



ITA Nos.1350 &1351/Mum/2016
Swiss Reinsurance Company Limited
Assessment Years-2011-12 & 2012-13

आयकर अपीलीय अधिकरण "एल" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"L" BENCH, MUMBAI

श्री सी. नागेंद्र प्रसाद, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI C.N. PRASAD, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. Nos.1350 & 1351/Mum/2016
(निर्धारण वर्ष / Assessment Years: 2011-12 & 2012-13)

Assistant Commissioner Of Income Tax (International Taxation) 4(2)(2) Scindia House, Ballard Pier N.M.Road, Mumbai – 400 038	बनाम/ Vs.	Swiss Re-insurance Company Limited C/o SRBC & Associates LLP 14 th Floor, The Ruby 29, Senapati Bapat Marg, Dadar (West), Mumbai-400 028
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.AACCS-2650-M		
(पीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Samuel Darse, Ld. CIT(DR)
Assessee by	:	Jasmin Amalsadvala & Nishant Thakkar, Ld. AR's

सुनवाई की तारीख / Date of Hearing	:	22/01/2018
घोषणा की तारीख / Date of Pronouncement	:	22/01/2018

आदेश / O R D E R

Per Bench

1. In the captioned appeals for Assessment Years [AY] 2011-12 & 2012-13, the revenue is aggrieved by certain directions given by Dispute Resolution Panel. Since, the issues are common in both the appeals, we dispose-off the same by way of this common order for the sake of convenience and brevity.

ITA No. 1351/Mum/2016 AY 2011-12



ITA Nos.1350 &1351/Mum/2016
Swiss Reinsurance Company Limited
Assessment Years-2011-12 & 2012-13

2. The revenue has raised the following grounds of appeal against direction given by *Dispute Resolution Panel-2, Mumbai, Objection No.248 dated 18/12/2015*: -

1. "Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP has erred in holding that the assessee company does not have any PE in India within the meaning of Article 5(1), 5(2) and 5(3) and Article 5(5)?" The DRP failed to appreciate that M/s.Swiss Reservices India Pvt.Ltd. (SRSIPL) was performing core functions, which were inextricably intertwined to assessee's reinsurance business and were not preparatory or auxiliary in nature.

2. "Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP has erred in holding that the reinsurance business has been specifically excluded from constituting a PE in India under the treaty. The DRP failed to appreciate that Article 5(4) of the DTAA is not a disabling clause, rather it is an enabling clause which create deeming fiction of existence of PE engaged in Insurance business and therefore does not restrict the applicability of clauses (2), (3), and (5) of the DTAA in case of reinsurance business, if the conditions mentioned therein are satisfied.

3. "Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP has erred in holding that M/s. Swiss Reservices India Pvt. Ltd. ('SRSIPL') is an independent organization and it has not acted as an agency of the assessee company and therefore, cannot be held to be an agency PE or Service PE as per Article 5(5) of the DTAA?" The DRP failed to appreciate that M/s. Swiss Reservices India Pvt. Ltd. (SRSIPL) was performing core functions, which were inseparable part of the assessee's reinsurance business.

4. "Whether on the facts and in the circumstances of the case and in law, the Hon'ble DRP is correct in holding that the assessee's reinsurance premium receipts/income from reinsurance contract agreement with Swiss Reservices India Pvt. Ltd. ("SRSIPL), cannot be taxed in India under the deeming provision of section 9(1)(i) of the Income Tax Act, 1961 though the assessee has regular flow of income emanating from India?"

5. The appellant prays that the order of the DRP be set aside on the above grounds and the draft order of the Assessing Officer restored.

3.1 Facts in brief are that the assessee being *non-resident corporate assessee* was assessed at Rs.'Nil' u/s 143(3) read with Section Sec.144C(13) of the Income Tax Act, 1961 on 22/01/2016 pursuant to the directions of *Dispute Resolution Panel-2 [DRP]* dated 18/12/2015. The



ITA Nos.1350 &1351/Mum/2016
Swiss Reinsurance Company Limited
Assessment Years-2011-12 & 2012-13

revenue is aggrieved by certain directions given by *DRP* pursuant to which final assessment order has been passed.

3.2 During proceedings, it was noted that the assessee company, being a company incorporated in *Switzerland*, was engaged in the business of providing re-insurance services in India to various *cedants* through its branch at *Singapore* and earned re-insurance premium, which was claimed as *business income*. The assessee claimed that since it had no *permanent establishment [PE]* in India, the '*business income*' earned in the shape of re-insurance premium was not taxable in India in terms of *Double Taxation Avoidance Agreement [DTAA]*. However, Ld. AO opined that the wholly owned subsidiary of the assessee namely *Swiss Re Services India Private Limited [SRSIPL]* constituted assessee's Service & Agency PE in India and hence, the income earned *there-from* was liable to be taxed and accordingly estimated the profits @10% of total receipts and after attributing the same to the extent of 50% to *Indian PE*, worked out estimated income @5% of total receipts which came to Rs.23.18 Crores.

3.3 The assessee raised objections against the *draft assessment order* with success before Ld.DRP vide impugned directions u/s 144C(5) dated 18/12/2015 where Ld. DRP following the order of this Tribunal for AY 2010-11 held that the assessee did not have any business connection in India within the meaning of Explanation-2 to Section 9(1) and further *SRSIPL* did not constitute *Service / Dependent Agent / Subsidiary PE* in India. Aggrieved, the revenue is in further appeal before us.



ITA Nos.1350 &1351/Mum/2016
Swiss Reinsurance Company Limited
Assessment Years-2011-12 & 2012-13

4. The Ld. Authorised Representative [AR] for the assessee, at the outset, by placing reliance on the directions of *DRP* contended that the matter squarely stood in assessee's favor by the order of this Tribunal for AY 2010-11 as well for AY 2013-14. The copies of the relevant orders have been placed before us. The Ld. Departmental Representative [DR], while fairly conceding the same, contended that the orders of the earlier years have been challenged by the revenue before Hon'ble Bombay High Court and the same are *sub-judice*.

5. We have carefully heard the rival contentions and perused cited order of the Tribunal. We find that, the matter, at present, stood covered in assessee's favor by the order of this Tribunal for AY 2010-11 ITA No. 1667/Mum/2014 dated 13/02/2015 which has been followed while deciding the matter for AY 2013-14 ITA No. 2759/Mum/2017 dated 04/07/2017. The relevant findings of the Tribunal as given in order for AY 2010-11 are extracted below for ease of reference:-

5.6 To sum up, the assessee does not have any business connection in India in the light of Explanation-2 to Section 9(1) of the Act. The assessee does not have PE in India. The facts on record show that there is neither Service PE nor Agency PE in the form of SESIPL. Considering the facts in totality in the light of the relevant provisions of the law and DTAA and the judicial decisions referred to herein above, we have no hesitation in setting aside the assessment order and accordingly we direct the AO not to treat the income of the assessee as taxable under the Act. With this Ground No. 1,2 and all its sub-grounds are allowed.

Respectfully following the binding judicial precedent, taking the same view, we dismiss revenue's appeal.

ITA No. 1350/Mum/2016 AY 2012-13



ITA Nos.1350 &1351/Mum/2016
Swiss Reinsurance Company Limited
Assessment Years-2011-12 & 2012-13

6. Aggrieved on similar facts and circumstances for AY 2012-13, the revenue has raised identical worded grounds of appeal. Since facts are similar except for minor variations, taking the same view, we dismiss revenue's appeal.

Conclusion

7. Both the appeals filed by the revenue stands dismissed.

Order pronounced in the open court on 22nd January, 2018.

Sd/-
(C. N. Prasad)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 22 .01.2018

Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai