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IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, PRESIDENT, AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.5492/Mum./2017	**ITA no.5493/Mum./2017**
(Assessment Year : 2016–17)	(Assessment Year : 2016–17)

The Board of Control for Cricket in India
Wankhede Stadium, „D" Road
Churchgate, Mumbai 400 020
PAN – AAATB0186A

……. Appellant

v/s

Dy. Commissioner of Income Tax
Central Circle–6(2), Mumbai

…….Respondent

Assessee by : S/Shri P.J. Pardiwala a/w Nitesh Joshi & Anil Sathe
Revenue by : Ms. Surabhi Sharma

Date of Hearing – 20/03/2023	Date of Order – 11/05/2023

O R D E R

The present appeals have been filed by the assessee challenging the separate orders of even date 31/05/2017, passed by the learned Commissioner of Income Tax (Appeals)–55, Mumbai, [*"learned CIT(A)"*] in appeals filed by the assessee under section 248 of the Income Tax Act, 1961 (*"the Act"*), for the assessment year 2016–17.

2. Since both appeals pertain to the same assessee and the issues arising in both appeals are also similar with the only difference being the payee and the amount paid, therefore, as a matter of convenience, these appeals were

heard together and are being disposed off by way of this consolidated order. With the consent of the parties, the assessee"s appeal, being ITA No.5492/Mum./2017, involving payment to Cricket South Africa is taken up as a lead case.

ITA no.5492/Mum./2017
Assessee's Appeal – A.Y. 2016–17

3. In this appeal, the assessee has raised the following grounds:–

"The Appellant files this appeal against the appellate order dated 31.05.2017 (received by it on 3rd July 2017) passed by the Commissioner of Income-tax(Appeals)- 55, Mumbai (the CIT(A)), under section 253 of the Income-tax Act, 1961 (the Act), on the following grounds each of which is in the alternative and without prejudice to any other:

"1. The CIT(A) erred in holding that the amount of Rs.256,02,16,001 paid by the Appellant to Cricket South Africa (CSA) was chargeable to tax in the hands of CSA, and hence, it was liable to deduct tax thereon under section 195 of the Act.

2. The CIT(A) ought to have held that :-

a. the amount of Rs.256,02,16,001 was not an income chargeable to tax under the Act;

b. the said amount could not be regarded as accruing or arising or deemed to accrue or arise or received or deemed to be received by CSA in India;

c. no part of the said amount could be charged to tax in India as the said receipt was not attributable to any operation carried out by CSA in India; and

d. the said amount which is in the nature of business income would be outside the purview of the Act as CSA neither has a permanent establishment in India nor could the said amount be regarded as attributable to any alleged permanent establishment in view of article 7 of the DTAA between India and South Africa.

3. The CIT(A) erred in holding that the amount of Rs.256,02,16,001, was chargeable to tax in India on the ground that the situs/cause of action giving rise to payment of the said amount had arisen in India.

4. The CIT(A) erred in holding that the Appellant was an agent of CSA and further that it was a dependent agent constituting itself as a permanent establishment of CSA in India in terms of article 5 of the DTAA between India and South Africa.

5. The CIT(A) erred in making the following observations which are factually incorrect or have no relevance to the issue under consideration:

a. it was doubtful whether the agreement between the Appellant and CSA dated 25.06.2015 was registered and stamp duty thereon was paid in India. Further, the said agreement also did not bear the signatures of any witness;

b. the situs/or cause of action giving rise to the amount was in India because:

(i) Head office of the Appellant was located in India;

(ii) the agreement between the Appellant and ESPN or CSA were signed in India;

(iii) the matches were to be played in India; and

(iv) the compensation for termination of the 25th June 2015 agreement was to be based on receipt of invoices from CSA which had not been produced before the Revenue.

c. The Appellant was acting as an agent of CSA as per mutual understanding and terms and conditions of an agreement and further that it was a dependent agent, and

d. CSA received the said payment for rendering services in India by facilitating two teams to participate in CLT 20 Tournament from year to year and also by not organising, sponsoring, staging, and holding similar tournament in South Africa.

6. The Appellant craves leave to add to, alter, amend, delete, vary, substitute and/or rescind any of the aforesaid grounds, as and when required."

BY THE PEOPLE. FOR THE PEOPLE. OF THE PEOPLE

4. The brief facts of the case as emanating from the record are: The assessee is the national body for Cricket in India and is a society registered under the Tamil Nadu Societies Registration Act. The assessee was founded in the year 1929 with the object of promoting and developing Cricket in India and fostering the spirit of sportsmanship. The assessee is also a member of the International Cricket Council ("*ICC*"), the international regulatory body for Cricket. The assessee derives substantial income from the conduct of Cricket tournaments and matches and is regularly assessed to tax in India. In the year 2008, the assessee commenced the conduct of a Cricket tournament, namely, the Champions League T20 ("*CLT20*"). The participants in the CLT20

Tournament included the winners and/or runners-up of the domestic 20-over leagues of India, Australia, South Africa, etc.

5. With a view to maximise the commercial success of the CLT20 Tournament and to ensure the participation of teams from South Africa in the CLT20 Tournament each year, in addition to the other teams of ICC member countries, the assessee arrived at an arrangement, inter-alia, with Cricket South Africa ("*CSA*"), which is the national body for Cricket in South Africa. Under the said arrangement, CSA ensured that the winning and, where appropriate, the runner-up Cricket team(s) involved in the domestic Twenty20 Cricket competition administered by CSA would be participating in CLT20 Tournament organised by the assessee each year. It was agreed between the assessee and CSA that the assessee would pay a quantified participation fee to CSA each year towards the participation of teams from its jurisdiction for the duration of the CLT20 term. Thus, the participating teams in the said tournament included the winner and runner-up of the Indian Premiere League and similar teams which were winners and runner-ups in corresponding domestic T20 league tournaments held in other countries.

6. The assessee awarded the media/broadcasting rights relating to the CLT20 Tournament to ESPN Star Sports by way of a Rights Agreement, which was subsequently novated in favour of Star India Private Ltd for the duration of the CLT20 term. Under the terms of the Rights Agreement, the assessee was obliged, inter-alia, to ensure the participation of teams from CSA for such a period. Following demands from Star India Private Ltd, being the right holder of the tournament, and with the concurrence of CSA it was mutually decided to

discontinue staging of the CLT20 Tournament from the year 2015 onwards and revoke aforesaid arrangements with CSA on mutually settled terms and conditions. Vide agreement dated 29/05/2015, the Rights Agreement granting media/broadcasting rights to Star India Private Ltd was terminated and a sum of USD 380 million was paid to the assessee as compensation.

7. On 25/06/2015, the assessee entered into an agreement with CSA to revoke the arrangement with CSA under which they were obliged to ensure the participation of the teams under its jurisdiction in the CLT20 Tournament. Apart from this, as part of the said agreement, CSA agreed that for a period of 4 years being the remainder period of the CLT20, if the assessee organises any similar tournament and calls upon them to ensure participation of at least two teams from South Africa, then, CSA shall ensure such participation on reasonable terms and conditions for which separate participation fees as may be agreed between the parties shall be payable. It was further agreed that during the said period, CSA shall not directly or indirectly, manage, operate, stage, involve itself and/or any teams from South Africa or otherwise participate in any tournament which is in any way similar to the CLT20 Tournament. As compensation for the termination of the CLT20 Tournament and in consideration of CSA"s obligations in the aforesaid agreement, the assessee agreed to pay CSA, net of taxes, an amount of USD 22,696,000. Although the assessee was of the view that the said payment was not taxable in India, as a measure of abundant caution, the assessee grossed up the payment by 43.26% and remitted the tax to the credit of the Revenue. The assessee filed an appeal under section 248 of the Act seeking a declaration

that the tax was not required to be deducted on the said amount paid by it to the CSA.

8. The learned CIT(A) vide impugned order held that CSA received compensation by way of annual price fees and non-compete fees from the assessee. Further, the situs of the entire cause of action arises in India as the head office of the assessee is in India; all the agreements were signed in India; cause of action for all the matches, which were primarily played or to be played was in India; and the agreement for the sale of media rights between the assessee and ESPN initially and later on cancellation agreement between the assessee and Star India Private Ltd was also signed and executed in India. The learned CIT(A) also held that the assessee constitutes the Dependent Agent Permanent Establishment ("*DAPE*") of CSA on the basis that the Governing Council of CLT20 comprises representatives from the assessee, CSA and Cricket Australia ("*CA*") and the assessee acted as an agent not only for CA and CSA, but also for other teams which participated in CLT20 as per the terms and conditions of the agreement. Accordingly, the learned CIT(A) held that the income of the CSA accrued and arose in India. The learned CIT(A) also held that the whole edifice of separate agreements with ESPN/Star and CA and CSA and maybe with other teams also was created to avoid payment of legitimate taxes in India by CA and CSA which accrued and arose in India. The learned CIT(A) further held that CA as well as CSA rendered services in India by facilitating two teams for participation in the CLT20 Tournament from year to year. Accordingly, the learned CIT(A) held that the provisions section 9(1) of the Act are applicable and the payment is taxable as "*income from*

business" under section 28(va) of the Act. Thus, the learned CIT(A) dismissed the appeal filed by the assessee and held that the provisions of section 195 of the Act are squarely attracted to the facts of the case and in law. Being aggrieved, the assessee is in appeal before us.

9. During the hearing, the learned Sr. Counsel, appearing for the assessee, submitted that under the original agreement, CSA had to ensure the participation of the winner and runner-up teams of the T20 domestic league in their country in CLT20 Tournament. Upon termination of the arrangement, even this obligation to ensure participation was done away with. Therefore, it was submitted that neither during the continuation of the arrangement nor upon its termination any services have been rendered by CSA in India. The learned Sr. Counsel further submitted that for any income to be chargeable to tax in India, the rendering of services giving rise to income should have been performed in India. It was submitted that the assessee had deducted the taxes under section 194E in respect of the annual participation fee paid by it to CSA and thus the taxability of participation fees is not an issue under consideration and the only dispute is regarding taxation of the compensation paid to CSA. The learned Sr. Counsel submitted that the compensation paid by the assessee is for the purpose of avoiding any litigation and settling the disputes, therefore, consideration received is in nature of capital receipt. It was further submitted that even if the payment is considered towards non-compete fees, the place where the non-compete clause would apply is outside India because if any tournament takes place in India the same would be organised by the assessee and CSA is not restrained from participating in such tournament. The

learned Sr. Counsel further submitted that the payment is not attributable to any operations carried out in India for being taxable under section 9(1)(i) r/w Explanation 1(a). As regards DAPE, the learned Sr. Counsel submitted that the burden to establish the fulfilment of conditions provided under the tax treaty has not been discharged by the Revenue. It was further submitted that the assessee is neither an agent of CSA nor has the authority to conclude the contract in their name and therefore there is no question of treating the assessee as the dependent agent of CSA. Therefore, in the absence of any Permanent Establishment of CSA in India, the payment of compensation for the discontinuance of the CLT20 Tournament cannot be taxed in India.

10. The learned Departmental Representative ("*learned DR*") by vehemently relying upon the impugned order submitted that the agreement is in the nature of a non-compete agreement as CSA had agreed to not engage in any tournament of nature similar to CLT20 in the near future, therefore the payment is taxable as business income under section 28(va) of the Act. The learned DR further submitted that the assessee constitutes DAPE of CSA in India and hence the income is liable to be taxed in India under the provisions of the India South Africa Double Taxation Avoidance Agreement ("*DTAA*") as well. The learned DR submitted that in the alternative, the assessee is liable to deduct TDS under section 194E of the Act. The learned DR submitted that the agreement entered into with CSA in 2008 was to continue till 2017 and was terminated prematurely in 2015. Thus, had the agreement not been discontinued, the annual payments would have continued to be taxable in India in light of their relation to games played in India. Accordingly, a logical

corollary would be that the compensatory payments post termination of the original agreement too should be viewed in a similar light as they are essentially in relation to tournaments majorly played in India, thus taxable under section 115BBA r/w section 194E of the Act.

11. In the rebuttal, the learned Sr. Counsel submitted that reference made by the learned DR to section 115BBA r/w section 194E of the Act is a new aspect raised, which does not find any place in the impugned order passed by the learned CIT(A) and therefore cannot be allowed at this stage of the proceedings. The learned Sr. Counsel further submitted that section 115BBA has no application in the present case as it is in relation to any game or sport played in India, however, the compensation paid by the assessee was not in relation to any game or sport played in India.

12. We have considered the rival submissions and perused the material available on record. The only dispute, in the present appeal, is regarding the taxability of compensation paid to the overseas Cricket Association for the termination of the agreement. Since the year 2008, the assessee conducted an annual Cricket tournament called CLT20 during the months of September/October every year, till the year 2014. The assessee entered into an arrangement with CSA and CA to ensure the participation of their winners and/or runner-up teams of the domestic Twenty20 Cricket competition in the CLT20 Tournament apart from other ICC member countries. In consideration of ensuring the participation of its domestic teams, the assessee paid annual participation fees to these overseas cricket associations. As per the assessee, during the continuation of the CLT20 Tournament, it had deducted the taxes

under section 194E of the Act in respect of annual participation fees paid to CSA, which is not in dispute. The main income from the CLT20 Tournament arose from the sale of media rights. Accordingly, the assessee, through its sub-committee i.e. Champions League Governing Council ("*Governing Council*"), entered into Rights Agreement on 10/09/2008 with ESPN Star Sports for the grant of certain rights like Media Rights, Umpires Sponsorship Rights, Title Sponsorship Rights, Official Sponsorship Rights, etc. in relation to CLT20 Tournament. From the perusal of the aforesaid Rights Agreement, which forms part of the paper book from pages 8-37, we find that the assessee, through its sub-committee, which is referred to as "*Newco*", agreed to stage the CLT20 Tournament with at least 8 teams and 15 matches in each year during the term with the involvement of domestic T20 winners and runners-up of CA and CSA, and other ICC member countries that are invited by the Governing Council. Vide Novation Agreement dated 24/10/2013, ESPN Star Sports, the assessee, and Star India Private Ltd agreed that the rights held by ESPN Star Sports will be vested in favour of Star India Private Ltd. From the perusal of the Novation Agreement, forming part of the paper book from pages 38-74, we find that the parties agreed to certain amendments in the Rights Agreement dated 10/09/2008. As per one of these amendments, the assessee, through its sub-committee, guaranteed at least 23 matches to be played each tournament year featuring at least the top three finalists of the Indian Premier League and at least two finalists from any Twenty20 competition played in each of Australia and South Africa. Though, the Governing Council, constituted three members of the assessee, two from CA and one from CSA, however, the same was stated to be a sub-committee of

the assessee in the Novation Agreement and the agreement was also signed by the assessee through the Governing Council.

13. Subsequently, Star India Private Ltd conveyed its desire to discontinue the exercise of its rights and requested for termination of the CLT20 Rights Agreement. Accordingly, vide agreement dated 29/05/2015, the assessee and Star India Private Ltd agreed to terminate CLT20 Rights Agreement. As compensation, Star India agreed to pay the Indian Rupee equivalent of USD 380 million to the assessee. This agreement was signed by the Honary Secretary of the assessee and the Authorised Signatory of Star India Private Ltd. In the present appeal, there is no dispute regarding the amount received under this agreement by the assessee.

14. Vide Termination Agreement dated 25/06/2015, forming part of the paper book from pages 87-92, it is evident that the assessee and CSA agreed to cease in full all arrangements amongst them and accordingly CSA was not obligated to ensure participation of any domestic team in the CLT20 Tournament. In the said agreement in clause 5, it was agreed that for a period of 4 years, if the assessee organises any similar tournament, CSA shall, if reasonably called upon to do so by the assessee, ensure participation of at least two teams from South Africa in such similar tournament organised by the assessee on such reasonable terms and conditions as agreed in writing amongst the parties. As per clause 6 of the agreement, it was also agreed that CSA shall not, directly or indirectly, manage, operate, stage, involve itself and/or any teams from South Africa and/or otherwise participate in any tournament which is anyway similar to CLT20 Tournament. As compensation

for the termination of the CLT20 Tournament and CSA"s obligation, the assessee agreed to pay CSA, net of taxes, an amount of USD 22,696,000. The dispute, in the present appeal, is pertaining to the taxability of this amount paid by the assessee to CSA.

15. Thus, from the perusal of the aforesaid agreement, we find that the payment made to CSA by the assessee under the Termination Agreement dated 25/06/2015 was not only for the premature termination of the arrangement amongst them, whereby CSA was required to ensure the participation of teams from South Africa in the CLT20 Tournament each year, but the compensation was also for the non-compete clause as provided in clause 6 of the agreement. However, there is no clause in the agreement that supports the submission of the assessee that the compensation was for the purpose of avoiding any litigation and settling the disputes, therefore we find no merits in the said submission.

16. As per the Revenue, the payment is taxable in India, since the agreements were executed in India and therefore situs of the entire cause of action lies in India; the payment is in nature of non-compete fees which is taxable under section 28(va) of the Act; and CSA rendered services in India by facilitating two domestic teams for participation in CLT20 Tournament each year and therefore section 9(1) of the Act is applicable. In the present case, there is no dispute regarding the fact that CSA is a resident of South Africa in terms of the India South Africa DTAA and is in the possession of a Tax Residency Certificate of South Africa. Therefore, before proceeding further, it is pertinent to note certain provisions of the Act, which are relevant in order to

decide the taxability in the hands of a non-resident assessee. Section 5(2) of the Act provides that the total income of a person who is non-resident includes all income from whatever source derived, which is (a) received or deemed to be received in India; or (b) accrues or arises or is deemed to accrue or arise in India to the assessee. It is not the case of the Revenue that compensation for the termination of the CLT20 Tournament was received in India, therefore clause (a) of section 5(2) of the Act has no application in the present case. As regards clause (b) of section 5(2) of the Act, section 9 elaborates on the expression "*Income deemed to accrue or arise in India*". As per section 9(1)(i) of the Act, all the income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source in India, or through the transfer of a capital asset situated in India shall be deemed to accrue or arise in India. Explanation 1 to section 9(1)(i) of the Act, further provides as under:

> "*(a) in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India;*"

17. Thus, as per the aforesaid provision of Explanation 1(a) to section 9(1)(i) of the Act, it is only that portion of the income which is *„reasonably attributable'* to the operations carried out in India shall be deemed to accrue or arise in India for the purpose of taxation under the Act. In the present case, it is evident from the record that the arrangement which existed between CSA and the assessee, whereby CSA was under obligation to ensure the participation of two domestic teams from the T20 league, was terminated vide

Termination Agreement dated 25/06/2015, and no Cricket match of the CLT20 Tournament was played anywhere in the world, least in India, in the year consideration. Thus, in the year under consideration no services, as alleged by the Revenue, by facilitating two domestic teams for participation in the CLT20 Tournament were rendered. As regards the compensation being in the nature of non-compete fees is concerned, we agree with the submissions of the assessee that the place where the non-compete clause would apply is outside India because if any tournament takes place in India the same would be organised by the assessee, being the national body for cricket in India, and CSA is not restrained from participating in such tournament, by virtue of clause 5 of the Termination Agreement. Therefore, in the present case, we are of the considered view that the payment to CSA is not arising from any operations carried out in India in the year under consideration and thus the same is not taxable under section 9(1) of the Act. Further, the fact that the agreements were executed in India is of some relevance, but only for the purpose of determining the jurisdiction of the courts and the same will not determine the taxability of receipt in India, unless there are some operations carried out in India and the payment is *„reasonably attributable*" to same, which condition, as noted above, is absent in the present case. In any case, the payment of compensation to CSA is for the termination of the arrangement, which was a profit-making apparatus, and thus is in the nature of capital receipt and hence not taxable.

18. It is well established that once the taxability fails in terms of the provisions of the Act, there is no occasion to refer to the provisions of the tax

treaty, as in terms of section 90(2) the provisions of the Act or the DTAA, whichever is more beneficial to the assessee shall be applicable. However, we find that even under the provisions of the India-South Africa DTAA, the payment of compensation under the Termination Agreement is not taxable in India. The learned CIT(A) vide impugned order held that the assessee acted as a DAPE not only for CA and CSA but also for other teams which participated in CLT20 and therefore the income of the CSA is taxable in India as it had a *„dependent agent*" in India. While coming to the aforesaid conclusion, the learned CIT(A) referred to the Rights Agreement dated 10/09/2008 between Governing Council and ESPN Star Sports, wherein Governing Council is stated to be constituted of three-member of the assessee, two from CA and one from CSA. Thus, it was held that Governing Council of CLT20 acted in unison and the assessee acted as an agent of CA and CSA.

19. In the present case, it is not in dispute that CSA is a resident of South Africa in terms of the India-South Africa DTAA and therefore is entitled to the benefit of provisions of the DTAA. As per Article 7 of the DTAA, the income of an enterprise of a contracting state shall be taxable in that state unless the enterprise carries on business in the other contracting state through a Permanent Establishment situated therein. Article 7 further provides that if the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other state only so much as is attributable to that Permanent Establishment. As per the Revenue, since CSA had a dependent agent in the form of the assessee in India, therefore, the receipt of compensation under the Termination Agreement is taxable in India even under the provisions of DTAA.

In order to decide the issue of whether the CSA had a DAPE in India under the provisions of the India-South Africa DTAA, it is relevant to analyse the provisions of Article 5(5) of the DTAA, which reads as under:-

> *"5. Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph."*

20. Therefore as per the provisions of Article 5(5) of the DTAA, it is only when a person acting on behalf of an enterprise has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a Permanent Establishment in that State. Thus, in order to invoke the provisions of Article 5(5) of the DTAA, both the conditions i.e. (a) the person has the authority to conclude contracts; and, (b) the person habitually exercises the authority to conclude the contract, need to be cumulatively satisfied. However, in the present case, the Revenue apart from alleging that the assessee is the agent of CSA did not bring anything on record to show that the assessee had the authority to conclude contracts in the name of CSA and has habitually exercised the said authority. Therefore, the Revenue has failed to discharge the burden cast on it to prove that the twin conditions provided in Article 5(5) of the DTAA are satisfied in the facts of the present case. The Hon"ble Supreme Court in ACIT vs E-Funds IT Solution Inc, (2017) 399 ITR 34 (SC) in para 10 of the judgment held that the burden of proving the fact that a foreign assessee

has a PE in India and must, therefore, suffer tax from the business generated from such PE is initially on the Revenue. We are further of the considered opinion that the emphasis laid on the Governing Council of CLT20, is also of no relevance, since the said Governing Council is stated to be a sub-committee of the assessee in the Novation Agreement and the said agreement was also signed by the assessee. In this regard, the following excerpts from OECD Model Commentary 2017 on Article 5 are of relevance:-

> *"96. The cases to which paragraph 5 applies must be distinguished from situations where a person concludes contracts on its own behalf and, in order to perform the obligations deriving from these contracts, obtains goods or services from other enterprises or arranges for other enterprises to deliver such goods or services. In these cases, the person is not acting "on behalf" of these other enterprises and the contracts concluded by the person are neither in the name of these enterprises nor for the transfer to third parties of the ownership or use of property that these enterprises own or have the right to use or for the provision of services by these other enterprises….."*

21. In the present case, it is pertinent to note that the entire CLT20 Tournament was conducted by the assessee, and all the agreements, including the media/broadcasting Rights Agreement, in this regard were entered into by the assessee. As noted in the Termination Agreement, in order to maximise the commercial success of the CLT20 Tournament and to ensure the participation of teams from South Africa and Australia in addition to the other teams of ICC member countries, the assessee, inter-alia, entered into an arrangement with CSA to ensure that its winning/runner-up teams involved in domestic Twenty20 Cricket competition administered by CSA participate in the CLT20 Tournament organised by the assessee each year. Further, the assessee also paid annual participation fees to CSA in this regard, and on same TDS under section 194E was also deducted. Therefore, in view of the above, the

assessee cannot be said to be DAPE of CSA in India under Article 5(5) of the India-South Africa DTAA. Thus, the payment of compensation to CSA under the Termination Agreement is also not taxable under the provisions of the India-South Africa DTAA. Since the payment is not chargeable to tax in India in the hands of CSA, therefore, there is no obligation on the assessee to deduct tax at source under section 195 of the Act. Accordingly, the impugned order passed by the learned CIT(A), on both counts, is set aside.

22. In respect of the submission of the learned DR regarding the taxability of the receipt under section 115BBA r/w 194E of the Act, we find that the same is not arising from the record and it was also not the basis of the learned CIT(A) to hold that provisions of section 195 of the Act are applicable in the present case. In this regard, the following observations of the Special Bench of the Tribunal in Mahindra and Mahindra Ltd vs DCIT, [2009] 30 SOT 374 (Mumbai) (SB), becomes relevant:-

> *"In our considered opinion the learned Departmental Representative has no jurisdiction to go beyond the order passed by the Assessing Officer. He cannot raise any point different from that considered by the Assessing Officer or CIT(A). His scope of arguments is confined to supporting or defending the impugned order. He cannot set up an altogether different case. If the learned D.R. is allowed to take up a new contention de hors the view taken by the Assessing Officer that would mean the learned A.R. stepping into the shoes of the CIT exercising jurisdiction under section 263. We, therefore, do not permit the learned D.R. to transgress the boundaries of his arguments."*

23. Therefore, on this preliminary basis only, as noted by the Special Bench of the Tribunal in the aforesaid decision, the contention of the learned DR is rejected. Even otherwise, section 115BBA(1)(b) of the Act has no application to the year under consideration, as the same only covers amount guaranteed to be paid or payable to a non-resident sports association or institution in

relation to any game or sport played in India. However, in the present case, it is undisputed that CLT20 Tournament was discontinued from the year 2015, therefore, no game or sport was played in India in the year under consideration. Further, the payment to CSA is compensation for the termination of the CLT20 Tournament, which cannot by any interpretation be said to be „*in relation to any game or sport played in India*". As a result, the grounds raised by the assessee are allowed.

24. In the result, the appeal by the assessee is allowed.

ITA no.5493/Mum./2017
Assessee's Appeal – A.Y. 2016–17

25. In this appeal, the assessee has raised the following grounds:–

"The Appellant files this appeal against the appellate order dated 31.05.2017 (received by it on 3rd July 2017) passed by the Commissioner of Income-tax (Appeals)- 55, Mumbai (the CIT(A)), under section 253 of the Income-tax Act, 1961 (the Act), on the following grounds each of which is in the alternative and without prejudice to any other:

1. The CIT(A) erred in holding that the amount of Rs.576,00,00,000 paid by the Appellant to Cricket Australia (CA) was chargeable to tax in the hands of CA, and hence, it was liable to deduct tax thereon under section 195 of the Act.

2. The CIT(A) ought to have held that:-

a. the amount of Rs.576,00,00,000 was not an income chargeable to tax under the Act;

b. the said amount could not be regarded as accruing or arising or deemed to accrue or arise or received or deemed to be received by CA in India;

c. no part of the said amount could be charged to tax in India as the said receipt was not attributable to any operation carried out by CA in India; and

d. the said amount which is in the nature of business income would be outside the purview of the Act as CA neither has a permanent establishment in India nor could the said amount be regarded as attributable to any alleged permanent establishment in view of article 7 of the DTAA between India and Australia.

3. The CIT(A) erred in holding that the amount of Rs.576,00,00,000 was chargeable to tax in India on the ground that the situs/cause of action giving rise to payment of the said amount had arisen in India.

4. The CIT(A) erred in holding that the Appellant was an agent of CA and further that it was a dependent agent constituting itself as a permanent establishment of CA in India in terms of article 5 of the DTAA between India and Australia.

5. The CIT(A) erred in making the following observations which are factually incorrect or have no relevance to the issue under consideration:

a. It was doubtful whether the agreement between the Appellant and CA dated 25.06.2015 was registered and stamp duty thereon was paid in India. Further, the said agreement also did not bear the signatures of any witness;

b. the situs/or cause of action giving rise to the amount was in India because:

(i) Head office of the Appellant was located in India;

(ii) the agreement between the Appellant and ESPN or CA were signed in India;

(iii) the matches were to be played in India; and

(iv) the compensation for termination of the 25th June 2015 agreement was to be based on receipt of invoices from CA which had not been produced before the Revenue.

c. The Appellant was acting as an agent of CA as per mutual understanding and terms and conditions of an agreement and further that it was a dependent agent; and

d. CA received the said payment for rendering services in India by facilitating two teams to participate in CLT 20 Tournament from year to year and also by not organising, sponsoring, staging, and holding similar tournament in Australia.

6. The Appellant craves leave to add to, alter, amend, delete, vary, substitute and/or rescind any of the aforesaid grounds, as and when required."

26. In this appeal, the assessee has challenged the taxability of compensation paid to Cricket Australia. Undisputedly, apart from the payee and the amount of consideration paid, all the facts, including the terms of all the agreements, in this appeal are similar to the appeal in ITA No. 5492/Mum./2017. Therefore, our findings/conclusions rendered therein shall apply *mutatis mutandis*. As a result, the grounds raised by the assessee are allowed.

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27. In the result, the appeal by the assessee is allowed.

28. To sum up, both appeals by the assessee are allowed.

Order pronounced in the open Court on 11/05/2023

Sd/-	**Sd/-**
G.S. PANNU	**SANDEEP SINGH KARHAIL**
PRESIDENT	**JUDICIAL MEMBER**

MUMBAI, DATED: 11/05/2023

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai