IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

IT(IT) A No.12 to 14/Bang/2020
Assessment year :2017-18 to 2019-20

Deputy Commissioner of Income-tax, International Taxation, Circle-1(1), Room No.441, 4th Floor, BMTC Building, 80 Feet Road, Koramangala, 6th Block, Bangalore-560095.	Vs.	M/s. Edgeverse Systems Ltd., 44/97A Konappana Agrahara, Hosur Road, Electronic City, Bangalore – 560 100. **PAN : AADCE6300K** **TAN: BLRE06897C**
APPELLANT		**RESPONDENT**

Revenue by	:	Smt.R.Premi, JCIT , DR(ITAT)
Assessee by	:	Shri. Sudheendra, Advocate

Date of hearing	:	10.09.2020
Date of Pronouncement	:	10.09.2020

O R D E R

Per Bench:

These are appeals by the Revenue against a common order dated 24.6.2019 of CIT(A)-12, Bengaluru, relating to AY 2017-18 to 2019-20.

2. The Assessee is a company and is engaged in the business of Products, Platforms and services. During the previous year relevant to AY 2017-18 to 2019-20, the Assessee made in all about 34 payments which are listed out in the impugned order of the CIT(A) to non-residents after grossing up the invoice amount and deducting tax at source thereon at the rates in force as per Sec.195 of the Income Tax Act, 1961 (Act). It was the plea of the Assessee that the payments

made to non-resident were not chargeable to tax and therefore the Assessee was not under any obligation to deduct tax at source on the aforesaid payments. This plea was rejected by the revenue authorities in the application filed by the Assessee u/s.248 of the Act pleading that the the Assessee was not under any obligation to deduct tax at source on the aforesaid payments made to non-residents. The Assessee also made a claim in the alternative and without prejudice to the main ground that the Assessee was not under any obligation to deduct tax at source on the aforesaid payments to non-residents, that the rate at which tax has to be deducted is not at higher rate as prescribed by Sec.206AA of the Act but at the rate applicable as per the Treaty for Double Taxation Avoidance (DTAA) between India and the country of which the payees were tax residents. Section 206AA was introduced from FY 2010-11. Section 206AA requires every taxpayer who receives taxable income to furnish their PAN to the payer of such income. This applies to both the resident as well as non-resident recipients. The payments in case of residents would include salary, rent, professional receipts, contractual receipts and so on. In the case of non-resident, , these would include all receipts that are taxable in India. A recipient of taxable income should furnish PAN to comply with the provisions of TDS under the Income Tax Act. Upon furnishing of the PAN, payments made to the recipient would be taxed at the rate of TDS specified under the various TDS provisions of the Income Tax Act. A recipient who does not furnish PAN would suffer TDS at the higher rates specified in Section 206AA. The recipient is also required to furnish his PAN to the payer and both of them are required to indicate the same in all correspondence, bills, vouchers and other documents which are sent to each other. A recipient who fails to furnish PAN to the person making a payment would suffer TDS at the **higher of the rates** mentioned below:

- At the rate specified in the relevant provision of the Act;

- At the rate or rates in force, i.e., the rate prescribed in the Finance Act.;
- At the rate of 20%

3. The AO rejected the plea of the Assessee that it is only the rates of taxes mentioned in the DTAA that should be adopted for the purpose of grossing up and also for determining the tax liability. According to the AO, the provisions of the Act, especially non-obstante clause in Sec.206AA of the Act have an overriding effect on the DTAA.

4. On appeal by the Assessee, the CIT(A) accepted the plea of the Assessee that the DTAA will override the provisions of the Act including Sec.206AA of the Act and that the rate of tax to be applied for grossing up should be as per the DTAA.

5. Aggrieved by the orders of the CIT(A), the revenue is in appeal before the Tribunal. The grounds of appeal of the Revenue in AY 2009-10 & 2010-11 are identical. The grounds of appeal of the Revenue in AY 2011-12 & 112-13 are identical. The sum and substance of these grounds is that Sec.206AA of the Act has a non obstante clause and therefore it overrides the rates prescribed in DTAA.

6. At the time of hearing it was not disputed that the issue raised by the revenue in its appeals are already decided by a Special Bench of ITAT, Hyderabad. The issue regarding the applicability of provisions of section 206AA of the Act, in cases of tax to be deducted at source, when the income is exigible to tax under DTAA and the payees are unable to provide valid Permanent Account Numbers, came up for consideration before the Special Bench, ITAT in the case of Nagarjuna Fertilizers

& Chemicals Ltd. Vs. AC IT (2017) 78 taxmann.com 264 (Hyderabad-Tribunal) (SB). The question before the special bench was whether the provisions of section 206AA had overriding effect for all other provisions of the Act, whether the assesse has to deduct tax at source at the rates prescribed in section 206AA in case the payees are unable to furnish their PANs, even in cases where tax liability arises out of the treaty. The DTAA provides for a rate of 10% whereas as per the provisions of Sec.206AA of the Act, the rate of tax deduction at source is 20%.

7. The plea of the revenue was that section 206AA starts with a non-obstante clause and therefore it overrides all other provisions of the Act including 90(2), 115A and 139A. The plea of the Assessee was that DTAA was supreme and in this regard reliance was placed on the Hon'ble Supreme Court decision in the case of Azadi Bachao Andolan (2003) 263 ITR 706 (SC), whereby it was held that DTAA, even if inconsistent, will prevail over the Act. Reliance was also placed on the decisions of the Hon'ble Andhra Pradesh High Court in the case of Sanofi Pasteur (2013) 354 ITR 316 (AP) wherein it was observed that DTAA being a sovereign matter, the machinery provisions cannot override or control that. Reliance was also placed on the decision of the Hon'ble Karnataka High Court in the case of Kaushallaya Bai and others (2012) 346 ITR 156 (Kar) wherein it has held that the provisions of section 206AA are to be read down.

8. The Special Bench held that DTAA overrides the Act, even if it is inconsistent with the Act. DTAAs are entered into between two nations in good faith and are supposed to be interpreted in good faith. Otherwise it would amount to the breach of Article 253 of the constitution.

9. The Hon'ble Delhi High Court in the case of **Danisco India Private Limited Vs. Union Of India & Ors. (Delhi High Court) in** W.P.(C) 5908/2015 Judgement/Order dated 05/02/2018 held that where reciprocating states mutually agree upon acceptable principles for tax treatment, the provision in Section 206AA (as it existed) has to be read down to mean that where the deductee i.e the overseas resident business concern conducts its operation from a territory, whose Government has entered into a Double Taxation Avoidance Agreement with India, the rate of taxation would be as dictated by the provisions of the treaty.

10. In view of the aforesaid decisions on the issue, we are of the view that there is no merit in the appeals of the Revenue.

11. In the result, the appeals are dismissed.

Order pronounced in the open court on this 10th day of September, 2020.

Sd/-	Sd/-
(CHANDRA POOJARI)	**(N. V. VASUDEVAN)**
Accountant Member	**Vice President**

Bangalore: Dated: 10th September, 2020.
*/desai murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

By order

Assistant Registrar,
ITAT, Bangalore.