

आयकर अपीलीय अधिकरण “बी” न्यायपीठ चेन्नईमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHENNAI

माननीय श्री वी.दुर्गा राव, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI V. DURGA RAO, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपीलसं./ ITA No.365/Chny/2023
(निर्धारणवर्ष / Assessment Year: 2020-21)

M/s. Dassault Systems Simulia Corp C/o. Deloitte Haskins and Sells LLP, 7 th floor, ASV Ramana Towers 52, Venkatnarayana Road, Chennai-600 017.	बनाम/ Vs.	DCIT International Taxation-1(1), Chennai.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AADCD-3705-D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri S.P. Chidambaram (Advocate)- Ld.AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Nandakumar (CIT)-Ld. DR

सुनवाईकीतारीख/ Date of Hearing	:	17-01-2024
घोषणाकीतारीख / Date of Pronouncement	:	23-01-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2020-21 arises out of final assessment order dated 19-01-2023 passed by Ld. Deputy Commissioner of Income Tax, International Taxation-1(1), Chennai (AO) u/s 143(3) r.w.s. 144C(13) of the Act pursuant to the directions of Ld. Dispute Resolution Panel-2, Bengaluru (DRP) u/s 144C(5) of the Act dated 27-12-2022. The sole substantive grievance of

the assessee is denial of Tax Deducted at Source (TDS) credit by lower authorities. The grounds raised by the assessee read as under:

1.1. The order of the learned Assessing Officer ("AO") and the Hon'ble Dispute Resolution Panel ("DRP") is contrary to canons of equity and natural justice, contrary to law and facts involved, not based on facts and circumstances of the case, contrary to mandatory provisions of the Income tax Act, 1961 ("Act"), lacks jurisdiction and is liable to be struck down.

1.2. On the facts and the circumstances of the case and in law, the learned AO and DRP has erred in not granting the TDS credit available as per Form 26AS.

1.3. The learned AO and DRP has erred in law and on facts in restricting the TDS credit to a proportion of the royalty income offered to tax.

1.4. The learned AO and DRP failed to appreciate the fact that the entire income as per Form 26AS has been offered to tax after considering the credit notes raised by the Appellant.

1.5. The learned AO and DRP failed to appreciate the fact that as per section 199 of the Act read with Rule 37BA(3)(i) of the Income tax rules, credit for TDS shall be given in the assessment year for which such income is assessable.

1.6. The learned AO and DRP failed to appreciate the fact that proviso to Section 155(14) of the Act is applicable only in cases where the Appellant has not disclosed income in the return of income.

Each of the above ground is independent and without prejudice to the other grounds of appeal preferred by the Appellant.

2. Both sides advanced arguments and filed written submissions. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under.

3. The assessee is a non-resident company incorporated in United States of America (USA). The assessee returned income of Rs.37.95 Crores and claimed refund of Rs.3.51 Crores. It transpired that the assessee earned contractual royalty income from M/s Dassault Systems India Pvt. Ltd. and offered the same to tax. However, in the financial statements, the assessee offered royalty income of Rs.37.86 Crores whereas as per Form 26AS, the payer entity paid an amount of Rs.69.83 Crores to the assessee after deducting tax at source for Rs.7.62 Crores.

4. The assessee explained that the amount reflected in Form 26AS represents gross invoices raised by the assessee which, in turn, are based on the amounts reported by the deductor payer in its TDS returns. However, the assessee has raised few credit notes subsequent to raising of invoices which were not reflected in Form 26AS since the same would not have any TDS implications. It was also explained that the assessee raised invoices for Rs.72.93 Crores against which credit notes were issued to the extent of Rs.35.07 Crores. The assessee also submitted financials of deductor payer wherein the amount paid to the assessee company was reflected as Rs.37.86 Crores. However, Ld. AR, invoking the provisions of Sec. 155(14), restricted TDS credit in proportion to the income reflected by the assessee in the financial statements and denied the TDS credit of balance amount. The action of Ld. AO was upheld by Ld. DRP against which the assessee is in further appeal before us.

5. From the fact, it emerges that the assessee has received contractual royalty payment from the Indian entity. The assessee would raise invoices on the payer entity who would deduct TDS and remit the remaining amount to the assessee. However, at year-end, the payment of royalty would be re-computed as per the terms of the agreement. Pursuant to the same, the assessee has issued credit notes to the payer entity. The income thus accrued to the assessee is gross invoices less the credit notes issued by the assessee. The same amount, on net basis, would be reflected by the assessee in the financial statements. This figure tallies with the financial statement of the payer entity. The assessee has duly reconciled the amounts reflected in financial

statement vis-à-vis amount reflected in Form 26AS. Though income to the extent of credit notes issued by the assessee would never accrue to the assessee, nevertheless, TDS as been deducted against these payments and the same has been deducted against the assessee. Therefore, the assessee would be entitled for the credit of the same. The amount of credit notes could not be held to be the income of the assessee. Therefore, lower authorities are not justified in denying the credit of the same. The provisions of Sec. 155(14) would not apply since these provisions would apply only in cases where the TDS certificate is furnished later and where the income has not been disclosed in the return of income. In the present case, the income to the extent of credit notes would never accrue to the assessee and hence, there is no question of offering the same to tax. The Ld. CIT-DR has submitted that the assessee could have insisted deductor to file revise TDS return and claim the excess TDS amount from the deductor. However, once TDS is deducted and deposited with the Central government, the only mechanism with the assessee to claim the refund of the same would be through filing of Income Tax Return which is the correct way of claiming the TDS credit. Therefore, considering the facts and circumstances of the case, we direct Ld. AO to allow full TDS credit to the assessee which is otherwise available as per Form 26AS.

6. The appeal stand allowed in terms of our above order.

Order pronounced on 23rd January, 2024

Sd/-
(V. DURGA RAO)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखासदस्य / ACCOUNTANT MEMBER

चेन्नईChennai; दिनांकDated : 23-01-2024
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आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF