आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL
'B' 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 Nos.: 2901 & 2902/Chny/2019**
निर्धारण वर्ष / Assessment Years: 2015-16 & 2016-17

Turbo Energy Private Limited, 67 Chamiers Road, Raja Annamalaipuram, Chennai – 600 028. **[PAN: AAACT-2916-R]**	v.	Deputy Commissioner of Income Tax, Large Tax Payer Unit -1, Chennai – 600 034
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./**ITA Nos.: 3043 & 3044/Chny/2019**
निर्धारण वर्ष / Assessment Years: 2015-16 & 2016-17

Assistant Commissioner of Income Tax, Large Tax Payer Unit -2, Chennai – 600 034	v.	Turbo Energy Private Limited, 67 Chamiers Road, Raja Annamalaipuram, Chennai – 600 028. **[PAN: AAACT-2916-R]**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri. R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri. R. Bhoopathi, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 24.11.2022
घोषणा की तारीख/Date of Pronouncement : 02.12.2022

आदेश /O R D E R

PER G. MANJUNATHA, ACCOUNTANT MEMBER:

This bunch of four cross appeals filed by the assessee and, as well as the revenue are directed against common

order passed by the learned Commissioner of Income Tax (Appeals)-9, Chennai, dated 07.08.2019 and relevant to assessment years 2015-16 & 2016-17. Since, facts are identical and issues are common, for the sake of convenience, the appeals filed by the assessee as well as revenue are disposed off by this consolidated order.

2. The assessee, has more or less raised common grounds of appeal for both assessment years. Therefore, for the sake of brevity grounds of appeal filed for assessment year 2015-16 are reproduced as under:

> *"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 disallowance u/s 80IC amounting to Rs.4, 72,27,891 /- in respect of its unit engaged in the business of turbocharger assembly and core assembly at Rudrapur, Uttarakhand.*
> *2.1 The Commissioner of Income tax (Appeals) ought to have appreciated that the appellant's factory set up at Rudrapur is engaged in the business of manufacture or production of article or thing as the end product is commercially different and distinct from the inputs contained in section 2(29)(BA) and therefore eligible for deduction u/s 80IC.*
> *2.2 The CIT(A) ought to have appreciated that the Central Excise Department has recognized that appellant is engaged in manufacture of article and hence entitled to exemption from Duty and also an Inspector from Income Tax Department had inspected the facility and had reported that the unit was engaged in manufacture of articles*

3. The Commissioner of Income tax (Appeals) erred in confirming the weighted deduction claimed u/s 35(2AB) amounting to Rs.5,81,972/-

3.1 The Commissioner of Income tax (Appeals) ought to have appreciated that the above R&D expenditure is certified as eligible in the audit report filed in pursuance of the above section and due compliance of all procedures by the appellant prescribed in the statute. Following the decision of assessee's own case in ITA No- 351/2013 dated 03.05.2017 the claim of the appellant should be allowed.

3.2 The appellant relies on the following decisions:-

CIT Vs Claris Lifesciences Ltd - 326 ITR 251 (Guj)

Wheels India Ltd - 336 ITR 513 (Mad)

Cadilia Healthcare Ltd Vs Addl.CIT -2012-TIOL-366-ITAT-Ahm

4. The Commissioner of Income tax (Appeals) erred in confirming the restriction of deprecation on UPS @ 15% as against the claim of the appellant @ 60%.

4.1 The Commissioner of Income tax (Appeals) ought to have appreciated that UPS being part of computers and eligible for depreciation @ 60%.

4.2 Without prejudice to the above following the decision of assessee's own case in IT A No-3 51/2013 dated 03.05.2017 the depreciation @ 60% should be allowed.

5. The Appellant craves leave to file additional grounds at the time of hearing."

3. The revenue has raised common grounds of appeal for both assessment years. Therefore, for the sake of brevity grounds of appeal filed for assessment year 2015-16 are reproduced as under:

"1. The order of the learned CIT(A) is contrary to law and facts and circumstances of the case.

2. The learned CIT(A) has erred and directed the AO to delete the disallowance made u/s 40(a)(i) on account of payment to Logistic Service the tune of Rs.3,93,74,945/-.

2.1 The learned CIT(A) has erred in deleting the addition made u/s 40(a)(i) on payment made to logistic services due to the fact that the concerned persons were providing

composite services and not merely a warehousing facility and as it is also seen from the agreement copy.
2.2. The learned CIT(A) has failed to note that the relied upon decision of Hon'ble ITAT in the assessee's own case in ITA Nos.203,204 & 205/Mds/2014 dated 03.05.2017 was not accepted by the department and appeal u/s 260A is pending before Madras High Court.
3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing officer be restored."

4. The brief facts of the case are that, the assessee company is mainly engaged in manufacturing of turbo chargers and components for engine application in passenger cars, commercial vehicles, off highway vehicles and industrial engines. The appellant had filed its return of income for the assessment years 2015-16 & 2016-17 u/s. 139 of the Income-tax Act, 1961 (hereinafter referred to as "the Act"). The assessment have been completed u/s. 143(3) of the Act for both assessment years and determined total income at Rs. 131,71,35,131/- for assessment year 2015-16 and Rs. 126,56,63,825/- for assessment year 2016-17, by inter alia, making various additions including additions towards disallowance of deduction claimed u/s. 80IC of the Act, disallowance of weighted deduction claimed u/s. 35(2AB) of the Act, excess depreciation on UPS and disallowance of

expenditure relatable to exempt income u/s. 14A of the Act and also additions u/s. 40(a)(i) of the Act towards logistic service payment for non-deduction of TDS u/s. 195 of the Act. The assessee carried the matter in appeal before the CIT(A), and the ld. CIT(A) vide their combined order dated 07.08.2019 has partly allowed appeal filed by the assessee, where he had deleted additions made towards disallowance u/s. 40(a)(i) of the Act for both assessment years, but confirmed additions made towards disallowance u/s. 80IC of the Act, deduction u/s. 35(2AB) of the Act, excess depreciation on UPS and disallowance u/s. 14A r.w.r. 8D of the Income-tax Rules, 1962 (hereafter referred to as "the IT Rules, 1962). Aggrieved by the Ld. CIT(A) order, the assessee as well as revenue are in appeal before us.

5. The first issue that came up for our consideration from assessee's appeal for both assessment years is disallowance of deduction claimed u/s. 80IC of the Act. The facts with regard to the impugned dispute are that, the assessee has claimed deduction u/s. 80IC of the Act in respect of profit derived from Rudrapur, Uttarakhand unit. The assessee claims that the unit

has been carrying on business of production/manufacture of turbocharger and parts thereof. The raw material (components) as input under goes various operations and finally emerged as a turbocharger. The turbochargers and parts of turbochargers sold as a final product from unit is totally different from the input components and is distinct object by itself with different structure. The entire process of production/manufacture in the unit falls within the definition of manufacture as defined u/s. 2(29BA) of the Act, and thus, the assessee has rightly claimed deduction u/s. 80IC of the Act. The AO however, was not convinced with the explanation furnished by the assessee and according to the Assessing Officer, the assessee has not satisfied the conditions prescribed under provisions of section 80IC of the Act, to be eligible for claiming deduction under the said section. Therefore, disallowed deduction claimed u/s. 80IC of the Act.

6. The Ld. Counsel for the assessee submitted that, this issue is covered by the decision of the ITAT, Chennai Benches in assessee's own case for assessment years 2011-12 to 2014-15 in ITA Nos. 190 to 193/Chny/2018, where under identical

set of facts, the Tribunal has set aside the issue to the file of the AO to re-consider the claim of deduction u/s. 80IC of the Act, in light of various averments made by the assessee.

7. The ld. DR, on the other hand submitted that in earlier years, the issue has been set aside to the file of the AO for further verification and thus, for these years also, the issue may be set aside to the file of the AO for further verification and to decide eligibility of the assessee for claiming deduction u/s. 80IC of the Act.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is a dispute between the assessee and the Assessing Officer on the eligibility of the assessee for claiming deduction u/s. 80IC of the Act, in respect of profit derived from its Rudrapur, Uttarakhand unit. The assessee claims that activities carried out at Rudrapur, Uttarakhand unit comes under the definition of manufacture as defined u/s. 2(29BA) of the Act, whereas, the AO claims that the process undertaken at Rudrapur, Uttarakhand unit does not amount to

manufacture and thus, assessee is not eligible for deduction u/s. 80IC of the Act. A similar issue had been considered by the Tribunal in assessee's own case in earlier years in ITA Nos. 190 to 193/Chny/2018, and by considering relevant facts, the issue has been set aside to the file of the AO for further verification, in light of averments made by the assessee. The relevant findings of Tribunal order are as under:

> *"3.4 We heard the rival submissions and gone through the above material. The assessee admits that more than 25 components manufactured at Chennai were sold to the Rudrapur unit, which was used for the manufacture of turbo chargers at Rudrapur. The assessee also submitted inviting our attention to the statement showing sales of 80IC unit at Rudrapur unit for the impugned assessment years, that the percentage of traded items viz., overhaul kit / secondary kit and core assembly are so minuscule with reference to manufactured items viz., core assemblies, turbo chargers. From the above facts, it is clear that the lower authorities have not properly examined the issues viz., whether the product sold at Rudrapur were subjected to manufacturing activity or not, independent of the audit report from the Central Excise. Therefore, we deem it fit to remit all these issues back to the AO for a fresh examination for the impugned assessment years. The assessee shall lay all materials in support of its contention before the Assessing Officer and comply with the requirements of the Assessing Officer in accordance with law. The AO shall also furnish the copy of Remand Report and its annexures to the assessee and consider the assessee's submissions on them and on due examination,*

shall pass appropriate orders for the impugned assessment years, in accordance with law."

9. In this view of the matter and consistent with view taken by the co-ordinate bench in assessee's own case for earlier years, we are of the considered view that the issue needs to go back to the file of the AO to decide the eligibility of the assessee to claim deduction u/s. 80IC of the Act and thus, we set aside the issue to the file of the AO and direct the Assessing Officer to re-examine the claim of the assessee in light of various averments, including necessary evidences placed to justify the activity carried out in the unit for claiming deduction u/s. 80IC of the Act for both the assessment years.

10. The next issue that came up for our consideration from assessee's appeal for both assessment years is disallowance of weighted deduction claimed u/s. 35(2AB) of the Act. The assessee has claimed weighted deduction u/s. 35(2AB) of the Act, for in house R&D expenditure incurred for the relevant assessment years. The AO has disallowed expenditure claimed over and above, what was certified by the competent authority in Form no. 3CL dated 28.03.2017. It was the argument of

the assessee that, once the facility has been approved by the competent authority, then irrespective of quantification of the expenditure incurred for R&D purpose, the assessee is entitled to claim deduction u/s. 35(2AB) of the Act.

11. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that, an identical issue has been considered by the Tribunal in assessee's own case for assessment year 2009-10 in ITA No. 317/Chny/2014, where the Tribunal by considering relevant provisions and also ratios of various case laws relied upon by the assessee, held that the assessee is not entitled for weighted deduction u/s. 35(2AB) of the Act for expenditure incurred over and above, what was certified by the competent authority and relevant findings of the Tribunal are as under:

> ***"14.1*** *We have heard both the parties and perused the materials placed on record. The act does not place any restrictions to incur the expenditure. The expenditure incurred for the purpose of scientific research required to be allowed as deduction u/s.35(AB) subject to complying the conditions laid down in Rule 6. The expenditure was incurred by the assessee which is certified by the tax audit report. There is no dispute regarding the actual amount incurred by the assessee. The*

assessee relied on the jurisdictional High Court decision supra. The decisions relied upon by the Ld.AR are not directly related to the issue of R&D expenditure incurred over and above the specified limit of DSIR. However, the essence of the judgments relied upon by the Ld.AR suggests to allow the actual expenditure. There is no dispute regarding the genuineness of expenditure. Therefore, we hold that the assessee is entitled for the weighted average deduction on the amount actually spent. Accordingly, the appeal of the assessee is allowed."

12. In this view of the matter and consistent with the view taken by the co-ordinate bench, we are of the considered view that, there is no error in the reasons given by the Ld. CIT(A), to sustain the additions made towards disallowance of expenditure incurred for in house R&D expenditure u/s. 35(2AB) of the Act and thus, we are inclined to uphold the findings of the Ld. CIT(A) and reject grounds taken by the assessee for both assessment years.

13. The next issue that came up for our consideration from assessee's appeal for assessment year 2015-16 is restriction of depreciation on UPS @ 15% as against claim of the appellant @ 60%. The assessee has claimed 60% depreciation on UPS, on the ground that the UPS is a part of computer and

computer software and eligible for higher depreciation at 60%. The AO has disallowed excess depreciation on UPS over and above 15% as applicable to electric equipment, on the ground that the UPS is not an integral part of computer and computer software.

14. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. We find that the Tribunal has considered an identical issue in assessee's own case for assessment year 2010-11 in ITA No. 2493/Chny/2016, where, under identical set of facts and also by following the decision of ITAT, Chennai, in the case of M/s. Sundaram Asset Management Ltd vs ACIT (2013) 145 ITD 17, held that UPS is an integral part of computer and computer software eligible for 60% depreciation. The relevant findings of the Tribunal are as under:

> *"30. The question whether UPS could be given depreciation @60% allowable to computer system had come up before this Tribunal in assessee's own case for assessment years 2007-08 to 2009-2010. What was held by this Tribunal in para 11 to 11.2 are reproduced hereunder:-*
>
> > *"11.0 The next issue in Ground No.2 is disallowance of depreciation on UPS. Both the assessee and Revenue have filed appeal on this issue. The*

assessee filed appeal for the AY 2007- 08 and the Revenue has filed appeal for the AY 2008-09 and 2009-10. This issue is involved for the AYs2007-08, 2008-09 & 2009-10. The AO disallowed a sum of Rs.1,26,086/- for the A.Y 2007-08, Rs.3,75,082/- for the AY 2008-09 and Rs.6,29,235/- for the A.Y 2009-10.The assessee claimed the depreciation @80% on UPs stating the UPS being an automatic voltage controller as well as power saving equipment is a energy saving device and claimed the depreciation @80% in accordance with Appendix-I to Income-Tax Rules. Reliance is also placed on the decision of 1TAT's Order in DCIT v Surface Finishing Equipment (2003) 81 TTJ 448. The AO examined the explanation of the assessee and held that the UPS is neither a part of the computer nor a energy saving device but it is only as an uninterrupted power supply equipment for all the electrical appliances. The AO relied on the decision of Hon'ble ITAT Delhi in the case of Nestle India Limited Vs. DCIT [111 TTJ 498], wherein it was held that UPS is not an integral part of computer and allowed depreciation as a part of general plant and machinery. Accordingly, the excess depreciation claimed by the assessee is disallowed and added to the total income.

11.1 During the appeal hearing the Ld.AR of the assessee argued that energy saving devices being automatic voltage controllers are the equipment eligible for claiming depreciation @80%. It was the contention of the Ld.AR that the UPS has inbuilt automatic voltage regulator which is capable of regulating the incoming voltage to feed stabilizer output voltage to the connected instrument in addition to the uninterrupted power supply during the power failure with the help of

batteries. The Ld.AR also relied on the following decisions:

- *Sundaram Asset Management (2013) 145 ITD 17 (Chennai)*
- *Godrey Phillips India Ltd.*
- *DCIT vs. Surface Finishing Equipment*

11.2 Though there are decisions in favour of assessee the claim of the assessee that the UPS as an energy saving device is not acceptable. It is only an equipment for uninterrupted power supply to all the electrical appliances as held by the Ld.AO. However ITAT'C' Bench, Chennai in ITA No1774/Mds/2012 in the case of Sundaram Asset Management Co.Ltd vs DCIT held that UPS is an part integral of computer and eligible for Depreciation @60%. Therefore, we are unable to accept the contention of the Ld.AR that UPS is eligible for 80% depreciation. Following the decision of this tribunal in the case cited (Supra) we uphold the order of the Ld.CIT(A) and direct the AO to allow the depreciation @60%. In the result, the assessee's appeals as well as Revenue's appeals are dismissed''.

Accordingly, we hold that ld. Commissioner of Income Tax (Appeals) was justified in allowing the claim of depreciation at the rate of 60% on UPS. Ground No.4 of the Revenue stands dismissed."

15. In this view of the matter and consistent with the view taken by the co-ordinate bench, we are of the considered view that the AO and CIT(A) erred in not allowing 60% depreciation claimed on UPS and thus, we direct the AO to allow 60% depreciation on UPS as claimed by the assessee.

16. The next issue that came up for our consideration from assessee's appeal for assessment year 2016-17 is disallowance of expenses relatable to exempt income u/s. 14A r.w.r. 8D of the IT Rules, 1962. The AO has disallowed expenditure relatable to exempt income by invoking Rule 8D(2) of IT Rules, 1962 and disallowed interest expenditure and other expenses, amounting to Rs. 75,75,295/-. Since, the assessee has already disallowed a sum of Rs. 71,98,449/-, the difference amount of Rs. 3,76,846/- has been disallowed and added back to the total income.

17. The Ld. Counsel for the assessee submitted that, the AO has erred in disallowing interest expenditure u/r. 8D(2) of IT Rules, 1962, even though the assessee has demonstrated with evidence that it has sufficient own funds which is in excess of investments made in shares and securities which yield exempt income, and thus, question of interest disallowance does not arise. The assessee, further contended that when it comes to disallowance of other expenses u/r. 8D(2)(iii) of the IT Rules, 1962 @ 0.5% on average investment, the AO can consider

only those investments which yielded exempt income for the relevant assessment years.

18. The Ld. DR, on the other hand submitted that the assessee itself has computed disallowance u/s. 14A r.w.r. 8D of the IT Rules, 1962 and thus, the arguments of the Ld. Counsel for the assessee, that interest expenditure cannot be disallowed is *devoid* of merits. Therefore, the Ld. DR submitted that the issue may be set aside to the file of the AO to re-examine the claim of the assessee.

19. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. There is no dispute with regard to applicability of provisions of section 14A r.w.r. 8D of IT Rules, 1962, because assessee has earned exempt income and also made *suomoto* disallowance of expenditure u/s. 14A of the Act. The AO has re-computed disallowance u/s. 14A r.w.r. 8D of the IT Rules, 1962 and determined total disallowance of Rs. 75,75,295/-. Thus, there is a difference of Rs. 3,76,846/- in total disallowance computed by the AO, when compared to *suomoto*

disallowance computed by the assessee. Further, in assessee's computation of disallowance, there is no bifurcation under which limb of Rule 8D, the assessee has determined disallowance. Although, the assessee claims that interest expenditure cannot be disallowed because of availability of own funds in excess of investments made in shares and securities which yield exempt income, but no details has been furnished to prove the claim. As regards, second argument of the assessee that, only those investments which yielded exempt income needs to be considered, we agree with the arguments of the assessee because the issue is settled by various decision of courts and Tribunals. However, once again there is no details from the assessee on this aspect also. Therefore, we are of the considered view that the issue needs to go back to the file of the AO for further examination of facts, in light of various averments made by the assessee and also *suomoto* disallowance computed u/s. 14A r.w.r. 8D of the IT Rules, 1962. Hence, we set aside the issue to the file of the AO and direct the AO to re-examine the issue, in light of various averments made by the assessee as discussed herein above and re-compute disallowance u/s. 14A of the Act.

However, disallowance computed by the AO u/s. 14A r.w.r. 8D of the IT Rules, 1962, cannot go below *suomoto* disallowance computed by the assessee u/s. 14A of the Act. In case, disallowance computed by the AO u/s. 14A r.w.r. 8D of the IT Rules, 1962 works out to lesser than amount of *suomoto* disallowance computed by the assessee, then the AO is directed to restrict the disallowance to the extent of *suomoto* disallowance of Rs. 71,98,449/- computed by the assessee and disallowed in the statement of total income.

20. In the result, appeals filed by the assessee for assessment years 2015-16 & 2016-17 are treated as partly allowed for statistical purposes.

21. The only issue that came up for our consideration from revenue's appeal for both assessment years is deletion of addition made towards disallowance u/s. 40(a)(i) of the Act for non-deduction of TDS on payment made to non-resident. The AO has disallowed payment made to M/s. Sonima Logistics, a non-resident service provider u/s. 40(a)(i) of the Act for non-deduction of tax at source u/s. 195 of the Act. According to

the AO, payment made by the assessee to non-resident service provider is in the nature of managerial service which comes under the provisions of section 9(1)(vii) of the Act. Since, the assessee has failed to deduct TDS on payment to non-resident u/s. 195 of the Act, the AO has disallowed said payment u/s. 40(a)(i) of the Act. The Ld. CIT(A) has deleted additions made by the AO towards disallowance of logistic services charges, by following his predecessor CIT(A) order for assessment year 2011-12 to 2014-15. Aggrieved by the CIT(A) order, the revenue is in appeal before us.

22. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. At the time of hearing, the Counsel for the assessee as well as the DR present for the revenue, fairly agreed that this issue is covered in favour of the assessee by the decision of ITAT, Chennai benches in assessee's own case for assessment years 2006-07 to 2009-10 in ITA No. 203 to 205/Chny/2014, where, under identical set of facts, the Tribunal held that payment made to non-resident without deducting the tax at source u/s. 195 of the Act, does not come under the provisions

of section 9(1)(vii) of the Act and consequently, assessee need not to deduct TDS u/s. 195 of the Act and thus, question of disallowance of said payment u/s. 40(a)(i) of the Act does not arise. The relevant findings of the Tribunal are as under:

> ***"8.0*** *Ground No.7 of the* ***AY 2007-08*** *is the disallowance u/s.40(a)(i) in respect of payment made to Sonima Logistics, Germany without deduction of tax at source. This issue is involved for the* ***A.Ys 2007-08, 2008-09 and A.Y 2009-10****. The AO found that the assessee has paid commission for the* ***AYs 2007-08 to 2009-10*** *as under:*
>
> - *AY 2007-08 - Rs.5,19,93,634/-*
> - *AY 2008-09 - Rs.6,75,34,886/-*
> - *AY 2009-10 - Rs.5,32,06,430/-*
>
> *The payment was made to Sonima Logistics, Germany for rendering the following services outside India.*
>
> a) *Import customs clearance including liaison with appropriate agencies*
> b) *Transporting the custom cleared containers to warehouse and unloading containers.*
> c) *Unpacking cases/cartons and transferring contents to pallets.*
> d) *Delivering components to supplier as per schedule.*
> e) *After delivery acknowledgements from supplier to be forwarded to Turbo Energy Ltd*
> f) *To maintain running account of pallets received from supplier and delivered back to them and reconcile these figures on monthly basis.*
> g) *To provided in all pallets delivered to supplier, details of part number, quantity and the related master consignment reference*

h) To send stock status report to Turbo Energy Limited on weekly basis."

8.1 *The AO held that the payments were made for managerial services and taxable u/s.9(1)(vii) of IT Act. Since the assessee failed to deduct the tax at source u/s.195 of the IT Act, disallowed the payments u/s.40(a)(i) of IT Act. The Ld.CIT(A) deleted the addition finding that the services rendered by non-resident do not fall under managerial or technical services within the meaning of IT Act and the services are rendered outside India and non-resident party has no permanent establishment or business connection in India. Accordingly, relying on the decision of the Hon'ble Apex Court in G.E. Technological Centre Pvt. Ltd., the Ld.CIT(A) allowed the appeal of the assessee. During the appeal, the Ld.AR argued that the services were rendered by the non-resident are liasoning services but not the managerial and technical services. Further, argued that even if the services rendered outside India are to be taxable, it is taxable as business profits in which case, only the profits required to be brought to tax if there is a permanent establishment or business connection in India. Since the assessee has no permanent establishment, the application of Sec.9(1)(vii) and Sec.195 has no application. The assessee also relied on the following decisions:*

- *Brakes India Ltd. V. DCIT (LTU) (266/Mds/2012) (Chennai)*
- *Sun Micro Systems India (P) Ltd (125 ITD 196) (Bang)*
- *G.E. Technology Centre Pvt. Ltd., Vs. CIT (327 ITR 456)*

8.2 *We heard the rival submissions and perused the material placed on record.*

The assessee has produced the copy of the agreement before the Ld.CIT(A). The Ld.CIT(A) examined the Explanation

of the assessee and the document placed before the CIT and concluded that the services rendered by the non-resident do not fall under the category of technical or managerial services. Ld.CIT(A) further stated that the services are rendered outside India and there is no permanent establishment or business connection to the non-resident in India. This fact has not been disputed by the Revenue. The profits of the services rendered outside India cannot be taxed in India unless the non-resident has permanent establishment/or business connection in India as envisaged in Sec.9(1) of IT Act. The Ld.CIT(A) deleted the addition relying on the decision of the Hon'ble Apex Court in the case of GE Technological Centre Pvt. Ltd. v. CIT 327 ITR 456. The findings and conclusions arrived in earlier ground in respect of payment made to M/s.Biggleswade Ltd., are squarely applicable to this ground also. Therefore, we do not find any infirmity in the order of the Ld.CIT(A) and the same is upheld. The Revenue's appeal on this issue for the ***A.Ys 2007-08, 2008-09 and A.Y 2009-10*** *are dismissed."*

23. In this view of the matter and consistent with the view taken by the co-ordinate bench in assessee's own case for earlier years, we are of the considered view that there is no error in reasons given by the Ld. CIT(A) to delete additions made towards disallowance of payment made to non-resident service provider u/s. 40(a)(i) of the Act for non-deduction of tax at source u/s. 195 of the Act and thus, we are inclined to uphold the findings of the Ld. CIT(A) and dismiss the appeal filed by the revenue for both the assessment years.

24. In the result, appeals filed by the assessee for both the assessment years are treated as partly allowed for statistical purposes and the appeals filed by the revenue for both the assessment years are dismissed.

Order pronounced in the court on 02nd December, 2022 at Chennai.

Sd/-	**Sd/-**
(वी दुर्गा राव)	**(जी. मंजुनाथ)**
(V. DURGA RAO)	**(G. MANJUNATHA)**
न्यायिकसदस्य/Judicial Member	**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,
दिनांक/Dated: 02nd December, 2022
JPV
आदेश की प्रतिलिपि अग्रेषित/Copy to:

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