IN THE **HIGH COURT FOR THE STATE OF TELANGANA**
AT HYDERABAD

WEDNESDAY ,THE TWENTY SEVENTH DAY OF SEPTEMBER
TWO THOUSAND AND TWENTY THREE

PRESENT
THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

INCOME TAX TRIBUNAL APPEAL Nos : 387 OF 2016; ITTA Nos. 47 of 2019 and ITTA Nos. 107, 108, 109, 110 and 111 of 2022

ITTA NO. 387 OF 2016

(Income Tax Tribunal Appeal Under Section 260 (A) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Hyderabad Bench ' B ', Hyderabad in ITA No 1074 / Hyd/ 2004 for assessment Year 2001-2002 dated 30-08-2010 preferred against the Order of the Commissioner of Income Tax (Appeals) – III, Hyderabad in ITA No. 113 / ACIT 2 (2) / CIT (A) – III / 04-05 dated 30-08-2004 preferred against the Order of the Asst Commissioner of Income Tax, Circle -2 (2), Hyderabad PAN/GIR No. AAACL4067F/ L -034 dated 29-03-2004.

Between:

Director Of Income Tax, International Taxation, Banglore.

... Petitioner

AND

M/S Louis Berger International INC., , 8-2-684/3/30, 2nd Floor, Banjara Green, Road No.12, Banjara Hills, Hyderabad. **...RESPONDENT**

Counsel for the Appellant: Ms. K. MAMATA CHOUDARY

Counsel for the Respondent: SRI DEEPAK CHOPRA FOR SRI A. CHANDRA SHAKER

I.T.T.A. NO. 47 OF 2019

(Income Tax Tribunal Appeal Under Section 260 (A) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Hyderabad Bench ' B ', Hyderabad in ITA No 720 / Hyd/ 2005 for assessment Year 2002-2003 dated 30-6-2010 preferred against the Order of the Commissioner of Income Tax (Appeals) – III, Hyderabad in ITA Nos. 210 & 221 / ACIT 2 (2) (A) –III / 04-05 dated 24-03-2005 preferred against the Order of the Asst Commissioner of Income Tax, Circle -2 (2), Hyderabad PAN/GIR No. AAACL4067F/ L -034 dated 09-02-2005 .

Between:

Director Of Income Tax, International Taxation, Banglore.

... Petitioner

AND

M/S Louis Berger International INC., , 8-2-684/30, 2nd Floor, Banjara Green, Road No.12, Banjara Hills, Hyderabad. **...RESPONDENT**

Counsel for the Appellant: Ms. K. MAMATA CHOUDARY

Counsel for the Respondent: SRI DEEPAK CHOPRA FOR SRI A. CHANDRA SHAKER

I.T.T.A.NO. 107 OF 2022:

Between:

(Income Tax Tribunal Appeal Under Sectior 260 (A) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Hyderabad Bench ' B ', Hyderabad in ITA No 1218/ / Hyd/ 2006 for assessment Year 2000-2001 dated 30-6-2010 preferred against the Order of the Commissioner of

Income Tax (Appeals) – III, Hyderabad in ITA No. 57/ ACIT 2 (2) / CIT (A) –III/ 04-05 dated 30-08-2004 preferred against the Order of the Asst Commissioner of Income Tax, Circle -2 (2), Hyderabad PAN/GIR No. AAACL4067F/ L -034 dated 31-03-2003

Between:
Commissioner of Income Tax – IT & TP , Hyderabad ... Petitioner
AND

M/S Louis Berger International Inc ,# , 8-2-684/30, 2nd Floor, Banjara Green, Road No.12, Banjara Hills, Hyderabad. **...RESPONDENT**

Counsel for the Appellant: Ms. K. MAMATA CHOUDARY

Counsel for the Respondent: SRI DEEPAK CHOPRA FOR SRI A. CHANDRA SHAKER

I.T.T.A.NO. 108 OF 2022:

Between:

(Income Tax Tribunal Appeal Under Section 260 (A) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Hyderabad Bench ' B ', Hyderabad in ITA No 1217/ / Hyd/ 2006 for assessment Year 1998-1999 dated 30-6-2010 preferred against the Order of the Commissioner of Income Tax (Appeals) – III, Hyderabad in ITA No. 250 & 251 / Tr/ DCIT (NRC) Delhi/ CIT (A) – III / 04-05 dated 21-04-2005 preferred against the Order of the Deputy Commissioner of Income Tax, Non Resident Circle, New Delhi (ACIT Circle-2(2), /Hyderabad) dated 22-03-2001.

Between:

Commissioner of Income Tax – IT & TP , Hyderabad ... Appellant

AND

M/S Louis Berger International Inc ,# , 8-2-684/30, 2nd Floor, Banjara Green, Road No.12, Banjara Hills, Hyderabad. ...**RESPONDENT**

Counsel for the Appellant: Ms. K. MAMATA CHOUDARY

Counsel for the Respondent: SRI DEEPAK CHOPRA FOR SRI A. CHANDRA SHAKER

I.T.T.A.NO. 109 OF 2022:

(Income Tax Tribunal Appeal Under Section 260 (A) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Hyderabad Bench ' B ', Hyderabad in ITA No .1073/ / Hyd/ 2004 for assessment Year 2000-2001 dated 30-6-2010 preferred against the Order of the Commissioner of Income Tax (Appeals) – III, Hyderabad in ITA No. 57 / ACIT 2 (2) / CIT (A)- III/ 04-05 dated 30-08-2004 preferred against the Order of the Asst. Commissioner of Income tax, Circle -2 (2), Hyderabad dated 31-03-2003 in PAN/ GIR No. AAACL4067F/ L-034 .

Between:

Commissioner of Income Tax – IT & TP , Hyderabad ... Appellant

AND

M/S Louis Berger International Inc ,# , 8-2-684/30, 2nd Floor, Banjara Green, Road No.12, Banjara Hills, Hyderabad. ...**RESPONDENT**

Counsel for the Appellant: Ms. K. MAMATA CHOUDARY

Counsel for the Respondent: SRI DEEPAK CHOPRA FOR SRI A. CHANDRA SHAKER

I.T.T.A.NO. 110 OF 2022:

(Income Tax Tribunal Appeal Under Section 260 (A) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Hyderabad Bench ' B ', Hyderabad in ITA No . 820 / / Hyd/ 2005 for assessment Year 1998-99 dated 30-6-2010 preferred against the Order of the Commissioner of Income Tax (Appeals) – V, Hyderabad in ITA No. 289 / AC-16 (1) / CIT (A) –V/ 2005 -06 dated 26-09-2006 preferred against the Order of the Asst. Commissioner of Income tax, Circle 16 (1) , Hyderabad dated 8-12-2005 in PAN/ GIR No. AAACL4067F/ L-34 .

Between:

Commissioner of Income Tax – IT & TP , Hyderabad ... Appellant
AND

M/S Louis Berger International Inc ,# , 8-2-684/30, 2nd Floor, Banjara Green, Road No.12, Banjara Hills, Hyderabad. **...RESPONDENT**

Counsel for the Appellant: Ms. K. MAMATA CHOUDARY

Counsel for the Respondent: SRI DEEPAK CHOPRA FOR SRI A. CHANDRA SHAKER

I.T.T.A.NO. 111 OF 2022:

(Income Tax Tribunal Appeal Under Section 260 (A) of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Hyderabad Bench ' B ', Hyderabad in ITA No . 721 / / Hyd/ 2005 for assessment Year 2003-04 dated 30-6-2010 preferred against the Order of the Commissioner of Income Tax (Appeals) – III Hyderabad in ITA No. 210 & 221 / ACIT 2 (2) / CIT

(A) –III / 04-05 dated 24-03-2005 preferred against the Order of the Asst. Commissioner of Income Tax, Circle -2 (2), Hyderabad dated 15-02-2005 in PAN/ GIR No. AAACL4067F/ L-034.

Between:

Commissioner of Income Tax – IT & TP, Hyderabad ... Appellant

AND

M/S Louis Berger International Inc ,# , 8-2-684/30, 2nd Floor, Banjara Green, Road No.12, Banjara Hills, Hyderabad. **...RESPONDENT**

Counsel for the Appellant: Ms. K. MAMATA CHOUDARY

Counsel for the Respondent: SRI DEEPAK CHOPRA FOR SRI A. CHANDRA SHAKER

The Court made the following Common order

THE HON'BLE SRI JUSTICE P.SAM KOSHY
AND
THE HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

ITTA No.387 of 2016; ITTA No.47 of 2019 and ITTA Nos.107, 108, 109, 110 and 111 of 2022

COMMON JUDGMENT:- *(per Hon'ble Sri Justice **P.SAM KOSHY**)*

Since common issue arise in these batch of appeals, they are being decided by way of this common judgment.

2. Heard Ms. K. Mamata Choudary, learned Standing Counsel for Income Tax Department appearing for the appellant and Mr. Deepak Chopra, learned counsel appearing on behalf of Mr. A. Chandra Shaker, learned counsel for the respondent.

3. For convenience, the facts in ITTA No.107 of 2022 are taken up as the lead case.

4. ITTA No.107 of 2022 is filed by the appellant challenging the common judgment dated 30.06.2010 passed by the Income Tax Appelate Tribunal, Hyderabad 'B' Bench, Hyderabad, in ITA.No.1218/Hyd/2006 for the assessment year 2000-2001.

5. The Income Tax Appellate Tribunal (for short the "Tribunal") vide its order dated 30.06.2010 had affirmed the order passed by the Commissioner of Income-Tax (Appeals)-III holding that the expenditure incurred by the assessee and which was reimbursed by the principal employer was held not to be part of the fees for technical services.

6. The respondent/assessee in the instant case was engaged by the National Highway Authority of India (for short "NHAI") for technical advice and technical services in the course of execution of construction and road widening project. For the purpose of imparting the said technical services, the respondent/assessee had incurred certain incidental expenditure like meeting the transport expenditure of their employees and other related expenses on the team of experts which includes their expenses incurred in the course of providing logistics to the members of the respondent/assessee deputed for providing the technical services. The Assessing Officer

included these expenses as part of the fees for technical services while passing the assessment order.

7. The order of the Assessing Officer was subjected to challenge before the Commissioner of Income-Tax (Appeals)-III. The Commissioner of Income-Tax (Appeals)-III on due consideration of the contentions made by the respondent/assessee in the appeal, allowed the same vide order dated 30.08.2004 holding that the expenditure incurred by the respondent/assessee in providing the technical services to NHAI would not be part of the fees for technical services. The said order was further challenged by appellant before the Tribunal. The Tribunal also concurred with the finding of the Commissioner of Income-Tax Appeals-III and had rejected the appeal of the Revenue leading to filing of the present appeal.

8. Learned counsel for the appellant contended that the Commissioner of Income-Tax Appeals-III as also the Tribunal have erred in holding that the amount initially incurred by the respondent/assessee and reimbursed by

the principal employer does not partake the character of fees for technical services. The Counsel insisted upon holding that the said amount which has been reimbursed to the respondent/assessee by the NHAI does in fact partakes all the characters of expenditure incurred by the principal employer and not one which has been incurred by the respondent/assessee. Therefore, the rate of tax ought to have been 20% and not 15% with other consequential orders.

9. After having due consideration of the contentions put forth by the learned counsel for the appellant, at this juncture, what is necessary to take note of the fact is that the very same contentions of the appellant have been duly considered by the Tribunal wherein the Tribunal in paragraph Nos.21, 23 and 27 of the said order held as under:

> *"21. We have also carefully gone through the judgement of the Delhi High Court in CIT Vs. Industrial Engineering Projects Pvt. Ltd. (1993) 202 ITR 1014. In the case before the Delhi High Court, the assessee had agreement with M/s.ETAG, a Swiss company, for rendering services. The assessee would receive a minimum sum of Rs.1,20,000 per month for the services rendered besides reimbursement of certain costs and expenditure incurred by the assessee while rendering the*

services as per the agreement. The Income-tax Officer disallowed the expenses incurred. On appeal by the assessee before the Delhi Bench of this Tribunal, it was held that the reimbursement of the expenditure did not constitute income as the expenses were incurred on behalf of the Swiss company. On a reference to the Delhi High Court at the instance of the Revenue, the Delhi High Court after considering the judgement of the Apex Court in the case of CIT Vs. Tejaji Farasram Kharawalla Ltd. (1968) 67 ITR 95 held that the reimbursable expenditure cannot form part of the taxable income. Accordingly, it was held that the reimbursable expenditures are to be excluded from the total income. In view of this judgement of the Delhi High Court, in our opinion, the reimbursable expenditure received by the assessee for the purpose of rendering services cannot form part of the total income. Therefore, it has to be excluded.

23. We have also carefully gone through the judgement of the Apex Court in the case of CIT Vs. Tejaji Farasram Kharawalla Ltd. (1968) 67 ITR 95. The assessee before the Apex Court acted as a selling agent of Ciba (India) Ltd. The assessee was entitled to commission of 12.5% on sales. Out of the 12.5%, 7.5% was treated as selling commission in lieu of the contingency expenditure would form part of the total income or not. The Apex Court held that 5% of the expenses in lieu of the contingency expenses was for the expenditure incurred in the performance of the duties of the respondent as selling agent. Therefore, it will not form part of the taxable income. Accordingly, the same was exempt. In view of this judgement of the Apex Court, the reimbursable expenditure received by the assessee in pursuance to the agreement cannot form part of the taxable income. Accordingly, the same has to be excluded.

27. For the purpose of claiming exemption u/s. 10(6A) an agreement needs to be entered into after 31st day of March, 1976 but before the 1st day of June, 2002 in relation to matters included in the industrial policy of the Government of India. In any other case the approval of the Government is required. The industrial policy of Government of India as disclosed in the year 1991 clearly shows that development of infrastructure is one of the policy included as item No.11. The contention of the learned Department Representative is that the policy was declared in the year 1991. Therefore, it is outdated. The learned Departmental Representative however, could not bring to the notice of the Bench any latest policy which was declared in the year relevant for the assessment year under consideration. Moreover, as rightly pointed out by the learned counsel for the assessee, the Assessing Officer himself refers

to the very same industrial policy in some of the assessment years under consideration. Therefore, we have no hesitation in taking note of the industrial policy as declared by the Government of India in the year 1991 is applicable for the year under consideration also. It is not in dispute that development of infrastructure is one of the industrial policy of the Government of India as disclosed in item No.11 of the policy. Once development of infrastructure falls in the industrial policy of the Government of India then, as rightly submitted by the learned counsel for the assessee, approval of the Central Government is not a pre-requirement for claiming exemption u/s. 10(6A) of the Act. Therefore, in our opinion, since the development of infrastructure falls within the industrial policy of Government of India specific approval may not be required for claiming exemption u/s. 10(6A) of the Act".

10. The finding given by the Tribunal referred to in the preceding paragraphs would clearly give an indication of the fact that the Tribunal has duly considered these aspects and have reached to the conclusion that the amount of reimbursement made by the NHAI to the respondent/assessee was towards the expenses that was incurred by the respondent/assessee on their team of experts in the course of providing technical services and therefore it does not amount to the fees for the technical services.

11. Thus, there is clear concurrent finding of fact by the two authorities below. Moreover, the said finding also is based upon the judicial precedents laid down in the

judgment of the Hon'ble Supreme Court in the case of ***CIT Vs. Tejaji Farasram Kharawalla Ltd.***[1] and a couple of decisions rendered by the High Court of Delhi on almost similar set of facts and other High Courts also.

12. In view of the same, we do not find any error on the part of the Tribunal in deciding the appeals against the appellant and concurring with the order passed by the Commissioner of Income-Tax Appeals-III. Moreover, we also do not find any substantial question of law made out in the given factual backdrop.

13. Accordingly, all these appeals fail and are rejected. No costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

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[1] (1968) 67 ITR 95

SD/-B.S.CHIRANJEEVI
JOINT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. **The Income Tax Appellate Tribunal, Hyderabad Bench ' B ', Hyderabad .**
2. **The Commissioner of Income Tax (Appeals) – III Hyderabad.**
3. **The Asst. Commissioner of Income Tax, Circle -2 (2) , Hyderabad**
4. **The Assistant Commissioner of Income Tax Circle-16(1), Hyderabad.**
5. **The Commissioner of Income Tax (Appeals) – V, Hyderabad**
6. One CC to Ms. . K MAMATA CHOUDHARY, Advocate [OPUC]
7. One CC to SRI. A. CHANDRA SHAKER, Advocate [OPUC]
8. **Two CD Copies**

PMG.

HIGH COURT

DATED:27/09/2023



COMMON JUDGMENT

INCOME TAX TRIBUNAL APPEAL No : 387 OF 2016; ITTA No. 47 of 2019 and ITTA Nos. 107, 108, 109, 110 and 111 of 2022

ALL THE APPEALS ARE REJECTED

WITHOUT COSTS

(10) PMG.
26/10/23.