

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'C', NEW DELHI**

**BEFORE SHRI N.K.SAINI, ACCOUNTANT MEMBER
AND SMT. BEENA A PILLAI, JUDICIAL MEMBER**

**ITA No. 1206/Del/2016
AY: 2011-12**

**ITA No. 6007/Del/2016
AY: 2012-13**

**ITA No. 6008/Del/2016
AY: 2013-14**

&

**ITA No. 5693/Del/2017
AY: 2014-15**

International Management Group (UK) Ltd. Building 10-CIT(A), 18 th floor Cyber City Gurgaon PAN: AABC19309N	vs.	DCIT, International Taxation 2(1)(1) 4 th floor, E 2 Block Pratyaksh Kar Bhawan Civic Centre J.L.Nehru Marg New Delhi
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(Appellant)

(Respondent)

Appellant by : Sh. Ravi Sharma, Adv.
Respondent by : Sh. D.K.Dhall, CIT, D.R.
Date of Hearing : 08/05/2018
Date of Pronouncement: 08/05/2018

ORDER

PER BENCH

These are appeals filed by assessee against order dated 20th January, 2016, 23rd September, 2016, 22nd September, 2016 and 18th July, 2017 passed by Ld.ACIT, Circle 2(1)(1),

International Taxation, for Ays 2011-12 to 2014-15 respectively. The impugned orders passed by Ld. ACIT are pursuant to directions u/s 144C of the Income Tax Act, 1961 (the Act) passed by the Dispute Resolution Panel (DRP) for the Ays under consideration. The issues raised by assessee against the impugned order are common and identical for all Ays before us, with a small difference of disputed amount. For the sake of convenience we are reproducing grounds raised by assessee for **A.Y. 2011-12** as under:

“1. That in the facts and circumstances of the case and in law, the order passed by the Ld. Deputy Commissioner of Income Tax (AO) under section 143(3) read with section 144C (13) of the Income Tax Act (the Act) assessing the income of the appellant at Rs. 15,59,22,430/- instead of return income of Rs. 8,10,71,396/- is bad in law.

2. That in facts and circumstances of the case and in law, the Ld. A.O. as well as Hon'ble Dispute Resolution Panel (DRP) has not appreciated the mandate of Clause 6 of Article 13 of the India UK Double Taxation Avoidance Agreement (DTAA) which states that if business is carried through a P.E. and the property, right or contract in respect of which royalties/fees for technical services (FTS) arise are effectively connected with such PE, then the provisions of Article 7 will be applicable and not Article 13 of the India-UK DTAA.

3. That in facts and circumstances of the case and in law, the Hon'ble Dispute Resolution Panel (DRP) has not appreciated that the attribution to the PE has already been examined and verified by the Ld.TPO and the same has been accepted by the Ld.AO and, therefore, the balance receipts cannot be taxed as FTS.

4. That in facts and circumstances of the case and in law, the Ld. A.O. as well as Hon'ble Dispute Resolution Panel (DRP) has

grossly erred in observing that the balance receipt from BCCI amounting to Rs.7,41,73,414/- would come within the purview of FTS as per provisions of Article 13(4)(CIT(A)) of the India-UK DTAA.

5. That in facts and circumstances of the case and in law, the Ld. A.O. as well as Hon'ble Dispute Resolution Panel (DRP) has grossly erred in observing that the receipts of Rs.6,77,624/- from International Merchandising Corporation Branch Office would come within the purview of FTS as per provisions of Article 13(4)(c) of the India-UK DTAA.

6. That in facts and circumstances of the case and in law, the Ld. A.O. as well as Hon'ble Dispute Resolution Panel (DRP) has grossly erred in misconstruing the principle of make available as per of Article 13(4)(c)) of the India-UK DTAA and accordingly, erred in holding that the receipts of appellant satisfies the make available principle and is to be taxed as FTS under the provisions of India UK DTAA.

7. That in facts and circumstances of the case and in law, the Ld. A.O. as well as Hon'ble Dispute Resolution Panel (DRP) erred in holding that in the process of providing the services, the appellant ahs transferred the technical knowledge, experience, skill, know how or processes and the same would remain with BCCI even after the event of rendition of services is complete.”

2. At the outset both the parties submitted that all issues are squarely covered against assessee vide order dated 04.10.2016 passed by this Tribunal in assessee's own case for A.Y. 2010-11 in ITA No.1613/Del/2015 and 1646/Del/2015. Ld. Counsel placed before us copy of order of this Tribunal dated 4 October, 2016 for A.Y. 2010-11.

3. We have perused the submissions advanced by both the sides in the light of records for A.Ys under consideration and

decision of this Tribunal in assessee's own case for A.Y. 2010-11 which is relied upon by both the sides.

4. It is observed that the factual background for the AYs under consideration as well as for A.Y. 2010-11 are similar and identical nature. The dispute raised by assessee in grounds of appeals for A.Ys under consideration is regarding applicability of Article 13 as proposed by Revenue vis-a-vis Article 7 as contended by assessee, as per India UK DTAA along with issue regarding attribution of income which are effectively connected with the P.E. of the assessee in India.

5. It has been observed that these issues have been addressed by this Tribunal as under.

"49. In view of above facts and circumstances we adjudicate the appeal of the assessee as under:

a. with respect to ground No. 2, 3,4,5 and 6 of the appeal of the assessee, we hold that that the receipts from the services rendered outside India of Rs. 237750181/- are chargeable to tax as Fees for Technical Services in terms of Article 13(4) (c) as it makes available the technology to the recipient of services and further the provisions of article 13(6) of the Indo UK Double Taxation Avoidance Agreement does not apply to this sum, as it does not 'arise through' and also not 'effectively connected' with the permanent establishment of the appellant.

b. With respect to the ground No. 7 and 8 of the appeal we hold that income of Rs 237750181/ -is chargeable to tax under

section 9 (1) (vii) (b) of the Income Tax Act as fees for technical services and it does not fall into the exception thereof.

c. With respect to ground No. 9 of the appeal we hold that receipt of the appellant satisfies the 'make available' test as provided under article 13 (4) (c) of the India UK DTAA as fees for technical services.”

6. Respectfully following the same, we dismiss the appeals filed by assessee for all the AYs under consideration.

7. In the result, all the appeals filed by the assessee for all the AYs under consideration are dismissed.

Order pronounced in the Open Court on 08th May, 2018.

Sd/-

(N.K.SAINI)
ACCOUNTANTMEMBER

Sd/-

(BEENA A PILLAI)
JUDICIAL MEMBER

Dt. 08th May, 2018

- Mv

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches