

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

श्री अनिल चतुर्वेदी, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।  
BEFORE SHRI ANIL CHATURVEDI, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.498/PUN/2016

निर्धारण वर्ष / Assessment Year : 2011-12

Dy. Director of Income Tax,  
(International Taxation),  
Circle – 2, Pune

.....अपीलार्थी / Appellant

**बनाम / V/s.**

M/s. Sandvik AB,  
C/o Sandvik Asia Limited,  
Mumbai-Pune Road, Dapodi,  
Pune – 411012

PAN : AAHCS7486E

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak  
Revenue by : Smt. Nirupama Kotru

सुनवाई की तारीख / Date of Hearing : 21-03-2018  
घोषणा की तारीख / Date of Pronouncement : 23-03-2018

**आदेश / ORDER**

**PER VIKAS AWASTHY, JM :**

This appeal by the Revenue is directed against the assessment order dated 27-01-2016 passed u/s. 144C(13) r.w.s. 143(3) of the Income Tax

Act, 1961 (hereinafter referred to as “the Act”) for the assessment year 2011-12.

2. The Revenue has raised following grounds in the appeal :

- “1. Whether on the facts and in the circumstances of the case, the DRP, Mumbai erred in concluding that the services provided by the assessee do not qualify as Fees for Technical Service under clause (b) of para 4 of Article 12 of Double Taxation Avoidance Agreement between India and Portuguese Republic by referring to the Protocol of India-Sweden DTAA.
2. Whether on the facts and in the circumstances of the case, the DRP, Mumbai erred in concluding that the term "make available" means supplying or transferring of technical knowledge or technology to another.
3. Whether on the facts and in the circumstances of the case, the DRP, Mumbai erred in allowing assessee's appeal without giving a categorical finding as to how the services are not taxable in India as per India-Portuguese DTAA.
4. The appellant craves to leave to add to modify any of the grounds of appeal.”

3. Shri Nikhil Pathak appearing on behalf of the assessee submitted that the assessee filed its return of income for the impugned assessment year on 30-11-2011 declaring total income as Nil. The assessee is a Non Resident company incorporated in Sweden. During the period relevant to the assessment year under appeal the assessee entered into transactions with its subsidiaries in India and received payments for the services provided as under :

<b>Sr. No.</b>	<b>Name of the AE</b>	<b>Nature of transaction</b>	<b>Amount in Rs.</b>
1	Sandvik Asia Ltd.	Management service fees	21,24,70,400
2	Walter Tools India Pvt. Ltd.	Technical services	1,04,98,188
		TOTAL	22,29,68,588

4. The ld. AR pointed that the Assessing Officer held the services rendered by the appellant to its Indian subsidiaries as 'fee for technical services' after drawing inference from Sweden Tax Treaty. The ld. AR contended that similar additions were made in assessment years 2008-09 and 2010-11. The assessee carried the matter in appeal in ITA No. 47/PN/2013 for assessment year 2008-09 decided on 22-05-2015 before the Tribunal. The Tribunal deleted the additions by placing reliance on the decision of Tribunal order in assessee's own case in ITA No. 1720/PN/2011 for assessment year 2007-08 decided on 28-11-2014. Similarly, in assessment year 2010-11 the addition was made by the authorities below for identical reasons. The Tribunal in assessee's appeal for assessment year 2010-11 in ITA No. 384/PUN/2015 decided on 20-12-2017 deleted the additions. In the assessment year under appeal the relief has been granted by the Dispute Resolution Panel (DRP) on the basis of decision of Tribunal in assessee's case for assessment years 2007-08 and 2008-09. The ld. AR furnished copy of order of the Tribunal in ITA No. 47/PN/2013 (supra) and ITA No. 384/PUN/2015 (supra).

5. Smt. Nirupama Kotru representing the Department vehemently defended the additions made by Assessing Officer in draft assessment order dated 23-03-2015. However, the ld. DR fairly admitted that the issue raised by the Revenue in appeal is identical to the one already adjudicated by the Tribunal in assessee's own case in earlier assessment years.

6. Both sides heard. Orders of the authorities below perused. The solitary issue raised by the Revenue in appeal is against the findings of Assessing Officer/DRP in holding that the services provided by the

assessee to Sandvik Asia Ltd. and Walter Tools India Pvt. Ltd. do not fall within the ambit of 'fee for technical services' under clause (b) of para 4 of Article 12 of Double Taxation Avoidance Agreement (DTAA) between India and Portuguese Republic. We find that the additions on this count were made by Assessing Officer in earlier assessment years as well. The matter travelled to the Tribunal for the first time in assessment year 2007-08. The Tribunal after analyzing the facts of case, DTAA between India and Portuguese Republic, Protocol to the Tax Treaty between India and Sweden and various case laws held that the payments received by assessee on account of management services fee from Sandvik Asia Ltd. and technical services fee from Walter Tools India Pvt. Ltd. cannot be brought to tax in view of principle of the most favoured nation (MFN) clause in the tax treaty. It is an undisputed fact that the nature of payments received by assessee in assessment year under appeal is identical to the one received in earlier assessment years. For the sake of completeness the relevant extract of the findings of Tribunal in assessee's own case in immediately preceding assessment year i.e. assessment year 2010-11 are reproduced here-in-below :

*"12. We find no merit in the orders of authorities below that alternatively the receipts for management services be treated in the nature of dividend and taxed under Article 10 to the Tax Treaty between India and Sweden as well as under section 9(1)(iv) of the Act. The Tribunal in the case of payer i.e. Sandvik Asia Pvt. Ltd. in ITA No.1750/PUN/2013 with Cross Appeal in ITA No.1804/PUN/2013, relating to assessment year 2005-06 vide order dated 14.06.2017 held that management fees paid to Sandvik AB, Sweden i.e. the assessee before us was income on account of rendering of management services and could not be treated as dividend. Following the same parity of reasoning, we dismiss the alternative stand of the DRP/Assessing Officer in taxing the management service charges in the hands of assessee. The ground of appeal No.2 raised by the assessee is thus, allowed."*

7. Thus, for the aforesaid reasons we find that no merit in the appeal by the Department. Accordingly, the impugned order is upheld and the appeal of the Revenue is dismissed.

8. In the result, the appeal of Revenue is dismissed.

Order pronounced on Friday, the 23<sup>rd</sup> day of March, 2018.

Sd/-	Sd/-
(अनिल चतुर्वेदी / Anil Chaturvedi)	(विकास अवस्थी / Vikas Awasthy)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 23<sup>rd</sup> March, 2018

RK

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Dispute Resolution Panel-3, Mumbai
4. The CIT (TP/IT), Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary,  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune