

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

**BEFORE SHRI G.S. PANNU, PRESIDENT &
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.5965/Del/2016	Assessment Years: 2011-12
ITA No.6238/Del/2018	Assessment Years: 2012-13
ITA No.4438/Del/2018	Assessment Years: 2013-14

Everest Business Advisory India Private Limited, A-1/B-27, Janak Puri, New Delhi-1100 58	Vs.	ACIT, Circle 8(2), New Delhi.
PAN :AABCE2871R		
(Appellant)		(Respondent)

Assessee by	Ms. Vandana Bhandari, CA
Department by	Shri Sanjay Kumar, Sr. DR

Date of hearing	05.09.2022
Date of pronouncement	20.09.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

Captioned appeals by the assessee arise out of three separate orders of learned Commissioner of Income-Tax (Appeals)-3, New Delhi pertaining to assessment years 2011-12 to 2013-14.

2. The common dispute arising in all these appeals relates to disallowance of various amounts made under Section 40(a)(i) of the Income-Tax Act, 1961.

3. Briefly, the facts, which are more or less common in all these appeals are, the assessee is a resident corporate entity engaged in the business of providing strategic advisory services on outsourcing. It also provides independent research on outsourcing.

4. In course of assessment proceedings, the assessing officer noticed that in the assessment years under dispute, assessee had paid certain amounts to its overseas associated enterprises viz. Everest Global Inc. towards management fee. When asked to explain, assessee submitted that the amount was paid towards use of manpower of sister concern in accepting third party projects abroad. Assessing Officer noticed that while making such payment, assessee had not deducted tax at source under Section 195 of the Act. Accordingly, he called upon the assessee to explain why amounts paid should not be disallowed under Section 40(a)(i) of the Act. Though, the assessee objected to the proposed disallowance by stating that the amount paid is not taxable at the hands of the AE in India. However, the assessing

officer remained unconvinced. Accordingly, he disallowed the amounts paid in different assessment years by invoking the provisions of Section 40(a)(i) of the Act. While doing so, he held that the management fee paid is in the nature of Fee for Included Services (FIS) both under the Income-Tax Act, 1961 as well as the Indo-USA Double Taxation Avoidance Agreement (DTAA). Though, assessee contested the aforesaid disallowance before learned Commissioner (Appeals), however, disallowances made by the assessing officer were confirmed.

5. Before us, learned counsel appearing for the assessee submitted, in assessment year 2011-12, assessing officer has committed a factual mistake by disallowing an amount of Rs.1,81,51,665. Whereas, the expenditure actually debited to the P & L account is to the tune of Rs.1,01,39,583.

6. Without prejudice, she submitted, the payment made by assessee to the overseas AE is not in the nature of FIS. Hence, in absence of a Permanent Establishment (PE) in India is not taxable. She submitted, while considering the taxability of the payment made by assessee at the hands of the AE viz. Everest Global Inc., the assessing officer has

treated it as FIS and added to the income of the AE. However, she submitted, while deciding the appeals filed by the AE in assessment years 2010-11 to 2012-13, the Tribunal has held that the payments received by the AE from the assessee are not in the nature of FIS under the provisions of India-USA DTAA. Thus, she submitted, once, the Tribunal has held that the payments received by the AE from the assessee are not taxable in India, there was no requirement for the assessee to deduct tax at source under Section 195(1) of the Act, while making payments of management fee.

7. Learned Departmental Representative strongly relied upon the observations of the assessing officer and learned Commissioner (Appeals).

8. We have considered rival submissions and perused the material on record.

9. The core issue arising for consideration is, whether assessee was required to deduct tax at source under Section 195 of the Act while paying management fee to its overseas AE i.e. Everest Global Inc. It is observed, for availing certain services from the AE, assessee had entered into a Master Support Services Agreement with the A.E on

08.07.2010. The support services to be availed by assessee along with other group entities are as under:

1. Management Oversight
 - a. Strategic direction
 - b. Contract review
 - c. Financial and legal guidance
 - d. Client relationship management
 - e. Insurance
 - f. Peer review

2. Marketing
 - a. Brand awareness
 - b. Marketplace analysis
 - c. Competitive analysis
 - d. Webinars
 - e. Leadership forums
 - i. Speaking engagements

3. Finance and Accounting
 - a. Payroll
 - b. General ledger
 - c. Employee time and expense
 - d. Revenue and expense accruals
 - e. Payables
 - f. Accounts receivable
 - g. Cash management
 - h. Financial reporting
 - i. Budgeting
 - j. Line of credit access management.

4. Human Resource Management
 - a. Recruiting
 - b. Compensation
 - c. Benefits administration
 - d. Legal

5. Information Technology
 - a. Laptop maintenance
 - b. Help desk support
 - c. Desk side support
 - d. User ID and passwords
 - e. Remote access
 - f. System/antivirus
 - g. Intranet
 - h. Inter-site communication links, email, voice mail, etc.
 - i. Standard computer platform
 - j. New Hardware and software
 - k. Training on IT resources
 - l. Licenses and compliance
 - m. Computer and phone networks

6. Training
 - a. Global training conference
 - b. Monthly training sessions
 - c. Ad hoc training as required

7. Legal
 - a. Contract review
 - b. Litigation management
 - c. Other legal services as required.

10. Undisputedly, assessee is availing such services from the AE from assessment year 2010-11 onwards.

11. It is the case of the Revenue that the services rendered by the AE to the assessee are in the nature of managerial/technical/consultancy services, hence, will fall within the scope and ambit of FTS/FIS as per the provisions of domestic law as well as under the India-USA DTAA.

Notably, while considering the taxability of the corresponding receipts made at the hands of the AE viz. Everest Global Inc. in assessment years 2010-11 to 2012-13, the Tribunal in ITA Nos.2469, 6137 & 2355/Del/2017 dated 30.03.2022 has held that they are not in the nature of FTS/FIS under Article 12(4) of the India-USA DTAA. As could be culled out from the observations of the Co-ordinate Bench in the aforesaid decision, the services received by the assesseees are general managerial services, hence, do not qualify the test of technical/consultancy services to satisfy the definition of FIS under Article 12(4) of the Tax Treaty. Thus, considering the fact that while considering the nature and taxability of corresponding receipts at the hands of the payee, the Tribunal has held that the amount is not taxable in India, in our considered opinion, there is no legal obligation on the assessee to withhold tax at source under Section 195 of the Act while remitting the management fee to the AE. This is so, because, section 195 itself is quite explicit in its language while providing withholding of tax in respect of any payment, which is chargeable to tax in India. Since, the management fee paid by assessee is not chargeable to tax in India in terms with Article 12(4) of India-USA

DTAA, as held by the Co-ordinate Bench in case of the payee, the assessee was not required to deduct tax at source while making such payment. Therefore, we hold that the disallowance made under Section 40(a)(i) of the Act in the assessment years under dispute are unsustainable, hence, deleted. Grounds are allowed.

12. In the result, all the three appeals are allowed.

Order pronounced in the open court on 20th September, 2022.

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 20th September, 2022.
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	09.09.2022
2.	Date on which the draft of order is placed before the Dictating Member:	13.09.2022
3.	Date on which the draft of order is placed before the other Member:	15.09.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	16.09.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	20.09.2022
6.	Date on which the final order received after having been singed/pronounced by the Members:	20.09.2022
7.	Date on which the final order is uploaded on the website of ITAT:	21.09.2022
8.	Date on which the file goes to the Bench Clerk	21.09.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	