

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'D' NEW DELHI**

**SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND  
DR. BRR KUMAR, ACCOUNTANT MEMBER**

ITA No. 9198/Del/2019  
Assessment Years: 2016-17

ACIT, Circle 8(2), New Delhi	<b>Vs.</b>	M/s. Exclusive Motors Pvt. Ltd., 7/17, Lower Ground Floor, Sarvpriya Vihar, New Delhi-1100 16
<b>PAN :AABCE1170F</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Shri Ashish Batra, Adv.
Department by	Ms. Grima Sharma, Sr. DR

Date of hearing	07.07.2022
Date of pronouncement	26.09.2022

**ORDER**

**PER SAKTIJIT DEY, JUDICIAL MEMBER:**

Captioned appeal by the Revenue arises out of order dated 04.09.2019 of learned Commissioner of Income-Tax (Appeals)-3, New Delhi pertaining to assessment year 2016-17.

2. The only effective ground raised by the Revenue reads as under:

*On the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in deleting the addition of Rs.3,75,68,310/- made by the*

*A.O on account of disallowance of extended warranted expenses paid by the assessee without deducting TDS u/s 195 of the I.T. Act, 1961.*

3. Briefly, the facts are, the assessee is a resident corporate entity. As stated by the assessing officer, assessee is an exclusive dealer of Bentley Cars in India. For the assessment year under dispute, assessee filed its return of income on 29.09.2016 declaring income of Rs.13,21,71,320. Assessee's case was selected for complete scrutiny, basically, for examining foreign remittances by the assessee.

4. In course of assessment proceedings, the assessing officer called for the details of foreign remittances made during the year. After examining the details, he found that in addition to the payment made against purchases from Bentley, UK, the assessee has remitted an amount of Rs.3,75,68,310 towards extended warranty payment to an Overseas Entity, namely, Car Care Private Ltd. (CCPL) an unit of Bentley Pre-Administrative Services. He also observed that the assessee has also raised invoices on the entity making some claim and has also received some payment. After examining in detail the payment made by the assessee to CCPL towards extended warranty payment, the assessing officer called upon the assessee to explain why such payment should not be disallowed under Section 40(a)(i) due to non-deduction of tax at source. In reply to assessing officer's query, assessee submitted that the extended warranty was purchased by the assessee from CCPL, a Bentley nominated UK based company. It was submitted that CCPL is a non-resident and has no business

connection in India nor any PE in India. There being no income chargeable to tax in India, the assessee submitted, there was no legal requirement to deduct tax at source under Section 195 of the Act. Assessing Officer, however, was not convinced with the submission of the assessee. Referring to the invoices raised for extended warranty, the assessing officer observed that assessee enters into contract for extended warranty with the Indian customers on behalf of CCPL as the assessee is not authorized to enter into such contracts by M/s. Bentley Ltd. He observed, the assessee merely acts as a dependant agent of CCPL for providing extended warranty services. He further observed that assessee merely acts as a conduit and secures orders of extended warranty on behalf of CCPL and assessee's activities are wholly dependant on the non-resident entity. Therefore, he concluded that the assessee is a dependent agent of CCPL, in so far as, it relates to extended warranty contract. Thus, he held that the amount remitted to the CCPL towards extended warranty is taxable in India through the PE and the assessee having failed to deduct tax under Section 195 of the Act, he disallowed the amount of Rs.3,75,68,310. The assessee contested the aforesaid disallowance before learned Commissioner (Appeals).

5. Being convinced with the submission of the assessee, learned Commissioner (Appeals) held that the assessee is having its own independent status and is not a dependent agent of CCPL. Further, he held that CCPL has neither any business connection nor PE in India. Therefore, there being no

income chargeable to tax in India at the hands of CCPL, he held that there is no obligation on the assessee to deducted tax at source on the remittances made to CCPL. Accordingly, he deleted the disallowance made under Section 40(a)(i) of the Act.

6. We have considered rival submissions and perused material on record.

7. Undisputedly, the assessing officer has concluded that part of the remittances made by assessee to CCPL towards extended warranty services are in the nature of profit attributable to the PE in India, hence, assessee was required to deduct tax at source on such remittances. He also held that while entering into extended warranty contracts with Indian customers, the assessee acted as a dependent agent PE of CCPL.

8. Before we proceed to decide the issue, it is necessary to bear in mind following facts; (i) the assessee is an exclusive dealer of Bentley Cars manufactured by a UK based entity Bentley Ltd; (ii) assessee provides extended warranty on the cars sold to customers in India, purchasing them from CCPL, another UK based entity. The issue arising for consideration is whether the contract for extended warranty are entered by the assessee on and behalf of CCPL so as to constitute a dependent agent PE in India.

9. From the facts and material on record, it is evident that the extended warranty is an additional feature provided to the customers at their option. There is no compulsion on the customers to buy extended warranty. If some customers

agree for extended warranty, the assessee purchases such warranty from CCPL, a Bentley recommended company, the consideration received from the customers towards the extended warranty is remitted to CCPL after retaining a part of it. It is observed, the extended warranties are in the nature of security and assurance to customers against any kind of defect/repair after lapse of original warranty and purely optional in nature. Material on record reveal, while entering into contracts for extended warranty, though, the assessee purchases such warranty from CCPL at a particular price, however, it independently negotiates price with the customers. In paragraph 4.5 of the order, learned Commissioner (Appeals) has referred to specific instances of invoices raised by the assessee to indicate that the price at which the extended warranty is sold to the customers is different from the warranty claimed to CCPL. It is further observed, there is no compulsion on the assessee to buy extended warranty only from CCPL or any other Bentley recommended party. Technically, assessee can buy extended warranty from anyone, subject to availability of original Bentley spares and accessories. It is also a fact on record that the sales invoices raised by assessee to the Indian customers towards extended warranty are in its own name and does not mention the name of CCPL. Therefore, the privity of contract is between the assessee and Indian customers, wherein, CCPL has no role to play. The aforesaid factual position emerging on record could not be effectively controverted by the Revenue through proper evidence. Thus, in our view, the

factual finding recorded by learned Commissioner (Appeals), to the effect that the assessee cannot be construed as a dependent agent PE of CCPL, deserves to be affirmed in absence of any contrary material brought on record by Revenue. Accordingly, we do so. Ground raised is dismissed.

10. In the result, the appeal is dismissed.

*Order pronounced in the open court on 26<sup>th</sup> September, 2022.*

**Sd/-  
( DR. BRR KUMAR )  
ACCOUNTANT MEMBER**

**Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER**

Dated: 26<sup>th</sup> September, 2022.

**Mohan Lal**

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

<b>Sl. No.</b>	<b>Particulars</b>	<b>Date</b>
1.	Date of dictation (Order drafted through Dragon software):	21.09.2022
2.	Date on which the draft of order is placed before the Dictating Member:	23.09.2022
3.	Date on which the draft of order is placed before the other Member:	23.09.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	23.09.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	26.09.2022
6.	Date on which the final order received after having been singed/pronounced by the Members:	27.09.2022
7.	Date on which the final order is uploaded on the website of ITAT:	27.09.2022
8.	Date on which the file goes to the Bench Clerk	27.09.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	