IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'D' NEW DELHI)

BEFORE S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No. 2084 /Del/2023 (A.Y. 2018-19)

M/s Hal Offshore Ltd. 25, Bazar Lane, Bengali Market, New Delhi-110001 **PAN: AAACH3144B**	Vs	Income Tax Officer, Ward International Taxation 2(1)(1), New Delhi
Appellant		**Respondent**

Assessee by	Dr. Rakesh Gupta, Adv, Sh. Somil Agrawal, Adv
Revenue by	Sh. Vikram Singh Sharma, Sr. DR
Date of Hearing	25/08/2025
Date of Pronouncement	/10/2025

ORDER

PER YOGESH KUMAR, U.S. JM:

This appeal is filed by the assessee pertaining to Assessment Year 2011-12 challenging the order of Commissioner of Income Tax (Appeals)-26, New Delhi dated 04/07/2023.

2. The grounds of Appeal are as under:-

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. ITO, Ward Int. Tax-2(1)(1) in passing the impugned order u/s 201(1)/201(1A) and that too without assuming jurisdiction as per law by holding that payment made by the assessee was in the nature of fee for technical services.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. ITO, Ward Int. Tax-2(1)(1) in treating the assessee company as "assessee in default" for non-deduction of TDS u/s 201(1)/201(1A) and that too without any basis, material and evidence available on record and by recording incorrect facts and findings.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. ITO, Ward Int. Tax-2(1)(1) in raising demand of Rs.16,80,590/- u/s 201(1)/201(1A) on the alleged ground that the assessee has not deducted TDS on the amount of Rs.1,07,28,734/-, more so when there is no requirement to deduct TDS as per law.

4. That in any case and in any view of the matter, action of Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. ITO, Ward Int. Tax-2(1)(1) in raising the demand of Rs. 16,80,590/- u/s 201(1)/201(1A), is bad in law and against the facts and circumstances of the case and the same is outside the purview of the said section.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. ITO. Ward Int. Tax-2(1)(1) in charging the interest amounting to Rs.6,07,717/- u/s 201(1A) and raising demand of Rs.10,72,873/- u/s 201(1) on the alleged ground that the assessee failed to deduct TDS within the prescribed time limit, more so when there is no requirement to deduct TDS as per law and the assessee has complied with all the necessary conditions in accordance with law.

6. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. ITO, Ward Int. Tax-2(1)(1) in charging the interest amounting to Rs.6,07,717/- u/s 201(1A) and raising demand of Rs. 10,72,873/- u/s 201(1), is bad in law and against the facts and circumstances of the case and the same is outside the purview of the said section.

7. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. ITO, Ward Int. Tax-2(1)(1) in raising aggregate demand of Rs. 16,80,590/- (Rs.6,07,717/- + Rs. 10,72,873/-) u/s 201(1)/201(1A) by treating the assessee company as "assessee in default" and passing the impugned order dated 15-02-2022 is illegal, bad in law, void ab-initio, and against the facts and circumstances of the case and is in violation of principles of natural justice and barred by limitation also.

8. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."

3. Brief facts of the case as mentioned in the order of the Ld. CIT(A) are as under:-

'Information available in the ITBA showed that the assessee has made remittance to foreign countries and in respect of some of the remittances tax at source had not been deducted by the assessee company. As per Central Action Plan circulated by the Central Board of Direct Taxes, the cases in which foreign remittances were made without deduction of taxes were to be selected on the basis of parameter contained in the said Central Action Plan and necessary verification were required to be made by the jurisdictional AO for ascertaining the veracity of claim made by the person remitting the funds out of India. Accordingly, case was selected and permission for initiating enquiries u/s 133(6) of the Act was sought from Commissioner of Income Tax, International Taxation-2, New Delhi and notices for verification of details furnish in Form no. 15CA-proceedings u/s 201(1)/201(1A) were issued time to time. The assessing officer has created demand along with interest of Rs. 16,80,590/- and passed order u/s 201(1)/201(14) of the Income Tax Act, 1961 vide order dated 15/02/2022.'

4. Aggrieved by the order dated 15/02/2022 passed u/s 201(1)/201(1A) of the Act, the Assessee preferred an Appeal before the Ld. CIT(A). The Ld. CIT(A) vide order dated 04/07/2023, dismissed

the Appeal filed by the Assessee. As against the order of the Ld. CIT(A) dated 04/07/2023, Assessee preferred the present Appeal on the grounds mentioned above.

5. The Ld. Counsel for the Assessee submitted that the authorities below committed error in treating the Assessee Company as 'Assessee in default', ignoring the fact that the Assessee did not have any PE in India and the income of the Assessee was not liable to tax in India as per Article 7 of DTAA between India and Norway. Further submitted that the personnel of vendor company stayed in India for only 29 days which is less than three months as provided in Article 5 paragraph 3 of DTAA between India and Norway and even if the activities of the Assessee are considered to be installation contract, the income was not taxable in India, therefore, no tax was deductable u/s 195 of the Act. Further submitted that the contract was primarily for sale of spare parts and replacement of defective parts through their personnel which was incidental to the sale of spare parts, therefore, whole of the contract partakes the character of work contract. The payment were not covered under Fees For Technical Services as defined in Section 9(1) (vii) of Article 12 of the DTAA as the work carried out was specifically fell under Article 7, leading to commercial profits. The Ld. Counsel for the Assessee relying on the order of the Co-ordinate Bench of the Tribunal in the case of Lufthansa Cargo

India Pvt. Ltd. Vs. DCIT reported in (2004) 91 ITD 133 dated 30/06/2004 and the order of the Tribunal in the case of Hindustan Aeronautics Ltd. Vs. State of Karnataka55 STC 314 and other judicial precedents, thusand sought for allowing the Appeal.

6. Per contra, the Ld. Departmental Representative submitted that the services rendered by the vendor is technical in nature and made available to the Assessee Company whenever requisitioned and the services rendered by the vendor company are utilized by the Assessee company for its business in India, therefore, nature of services are in the nature of FTS as per the provisions of Section 9 (1)(vii) of the Act and Article 12 (3) of DTAA between India and Norway, therefore, the Assessee was liable to deduct/withheld the tax on the payment made as per the provision of Section 195 r.w Section 115A of the Act. The Ld. Departmental Representative relying on the orders of the Lower Authorities, sought for dismissal of the Appeal.

7. We have heard both the parties and perused the material available on record. During the year under consideration, Assessee company made two payments of Rs. 78,18,744/- and Rs. 29,09,960/- to M/s Brunvoll AS Norway a nonresident company, however, no tax was deducted by the Assessee on those payments. It was the specific case of the Assessee that M/s Brunvoll AS, has undertaken work of replacing the defective parts of its ship and activities of the said

company are in the nature of carrying out work contract and not the nature of rendering Technical Services. The part supplied by the said Company were found to be defective and installed those parts in Assessee's ships during its dry dock. It is not in dispute that person of the vendor visited India and stayed in India for aggregate period of 29 days for replacement/installation of spare parts and the said Norway Company being a tax resident of Norway, has no PE India. For the said services of repairs, the Assessee made payment of above sums without deducting TDS. As the said Company has no PE in India and the activities undertaken by the vendor were in the nature of work contract, the said income was not taxable in India as per Article 7 of DTAA between India and Norway. Further, the personnel of Vendor Company stayed in India for only for 29 days, which is less than 'three months' as provided in Article 5 Paragraph 3 of DTAA. Even if the said activities are considered as installation contract, the said income was not taxable in India. The payments made by the Assessee were also not covered under 'Fees for technical Services' as defined in Section 9(1)(vii) or Article 12 of the DTAA as the work carried out by the vendor company falls under Article 7 leading to commercial profits. Considering the fact that the contract was primarily for sale of spare parts and replacement of defective parts which was incidental to the sale of spare parts, the whole contract is deserves to be considered as

work contract. The Co-ordinate Bench of the Tribunal in the case of Lufthansa (supra) held as under:

> *" A chart was furnished before the CIT(A) and also before us giving the year-wise break-up of the payments made to Technik and others (p. 152 of paper book B) under the heads; "labour', of "repairs' and "others'. It is noticed that "repairs' and "materials' account for about 60 Delacent of the total amount of payment and "labour charges' account about 30 per cent. The balance 10 per cent of payments falling under the head "others' primarily Include airport charges, fuel and parking charges, etc. It is clear that the co-ordination of transportation of the components to the Technik's facilities in Germany was the assessee's responsibility. Technik carried out the job work of repairs and replacement of parts at it's own discretion. The overhauled components along with certificate of airworthiness is sent back at the assessee's cost. The Technik also gave warranty for the work executed by it. Supply of parts for replacement is made under separate agreements for loan exchange or sale. The proforma agreements of the loan and exchange also form part Attachment "C".*
> *30. From the above it appears that the Technik contract is primarily for carrying out routine maintenance of components the use of material being incidental to the execution of work. As pointed out by Hon'ble Calcutta High Court in the case of Calcutta Goods Transport P. Association vs. Union of India & Ors. (1996) 134 CTR (Cal) 132: (1996) 219 ITR 486 (Cal):*
> *"the word "work' may be used in two senses; it may mean either labour which a man bestows upon thing or the thing upon which labour is bestowed",*
> *In other words, in a works contract like the present one in which components are repaired and overhauled, the technicians of the contractor bestow their labour upon "things" like engines and aircrafts components or put them through the machines. Technik carries out these activities in the normal course of its business as its facilities in Germany without any involvement of the assessee. From the facts placed on record it appears that there is absence of human element as there is no interaction between the technicians of Technik and the assessee's personnel. This is further supported by the fact that the components are sent for*

repairs along with airway bills and are redelivered in the same manner and the invoices are raised by Technik with reference to specific job-works and supply of parts, etc. The payments by the assessee are clearly business receipts in the hands of Technik."

8. Further the Co-ordinate Bench of the Tribunal of Hyderabad Bench in the case of Additional Director of Income Tax Vs BHEL-GE-Gas Turbine Servicing Pvt. Ltd in ITA No. 976/Hyd/2011 and other connected matters vide order dated 31/07/2012 it has been held as under:-

"12. We heard both the sides. Actually, this is a case where the assessee obtained works orders from third parties such as ESSAR, and the items such as turbines are required to be repaired or refurbished and for this, these items are sent abroad to Saudi Arabia and Singapore for repairs and refurbishment by the non resident companies abroad. It is a fact that the assessee personnel do not accompany these items and therefore, there is no involvement of assessee's personnel in getting the items repaired or refurbished. As per the invoices raised by the said nonresident companies, the assessee makes the payment. In these factual circumstances, we are to decide whether the said payment made by the assessee to the nonresident companies would constitute 'fee for technical services' as defined in the Explanation 2 to section 9(1)(vii) of the Act.

13. The case of the Revenue is that in view of the language of Explanation 2 to clause (vii) to sub-section (1) of section 9 of the Act, i.e. 'rendering of technical services', the expression 'rendering' if interpreted in its common parlance, the payments made by the assessee would amount to 'fee for technical services'. The said expression 'rendering' does not involve providing for or transfer of any technical knowledge to the assessee or its accompanying personnel. Therefore, the fact no personnel of the company is sent abroad along with the items to be repaired, is not relevant factor for deciding the nature of the services. Ld DR relied on the Hyderabad Bench decision in the case of Mannesmann Demag L Kauchhammer V/s. CIT (supra) in support of the above. Further, LD DR also relied on the judgment in the case of Bharati Cellular Ltd. (supra) for the proposition that the CIT(A) should have sought the expert opinion, as he himself is not an expert in the field.

14. On the other hand, the case of the assessee is that the scope of works include assembly, disassembly, inspection, evaluation etc and none of these works fall within the scope of services within the meaning of 'fee for technical services'. These are the repairs oriented work and are outside the scope of services of FTS nature and the same are outside the scope of S.195. Reliance is placed heavily on the Delhi Bench decision in the case of Lufthansa Cargo India Ltd. (supra), which was decided after considering the Hyderabad Bench decision for the proposition that the repairs of routine and recurring nature do not constitutes FTS and therefore such payments do not constitute income u/s 9 of the Act. The expression 'rendering' used in the Explanation 2 to clause (vii) to section 9(1) fall in the stage prior to the stage of providing technical services or making available of the technical services. These stages alone attract the FTS provisions and not mere cases of 'rendering of technical services'. Mere repairs and refurbishing of the damaged turbines do not constitute services. Therefore, the payment made by the assessee is not for rendering of the technical services and therefore, such consideration is not for FTS. For falling with the basket of FTS, there must be transfer of the technical knowledge or skill to the assessee or its personal. The case of decision of the Hyderabad Bench involves transfer of such knowledge to the accompanying personnel of the assessee and therefore, the said case is distinguishable on facts.

15. We have perused the said principles in the light of the detailed scope of work done in the case of the assessee, which as noted by the CIT(A) in the impugned appellate order for assessment year 2001- 02, from the order of the assessing officer in para 5.4 thereof the impugned order, which reads as under-

"a) Receive and un-box fuel nozzle assemblies.
b) Perform incoming conditional evaluation of fuel nozzle assembly.
c) Removal of premix gas flexible manifolds.
d) Perform incoming flow test of fuel nozzle assembly.
e) Disassemble fuel nozzle assemblies using GE approved method
f) Clean {chemical, ultrasonic, grit blast} bolts tubing, gas swozzles, oil/water, cartridges, end covers, and water manifold to remove dirt, rust foreign material and paint.
g) Disassemble, clean rebuilt and pressure test the distributor value.
h) Perform Non-destructive Evaluation of fuel nozzle components.
i) Perform boroscope inspection on end cover gas passage,
j) Individually flow test fuel nozzle components according to GE factory standards.
k) Complete evaluation of components and test results (GE Engineering)

l) Utilize piece part flow data to best match fuel nozzle tips and oil/ water cartridges to the end covers.
m) Re-assemble all fuel nozzle components with new seals and lock plates.
n) Perform final flow check and leak check of assembly to verify work.
o) Reassembled all fuel nozzle components with new seals and lock plates.
p) Complete final Quality Assurance inspection (GE Engineering)
q) Ship parts to customer with a copy of the flow test results'
r) Provide repair report.
s) Ship parts to the customer with a copy of the flow test results."

16. The above activities involve assembly, disassembly, inspection, reporting and evaluation. CIT(A) examined every activity enlisted above and came to the conclusion that none of the above works involve services of technical nature. The discussion given by the CIT(A) in para 5.4.2 is relevant. We agree with the same considering the settled legal position that routine maintenance repairs are not FTS as held by the Delhi Bench of the Tribunal in the case of Lufthansa Air Cargo (supra). For the purpose of completeness of this order, we reproduce below the relevant praragraph of the said decision in the context of the questions raised in the said decision-

> *"In conclusion, Technik carried out the repair work in the normal course of its business in Germany, without any involvement or participation of the assessee's personnel. The overhaul repairs involved were routine maintenance repairs. It cannot therefore be said that Technik rendered any managerial, technical or consultancy service to the assessee. In this view of the matter, we hold that the payments made by the assessee to non-residents workshops outside India do not constitute payment of fees for managerial, consultancy or Technical services as defined in Explanation 2 to section 9(1)(vii). The assessee succeeds on this ground."*

Regarding the decision of the Hyderabad in the case of Mannesmann Demag L Kauchhammer V/s. CIT (supra) which involves deputing of technicians to India for supervision of repairs to be carried out at the plant and machinery purchased by the NMDC, we find that the said decision is distinguishable on facts. Such deputation, whether deputation or supervision, is absent in both instant cases as well as the case before it, as observed by the Delhi Bench of the Tribunal in the cited case. The relevant para of the order of the Tribunal in that case reads as follows-

> *"We find that in Demag's case, the foreign company rendered 'technical consultancy' by way deputing a technician to India for supervising repairs to be carried out on the plant and machinery purchased by National Mineral Development*

Corporation. It is not the repair work per se which has been held to be technical services but it is the provision of the consultant technician deputed to India for supervising the repairs which has been treated as consultancy services. The foreign technician stayed on in India for 44 days to advise and supervise repair work which was obviously carried out by the engineers and workers of the Indian Company. Thus, the nature of services rendered by the foreign company was consultancy of technical nature through the provision of its technician deputed to India. Our conclusion is supported by the decision of Andhra Pradesh high court in the same case reported in 238 ITR 861, wherein Hon'ble High Court affirming the aforesaid decision of the Tribunal held that the Explanation 2 has expanded the scope of Section 9(1)(vii)(b) by providing that the services of technical or other personnel would be taxable. It has been repeatedly stated by the assessee that no foreign Technician was ever deputed of India. The lower authorities and the DR have not pointed out any instance of a technician having been assigned of India. This decision therefore is of no assistance to the Revenue."

Thus, the above decisions of the Tribunal are relevant for the proposition that the routine repairs do not constitute 'FTS' as they are merely repair works and not technical services. Technical repairs are different from 'technical services'. Thus, the payments made for 'technical services' alone attract the provisions of S.9(1)(vii) and its Explanation 2. Further, it is also a settled issue at the level of the Tribunal that every consideration made for rendering of services do not constitute income within the meaning of S.9(1)(viii) of the Act and for considering the same, first of all the said consideration is for the FTS. Therefore, considering the above, decision of Delhi Bench of the Tribunal, which explained the scope of the provisions, we are of the view that the impugned orders of the CIT(A), for the years under consideration, on this aspect of the matter, do not call for interference. Accordingly, the grounds raised in these appeals of the revenue are dismissed."

9. In view of the above discussions and relying on the above ratio laid down by the Tribunal, we are of the opinion that the authorities below have committed error in treating the Assessee company as the 'Assessee in default' for non-deduction of TDS u/s 201(1)/201(1A), accordingly the additions confirmed by the Ld. CIT(A) is hereby deleted.

10. In the result, the Appeal of the Assessee is allowed.

Order pronounced in the open court on 17th October, 2025

Sd/-	**Sd/-**
(S. RIFAUR RAHMAN)	**(YOGESH KUMAR U.S.)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Date:- 17 .10.2025
R.N, Sr.P.S*
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI