

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH, BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

IT(IT)A No. 990/Bang/2023
Assessment Years : 2021-22

QlikTech International AB C/o QlikTech India Pvt. Ltd., Kind Attn: - Mr. Naveen Chokkadi, No.1 & 2, The Millennia Tower A, 4 th Floor Murphy Road, Ulsoor, Bengaluru – 560 008. PAN – AAACQ 2234 R	Vs.	The Dy. Commissioner of Income Tax, Assessment Circle – 2(1), Bengaluru. .
APPELLANT		RESPONDENT

Assessee by	:	Shri Ketan Ved, Advocate
Revenue by	:	Shri A Sreenivasa Rao, CIT (DR)

Date of hearing	:	14.10.2024
Date of Pronouncement	:	16.12.2024

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the DCIT, Bangalore dated 29/10/2023 in ITA No. ITBA/AST/S/143(3)/2023-24/1057479453(1) for the assessment year 2021-22.

2. At the outset, the Ld. counsel for the assessee before us submitted that he has been instructed by the assessee not to press ground No. 1, therefore we dismiss the same as not pressed.

3. The issue raised by the assessee on ground No. 2 and 3 is that the Id. DRP/AO erred in holding that the Indian subsidiary of the assessee is dependent agent permanent establishment of the assessee.

4. The necessary facts are that the assessee in the present case is a foreign company and engaged in the sale of software products. The assessee has subsidiary company in India namely Qliktech India private limited which has paid to the assessee a sum of Rs. 55,91,48,515 after deducting the TDS of Rs. 5,59,14,851 which was reflecting in form 26AS for the year under consideration. However, the assessee has not offered the consideration received from the Indian subsidiary to tax and claimed the refund of the corresponding TDS by filing the return of income.

5. However, the AO during the assessment proceedings based on master distribution agreement dated 1-1-2020 and service agreement dated 1st April 2016 between the assessee and its Indian subsidiary company found that the Indian subsidiary company carries out the functions such as identifying customers, negotiating prices and concluding the terms/conditions of the contract with respect to the product supplied by the foreign company being the assessee to its customers in India. According to the AO the Indian company is a dependent agency permanent establishment of the assessee and accordingly the AO concluded that the income earned by the assessee is taxable to the extent attributable in India at the rate of 30% of ₹ 9687.02 lacs representing the revenue from the sale of products in India. The view taken by the AO was subsequently also upheld by the Id. DRP.

6. Being aggrieved by the order of Id. DRP/AO, the assessee is in appeal before us.

7. The learned AR before us filed paper books, written submissions, and additional documents in the form of TPO order of the subsidiary company of the assessee for the assessment year 2021-22. As per the Id. AR the assessee was supplying the software products to its Indian subsidiary on outright sale basis. This fact was also accepted in the assessment framed in the case of Indian subsidiary wherein such transaction of purchase and sale was made subject to TPO adjustment.

8. The Id. AR also submitted that the sale of software by the assessee company to its subsidiary company was duly recorded as the transaction of purchase and sale in the respective books of accounts. Therefore, the question of dependent agency permanent establishment does not arise.

9. On the other hand, the Id. DR vehemently supported the order of the authorities below.

10. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the order of the TPO in the case of the subsidiary company namely Qliktech India private limited, we find that the transaction between the assessee and its subsidiary for the sale of software product has been made subject to TPO adjustment. Accordingly, the question of treating the Indian subsidiary as dependent agency permanent establishment does not arise. The copy of the TP order in the case of the subsidiary company is

available on record. However, we note that such document was filed before us as additional piece of evidence and therefore we are of the view that such TP order has not been verified at the level of the lower authorities. Accordingly, we set aside the issue to the file of the AO for fresh adjudication in the light of the above stated discussion and as per the provisions of law. Hence the ground of appeal of the assessee is hereby allowed for statistical purposes.

11. **The next issue** raised by the assessee in ground No. 4 is that the interest on the income tax refund is not subject to tax.

12. At the outset, the Id. AR fairly agreed that the issue stands covered against the assessee. Accordingly, we do not find any merit in the ground of appeal raised by the assessee. Thus, we decline to interfere in the order of the authorities below. Hence, the ground of appeal of the assessee is hereby dismissed.

13. **The issue raised by the assessee in ground No. 5** is that the Id. AO erred in not granting the credit of TDS claimed at the time of filing the return of income.

14. The Id. AR before us submitted that a direction can be issued to the AO to verify the amount of TDS deducted on behalf of the assessee and allow the benefit of the same as per the provisions of law. On the contrary, the Id. DR did not raise any objection if the matter is that aside to the file of the AO for fresh adjudication as per the provisions of law. In view of the above, after hearing both the parties and in the interest of justice and fair play, we set aside the issue to the file of the AO for fresh

adjudication as per the provisions of law. Hence, the ground of appeal of the assessee is hereby allowed for statistical purposes.

15. **The assessee in ground No. 6 prays** to issue a direction to the AO for levying of interest under section 234A and 234B of the Act as per the provisions of law. In our considered view, such grounds are consequential in nature. Yet, we direct the AO to levy the interest under section 234A and 234B of the Act as per the provisions of law. Hence the ground of appeal of the assessee is hereby allowed for statistical purposes.

16. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in court on 16th day of December, 2024

Sd/-

(KESHAV DUBEY)
Judicial Member

Sd/-

(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 16th December, 2024

/ vms /
Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore