

आयकर अपीलिय अधिकरण "एल" न्यायपीठ मुंबई में

IN THE INCOME TAX APPELLATE TRIBUNAL "L" BENCH, MUMBAI

सर्वश्री राजेन्द्र, लेखा सदस्य एवं संदीप गोसाईं, न्यायिक सदस्य

Before S/Shri Rajendra, A.M. and Sandeep Gosain, J.M.

आयकर अपील सं./ITA No. 388/Mum/2013, निर्धारण वर्ष /Assessment Year: 2008-09

M/s. Lloyds Register UK C/o. Lloyds Register Asia-India Branch Office, 63-64 Kalpataru Square, 6th Floor Kondivita Lana, Andheri (E) Mumbai-400 059. PAN: AAACL 2209 B	Vs.	The ADIT Intl Taxn Range -4(1) Mumbai.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

आयकर अपील सं./ITA No. 518/Mum/2013, निर्धारण वर्ष /Assessment Year: 2008-09

The ADIT Intl Taxn Range -4(1) Mumbai.	Vs.	M/s. Lloyds Register UK Mumbai-59.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Jasbir Chauhan

Assessee by: Shri Nitesh Joshi

सुनवाई की तारीख / Date of Hearing: 04/07/2017

घोषणा की तारीख / Date of Pronouncement: 04/07/2017

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य, राजेन्द्र के अनुसार -Per Rajendra, AM:

Challenging the order dated 08.10.2012 of the CIT(A)-11, Mumbai the assessee and the Assessing Officer(AO) have filed cross-appeal for the above mentioned Assessment Year (AY).

2. During the course of hearing before us, the Authorised Representative (AR) did not press ground no.2. Hence, same stands dismissed, as not pressed.

3. It was brought to our notice by the representatives of both the sides that effective ground of appeal in both the appeals is about treatment to be given to the Management Charges (MS), that identical issue had arisen in earlier AY.s. (ITA/3138, 6746, 3587 and 6850/Mum/ 2011 AY.s. 2005-06 and 2007-08, dtd. 18.03.2016), that the Tribunal had restored back the issue to the file of the FAA for fresh adjudication.

4. We find that while deciding the appeals for the AY.s 2005-06 and 2007-08 the Tribunal had deliberated upon the facts of the case as under:

"2. M/s. Lloyds Register, UK, having an India Office, had filed the return of income in as Lloyds Register-India Office (LRIO). UK parent company had several subsidiaries all over the world, including two subsidiaries in UK, having their branch office in India namely Lloyds Register

Asia,(LRA)and Lloyds Register Quality Assurance Ltd.(LRQA).Assessee discontinued its India operation as branch office w.e.f 1.4.2004.During the previous year,all the assets and liabilities were under process of transfer to LRA-India Branch office(LRA-IBO) and LRAQ-India Branch Office(LRAQ-IBO).Lloyds Register UK entered into licence agreement on 16.7.2003 with LRA and LRQA and certain rights were transferred to them.

During its world-wide corporate-restructuring,Lloyds applied for closure of its Branch vide its application dated 13.10.2003 and RBI granted final approval vide its letter dated 02.12.2005. Even after closure of its India Branch office,the assessee was filing its return of income from AY.2005-06 onwards as it had started earning royalty income from its two subsidiaries i.e.LRA and LRQA.As stated earlier,it entered into two types of agreements.First agreement i.e.licence agreement dealt with the right to use the intellectual property and technical and marketing support services to various clients against the payment of royalty.The agreement was entered into between Lloyds Register UK and Lloyds Register Asia Ltd. and LRA.The second agreement was termed as management services agreement.As per the agreement Lloyds register UK and Lloyds Register Asia Ltd.were the service provider and LRQA was service recipient.Both the agreements were valid for the period upto June,2007.Lloyds Register,UK and Lloyds Register Quality assurance,UK opened their respective branch offices in India.During the year under consideration following amounts were paid by both the subsidiary companies to Lloyds Register UK:

Name of the Subsidiary	Royalty	Management Charges
Lloyd's Register Asia Ltd.(U.K.)	13,89,20,438/-	4,42,92,396/-
Lloyd's Register Quality Assurance Ltd.U.K.	89,14,963/-	22,40,853/-
Total	14,78,35,401/-	4,65,33,249/-

Out of the above amount,Lloyds Register UK,offered royalty income of Rs.14.78 crores for taxation,however Rs.4.65crores received under the head 'management charges'were claimed to be non chargeable in India.The AO did not agree with the assessee and held that management charges,amounting to Rs.4,65,33,249/- were taxable in India as fee for technical services(FTS)under Article-13(2)(a)(ii) of the India-UK DTAA r.w.s.9(1)(vii)of the Act.He was of the opinion that there was no arrangement before 16.7.2003,that earlier technical and managerial services(MS)were considered part of the business activity by the assessee-company,that profit arising out of such activities was offered for taxation in India under the head business income.

3.Aggrieved by the order of the AO,the assessee preferred an appeal before the First Appellate Authority(FAA).Before him,it was contended that to attract section 9(1)(viii)(c) of the Act two conditions were required to be fulfilled i.e. rendering of services in India and utilisation of services in business/profession carried out by the payer in India,that the MS were not covered by definition of FTS,that services were rendered from outside India,that as per the Article 13 of DTAA FTS were not MS,that the terms MS and technical and consultancy had neither been defined in the Act or in the DTAA,that the dictionary meaning of phrase technical services(TS)was services involving or concerned with mechanical,arts and applied sciences,that consultancy services(CS)meant services which were advisory in nature and which were rendered by a consultant,that CS could be managerial or technical, that services as envisaged under agreement were not technical in nature but same were commercial, that MS were support services conducted by group entities and rendered as per the independent agreements,that MS was towards adoption and carrying out policies of the organisation,that even if services were treated as TS-it had to be made available as per the Article 4(c) of the tax-treaty,that such services were not taxable under the treaty and that the fact was accepted by the AO himself,that the definition of FTS in the Act and in the DTAA is not the same,the definition of FTS in section 9 had a specific meaning of the expression MS, that in the India-UK-DTAA the word managerial services was not there,that in the license fee agreement it was stated that licensees wished to use the IPR and the technical/marketing

services, that in the MS agreement it was mentioned that service provider had specific knowledge and skills in the fields of commerce, finance, law, administration and management, that these were essential to enable the service recipients as a whole to benefit from such specialised knowledge and skill in order to carry out the objectives of promoting safety on land and at sea and in air, that it could not be basis for linking MS with licence fee, that in transfer pricing assessment no nexus had been found between license agreement and management fee agreement, that the AO had accepted the fact the services were not covered under section 9(1)(vi)(c) r.w. Explanation-2(vi), that provisions of Article 13-(4)(a) had no application.

After going through the assessment order and the submission of the assessee, the FAA held that the word 'managerial' did not find a place in the definition of FTS under India-UK Tax Treaty, that fee paid for MS could not be regarded as FTS. He referred to the case of Temken India Ltd. and observed that the AAR had applied Article 12 of India - tax treaty in respect of MS, that the provisions of India-US treaty and the India-UK DTAA were similar in respect of MS, that the MS signified service for management of affairs or services rendered in performing management functions, that it involved adoption or to carry out policies of organization as a whole. He gave a list of services which would not qualify under the head managerial service and further held that Schedule 3 of management services proved that assessee was getting money for getting technical services rather than managerial services, that certification of machinery of product was technical service and not managerial service, that Lloyd Register's Rules and Regulations was also technical service, that similarly expenditure incurred on information technology, hardware maintenance and software maintenance could not be categorised as MS, that providing comprehensive insurance programme for third parties was not managerial function - rather it was a technical service, that it was very difficult to segregate managerial and technical service shown by the assessee because of composite nature of services rendered by assessee to its subsidiaries, that in the earlier years assessee was carrying out its business in India and had not claimed any bifurcation under the respective heads, that in the year under consideration business profit was offered for taxation by subsidiary in India besides paying royalty and managerial services by the subsidiaries to the assessee, that the AO and the assessee had some merits in their arguments about taxability/non-taxability of MS, that out of total management charges of Rs. 4.65 crores 50% had to be allowed as management charges (non taxable) and balance 50% was to be treated as FTS (taxable)."

After considering the rival submissions, the Tribunal decided the issue as under in the appeal filed by the AO as follows:

5. We find that the assessee had received Rs. 14,78,35,401/- as royalty and Rs. 4.65 crores as MS, that it had claimed that managerial charges, received by it, were not taxable in India, that the AO was of the view that notwithstanding two agreements entire management charges were taxable as FTS, that the FAA had held that half of the MS charges were to be taxed in India, that while deciding the appeal, he had not given any reason as to why 50% of the receipts should be treated as MS, that the assessee as an alternate plea had stated that if any addition was to be made it should have been restricted to 10-15% of the payment. We further find that the FAA had discussed a few services and has stated that same could be treated as MS. But, he has not analysed the bills that would give him a clear and fair idea as to which services were actually rendered by the assessee for the year under consideration and that which could be treated as MS or otherwise. Without establishing the primary facts, he should not have decided the issue. We do not find any basis for holding that 50% of the managerial charges should be taxed. In our opinion, matter needs further investigation and verification, as his order lacks reasoning. Therefore, in the interest of justice, we are restoring back the issue to the file of the FAA for fresh adjudication who will decide the issue afresh after affording a reasonable opportunity of hearing to the assessee. Ground no. 1 is decided in favour of the AO, in part."

As the facts of the case for the year under appeal are identical to the facts of earlier AY.s.- except for the amounts involved,so,respectfully following the orders for those years,we restore back the matter to the file of the FAA with the same directions.First ground of appeal raised by the AO and the Assessee,is decided in their favour,in part.

As a result,appeals filed by the AO and the assessee stand partly allowed.

फलतःनिर्धारण अधिकारी और निर्धारिती द्वारा दाखिल की गई अपीलें अंशतः मंजूर की जाती हैं.

Order pronounced in the open court on 4th July, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक 4 जुलाई, 2017 को की गई।

Sd/-

Sd/-

(संदीप गोसांई/Sandeep Gosain)

(राजेन्द्र / RAJENDRA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक/Dated :04.7.2017.

Jv.Sr.PS.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त,
- 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR “ L ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.