

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

IT(TP)A No. 12/Bang/2021
Assessment Year : 2013-14

M/s. Maxim India Integrated Circuit Design Pvt. Ltd., 4 th Floor, Tower B, Commercio@Mantri, Survey No. 51/2, 51/3, 51/4, Devarabesanahalli, Kariyammana Agrahara, Varthur Hobli, Bangalore. PAN: AACCM9437E	Vs.	The Deputy Commissioner of Income Tax, Circle (4) (2), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri Padamchand Khincha, CA
Revenue by	:	Shri Priyadarshi Mishra, Addl. CIT (DR)

Date of Hearing	:	06-09-2021
Date of Pronouncement	:	20-10-2021

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 19/05/2017 by the Ld.DCIT, Circle 4(1)(2), Bangalore on following grounds of appeal:

“1. The lower authorities have erred in passing the order in the manner passed by them. The order is bad in law and liable to be quashed.

2. On the facts and circumstances of the case and in law, the Hon'ble DRP has erred in directing the AO to treat payment of lease line charges and payroll processing fees as royalty and learned AO has erred in disallowing the same under section 40(a)(i) of the Act while determining the total income of the Appellant. The payment towards payment of lease line charges and payroll processing fees are not liable for TDS and therefore disallowance under section 40(a)(i) is not applicable.

3. The learned AO and DRP have erred in not appreciating that payment of lease line charges were mere reimbursement of expenses and therefore provisions of section 195 of the Act are not applicable.

4. On the facts and circumstances of the case and in law, the Hon'ble DRP erred in making addition to the expenditure not referred / proposed by the Learned AO / TPO. The Hon'ble DRP has no power to make a suo moto addition when the same is not referred / proposed by the Learned AO / TPO.

The Appellant craves leave to add, alter, vary, omit, substitute or amend the above grounds of appeal, at any time before or at, the time of hearing, of the appeal, so as to enable the Income-tax Appellate Tribunal to decide the appeal according to law.

The Appellant prays accordingly."

2. At the outset Ld.AR submitted that the present appeal is filed with the delay of 922 days.

3. Referring to the affidavit and the application for condition of the filed by assessee, the Ld.AR submitted that originally appeal was filed before the *Tribunal* in IT(TP)A No.1573/B/2017 against the final assessment order passed by the Ld.AO dated 12.05.2017. He submitted that, the addition made under section 40 (a) (i) of the Act was filed as an additional ground before this *Tribunal*. However the *Tribunal* while passing order dated 02.11.2020 declined to admit the additional ground as the addition did not arise out of the final assessment order passed by the Ld.AO. This *Tribunal* observed that the addition was made in a separate order passed under section 154 of the Act by the Ld.AO, against which assessee had not preferred any.

4. The Ld.AR submitted that it is only after the order passed by this *Tribunal* in the main appeal that assessee was advised to file an appeal against the order passed under section 154 of the Act, wherein the addition was made. He submitted that it for this reason that, the delay was caused. The Ld.AR submitted that, even after the order passed by this *Tribunal*, as assessee could not file appeal against order under section 154 immediately for lockdown declared due to COVID-19 pandemic.

5. He thus pleads for the appeal to be heard on merits.

The Ld.SR.DR though opposed the condemnation, could not controvert the submissions of the Ld.AR.

We have perused submissions advanced by both sides blight record for us.

6. We note that, the delay in filing the present appeal against order passed by the Ld.AO under section 154 of the Act is a bonafide Act and cannot be attributed assessee. Under such circumstances we are condoning the delay and the appeal is admitted to be heard on merits.

Accordingly the application for condemnation of the delay stands allowed.

Brief facts of the case are as under:

7. The assessee is in the business of design and development of integrated circuits. It filed its return of income for your under consideration declaring total income of Rs.84, 36, 720/-.

For the year under consideration in the draft assessment order passed by the DRP, disallowance was made under section 40(a)(ia) of the Act. Before the DRP, assessee raised objections on the issues that arose out of the draft assessment order. The DRP

directed the Ld.AO to treat the payment towards lease line charges and payroll processing fee as royalty. On receipt of DRP directions, the Ld.AO pass the final assessment order on 12.05.2017. The Ld.AO did not initially make addition as directed by the DRP respect of lease line charges and payroll processing fee.

8. Subsequently the Ld.AO found that disallowance was not made towards the lease line charges and payroll processing fee, despite the directions of DRP. The Ld.AO was of the opinion that this was a mistake apparent order. Accordingly rectification order under section 154 was passed on 19.05.2017, making the addition as per the directions by of DRP.

Assessee is in appeal before us against order passed u/s. 154 by the Ld.AO.

9. All grounds raised by assessee in this appeal is relating to the disallowance we need under section 40(a)(ia) of the Act. Ld.AR submitted that, the payment towards lease line charges and payroll expenses were mere reimbursement and therefore provisions of section 195 of the Act are not applicable. He submitted that this issue was decided against assessee by DRP relying on the decision of *Hon'ble Karnataka High Court* decision in case of *CIT vs. Samsung Electronics Co Ltd.* in (2011) 203 taxman 477 and *CIT vs. Synopsis International Old Ltd* reported in (2012) 28 taxman.com 162.

10. He submitted that the view taken by *Hon'ble Karnataka High Court* in above cases stand reversed by the decision of *Hon'ble Supreme Court* in case of *Engineering Analysis Centre of Excellence Pvt. Ltd* reported (2021) 125 taxman.com 42.

11. The Ld.SR DR did not object to the above submissions of the Ld.AR. He submitted that the authorities below did not have the benefit of the decision of *Hon'ble Supreme Court* as impugned orders were passed before the date of order passed by *Hon'ble Supreme Court*.

We have perused submissions and was satellite records please before us.

12. We know that there is service agreement entered into by assessee with its AE as per which payments made to assessee. The authorities below have not verified the agreement vis-à-vis the provisions of the Act and the DTAA. In the interest of justice, it is necessary to remand this issue back to Ld.AO to carry out necessary verifications for ascertaining the tax ability of the receipt in the hands of assessee. We direct the Ld.AO to consider the claim of assessee in the light of principles laid down by *Hon'ble Supreme Court* in case of *Engineering Analysis (supra)* and the service agreement entered into by assessee.

Accordingly all grounds raised by the assessee are allowed for statistical purposes.

In the result appeal filed by assessee stands allowed for statistical purposes.

Order pronounced in the open court on 20th October, 2021

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 20th October, 2021.
/MS/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.