IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "D" : DELHI

BEFORE SHRI BHAVNESH SAINI, J.M. AND SHRI O.P. KANT, A.M.

ITA.No.2077/Del./2012
Assessment Year 2006-2007

The Deputy Director of Income Tax, Circle-2(2), International Taxation, New Delhi.	vs.	M/s. Western Union Financial Services Inc. PAN AAACW1936E C/o. KPMG Building No.10, DLF Cyber City Phase-II, Gurgaon 122002
(Appellant)		(Respondent)

For Revenue :	Shri G.K. Dhall, CIT-D.R.
For Assessee :	Shri Tarandeep Singh, C.A.

Date of Hearing :	20.12.2018
Date of Pronouncement :	02.01.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-XXV, New Delhi, Dated 24.02.2012, for the A.Y. 2006-2007.

1.1. Earlier, the Departmental Appeal was dismissed for low tax effect. However, on filing M.A. by the Department, the Order was recalled and appeal was re-fixed for hearing on merits.

3. In this case, A.O. determined the total income of Rs.14.30 crores as against the NIL income declared by the assessee. The facts emanating from the Order of the A.O. and submissions of the assessee are that the assessee company is a company incorporated in USA and is known as Western Union Money Transfer in India. The company is in business of money transfer since 1890 in USA and the *modus operandi* is that money is received by assessee in the foreign country from various customers and same is delivered to the customers in India by various agents of the Company. The assessee receives Commission from the various customers for the money transfer business in foreign country which is the income of the assessee and the assessee also pays commission to its Agents in India for delivering the money to various customers. The assessee does not have any PE (Permanent Establishment) or any specific business connection in India excepting the Indian Agents through which money is delivered to various customers in India. The A.O. has treated the assessee, is having P.E. in India for its business activities and as such

the Commission earned by the Company even in foreign country is taxable in India and accordingly, the A.O. made addition of Rs.14.30 crores.

4. The assessee challenged the Order of the A.O. before the Ld. CIT(A) and it was submitted that similar issue in earlier A.Ys. 2001-2002 to 2005-2006 was raised by the Department against which assessee preferred an appeal before Ld. CIT(A) who had given full relief to the assessee on the ground that assessee does not have P.E. in India and as such there is no taxable income in India. It was submitted that matter was before the Tribunal for A.Ys. 2001-2002 to 2005-2006 and the Tribunal has held that assessee has no P.E. in India and as such there is no taxable income. Similar additions in earlier years as above have been deleted on the same facts and circumstances. The assessee, therefore, prayed that the issue is covered in favour of the assessee by the earlier Orders of the Ld. CIT(A) as well as Tribunal. It was also submitted that the Ld. CIT(A) in A.Y. 2008-2009 following the Order of the Tribunal deleted the similar additions.

5. The Ld. CIT(A) considering the material on record accepted the contention of assessee that on similar facts and circumstances, similar addition have been deleted in assessee's own case for preceding A.Ys. 2001-2002 to 2005-2006. The Ld. CIT(A) following the Orders of the Tribunal for earlier years deleted the similar addition.

6. We have heard the Learned Representatives of both the parties and gone through the findings of the authorities below. The Ld. D.R. submitted that Ground No. 1, 2, 4 and 6 of the Departmental Appeal are covered against the Revenue by earlier Orders of the Tribunal. He has further submitted that on Ground Nos. 3 and 5, the Department contends that the issue is not covered because the Ld. CIT(A) has erred in relying upon the Order of the ITAT and the Ld. CIT(A) has erred in ignoring the arguments of the A.O. inferring that the stand-alone machines where software applications of the assessee are installed, which are dedicated to business of money transfer cannot be treated as fixed place P.E. of the assessee.

7. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that all the issues are covered by the earlier Orders of the Tribunal including Ground No. 3 and 5 which have already been adjudicated. He has also submitted that in A.Y. 2011-2012, Revenue preferred appeal before ITAT G-Bench in ITA.No.4532/Del./ 2015 which have been dismissed by the Tribunal vide Order dated 28.09.2018. Copy of the Order is also placed on record.

8. After considering the rival submissions, we are of the view that the entire issues are covered by earlier Orders of the Tribunal in which it was held that (a) there was business connection and hence the assessee was liable to tax under section 9(1)(b) but since there were no P.E. in India under Rule-5 of DTAA between India and USA, no profits could be attributable to the Indian operations of the assessee and taxed in India. The appeal of assessee was allowed in A.Y. 2001-2002 by ITAT Delhi Bench reported in 104 ITD 34. The issue is, therefore, covered by the Orders of

ITAT in the case of the assessee in earlier years as referred to above. There is no infirmity in the Order of the Ld. CIT(A) in following the Orders of the Tribunal for the purpose of deleting the addition. We, accordingly, dismiss the Departmental Appeal.

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

Order pronounced in the open Court.

Sd/- (O.P.KANT) ACCOUNTANT MEMBER	Sd/- (BHAVNESH SAINI) JUDICIAL MEMBER

Delhi, Dated 02nd January, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'D' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi