to deduct tax under S.195 of the Act. But, learned

AO did not agree to the contention of the assessee and made disallowance as TDS was not deducted on foreign payments Rs.1,78,09,835/-.

7. Against the said order, the assessee preferred first statutory appeal before the CIT(A) who confirmed the action of the learned AO on the ground that payments were made for legal and professional work including commission paid for sale support for marketing development amounting to Rs.1,03,93,721/- as business promotion expenses amounting to Rs.33,94,184/- deemed to accrue and arise in India since the same were in the nature of managerial and consultancy charges satisfying the fees for technical services and accordingly same were chargeable to tax in India. Since, assessee has failed to deduct tax at source under s.195(1) of the Act. Therefore, learned AO rightly made the disallowance.

8. Now, assessee has come before us and argued that assessee company is engaged in the business of processing and packaging of various food items and selling them world-wide. It recorded total turnover of more than Rs.110 Crores, out of which more than 90% of its turnover accounted for by way of exports outside India and remaining turnover accounted for in domestic market. Hence, to improve its international market it had appointed various persons as 'Country Managers' in different countries. They were non residents and they provided all business & marketing related services abroad. Learned AR argued that before the learned CIT(A) assessee filed detailed chart of the supporting case laws of Hon'ble Supreme Court, High Courts as well as ITAT but same were not considered by the learned CIT(A) for the reason best known to him. Apart from that payments supported by other documents to the effect that to whom payments were made were not the resident of India were also filed before the learned CIT(A).

9. On plain reading of the order of CIT(A), we find nowhere that CIT(A) has considered the case laws and details submitted by the assessee. To our mind, same is amounting to miscarriage of justice. Learned CIT(A) ought to have considered the submission and case laws filed by the assessee in its support, thereafter, ought to have passed a detailed and reasoned order. Thus, in the interest of justice, we set aside this matter back to the file of the CIT(A) to pass afresh order after considering the submissions and case laws filed by the assessee.

10. In the result, all three appeals filed by the assessee as well as one appeal filed by the Revenue are set aside to the file of the learned CIT(A) to decide the matters as per law.

11. In the combined result, all four appeals filed, three by the Assessee and one appeal by the Revenue are allowed for statistical purposes.

**This Order pronounced in Open Court on 26/05/2022**

Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER  
Ahmedabad: Dated 26/05/2022

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER

*True Copy*

*S.K.SINHA*

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।