

Setback to Lite-on Mobile: ITAT disallows grossed up portion of TDS deducted on Interest paid to AE on External Commercial Borrowings

Fact of the Case

1. The assessee, M/s. Lite-on Mobile India Pvt.Ltd. is wholly owned subsidiary of Perlos Oyj, Finland, is engaged in the business of manufacture and supply of moulded components for the telecommunication industry.
2. The assessee does moulding, painting, punching and assembly for manufacture of plastic covers of mobile phones. The assessee imports raw materials like display window, key pads from its Associated Enterprises. The assessee does not possess technology for manufacture of aforesaid materials in India. The assessee had entered into an agreement with its AE for availing various managerial services for which it has paid management fees. The assessee had also entered into various other international transactions with its AEs
3. The assessee has aggregated all transactions with its AEs and has adopted Transactional Net Margin Method (TNMM) to benchmark all international transactions, except transaction pertaining to payment of interest on ECB (External Commercial Borrowings) which was benchmarked under Comparable Uncontrolled Price method (CUP) and concluded that international transactions with its AEs are at arms' length price.
4. The assessee submitted that the learned DRP has erred in sustaining additions made by the TPO towards disallowance of grossed up portion of TDS of Rs.78,15,435/- without appreciating fact that as per contractual arrangement between parties, the assessee is liable to deposit TDS applicable on said payment and thus, same partakes nature of expenditure which needs to be allowed as deduction.
5. The department on the other hand, strongly supporting order of the learned DRP submitted that what was paid by the assessee is liability of AE, but not payment for services rendered by the AE. Therefore, the learned TPO/DRP has rightly disallowed TDS deducted and remitted on behalf of AE and grossed up in interest provided on ECB loan and thus, their orders should be upheld.

Decision of the Case

1. The coram of Judicial Member, Duvvuru RL Reddy and Accountant Member, G.Manjunatha observed that as per the agreement, any tax liability including income tax, if any, on interest accrued to the lender under the agreement would be borne by the lender. The agreement further states that the borrower will compute the appropriate amount of taxes required to be withheld and deposit the same to credit of Indian Govt. treasury.
2. The borrower will provide the lender with a certificate evidencing deposit of such taxes. Therefore, from the conditions of agreement between parties, it is very clear that tax liability, if any, on interest paid to the lender is the responsibility of the lender. However, the assessee should deduct applicable tax deducted at source as per law, remit the same to Govt. treasury and furnish proof to the lender.
3. In a major setback to Lite-on Mobile, the Chennai Bench of Income Tax Appellate Tribunal (ITAT) disallowed the grossed up portion of TDS deducted on interest paid to AE on External Commercial Borrowings.