

**In the Income-Tax Appellate Tribunal,
Delhi Bench 'F', New Delhi**

**Before : Shri H.S. Sidhu, Judicial Member And
Shri L.P. Sahu, Accountant Member**

**ITA No. 1805/Del/2016
Assessment Year: 2012-13**

Sauber Motorsport AG, C/o PDS Legal Atmaram Mansion Office No. 7, First Floor, KG. Marg, New Delhi. PAN-AAQCS 4299G (Appellant)	vs.	DCIT (Intl. Taxation) Noida. (Respondent)
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Appellant by	Sh. Ajit Korde, Advocate
Respondent by	Sh. G.K. Dhall, CIT/DR

Date of Hearing	31.01.2019
Date of Pronouncement	04.02.2019

ORDER

Per L.P. Sahu, A.M.:

This is an appeal filed by the assessee against the assessment order dated 29.01.2016 passed u/s 144C/143(3)/144C(5) read with directions of Dispute Resolution Penal dated 23.12.2015 for the assessment year 2012-13 on the following grounds :

On the facts and circumstances of the case and in law, the Learned AO, based on the directions of the Hon'ble DRP, has:

- 1. The Learned AO/ Hon'ble DRP erred in determining the total taxable income of the Appellant for AY 2012-13 at Rs 1,81,99,800 instead*

of the Nil income offered by the Appellant for the subject AY under normal provisions of the Act in its income-tax return.

2. The Hon'ble DRP erred in noting that adequate opportunity was given to show-cause why provisions of Article 17 of the India-Switzerland Tax Treaty ('DTAA') should not apply to the income of the Appellant.

3. The Learned AO/ Hon'ble DRP erred in holding that the receipts of the Appellant are in the nature of receipts derived from personal activities of the athletes exercised in India and hence, taxable in India under Article 17 of the DTAA without giving opportunity to the Appellant to show-cause why Article 17 of the DTAA should not apply.

4. The Learned AO/ Hon'ble DRP erred in holding that the sponsorship revenues from Draft FCB Ulka Advertising Private Limited are in the nature of income derived from personal activities of the drivers exercised in India and hence, taxable in India under Article 17(2) of 1 the DTAA without giving opportunity to the Appellant to show-cause why Article 17 of the DTAA should not apply.

5. The Learned AO/ Hon'ble DRP erred in seeking information regarding receipts from any source and sponsorship revenue earned in context of Grand Prix of India without appreciating the Appellant's submissions that no receipts have been earned by the Appellant in connection with the Grand Prix of India and hence, such details are not relevant.

6. The Learned AO/ Hon'ble DRP erred in taxing payments to Kamui Kobayashi and Sergio Perez, on which taxes had been deducted and deposited into the Indian Government treasury, as taxable under Article 17 of the DTAA, thereby leading to double taxation.

7. The Learned AO/ Hon'ble DRP erred in not allowing payments made to Kamui Kobayashi and Sergio Perez as a deductible expense inspite of the fact that applicable tax has been duly deducted and deposited into the Indian Government treasury.

8. *The Learned AO/ Hon'ble DRP erred in not granting the corresponding credit for tax deducted at source amounting to Rs 13,80,000 as per the provisions of Section 199 of the Act.*

9. *The Learned AO/ Hon'ble DRP erred in levying interest under Section 234A, 234B and 234C of the Act.*

10. *The Learned A.O./Hon'ble DRP erred in levying interest under section 234D of the Act.*

11. *The Learned Assessing Officer/Hon'ble DRP erred in initiating penalty proceedings under section 271(1)(c) of the Act."*

2. We have heard the submissions of both the sides and have gone through the entire material available on record. During the course of hearing, the ld. counsel for the assessee submitted at the outset that the ld. authorities below while deciding the issues, as involved in the aforesaid grounds of appeal did not give adequate opportunity of being heard to show cause as to why the provisions of Article No. 17 of the DTAA should not apply with respect to receipts from activities of the athletes, sponsorship Receipts from FCB Ulka Advertising Pvt. Ltd. etc. It was also submitted that no receipts were earned by appellant in connection with the Grand Prix of India and that the tax liability has wrongly been fastened on the payments made to athletes after deducting TDS and its deposit in the Govt. Treasury. It is submitted since no adequate opportunity was granted by the Assessing Officer to explain the applicability of Article 17 of the DTAA, the matter may be restored to the file of Assessing Officer for deciding the issues involved in this appeal de novo after affording reasonable opportunity of being. The ld. DR, on being asked, has no objection on the request of the ld. AR of the assessee for remitting the matter back to

Assessing Officer. We accordingly think it appropriate in the interest of justice to remit the matter back to the file of Assessing Officer for deciding all the issues de novo after giving reasonable opportunity of being heard to the assessee.

3. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the open court on 04.02.2019.

Sd/-

(H.S. Sidhu)
Judicial member

Sd/-

(L.P. Sahu)
Accountant Member

Dated: 04.02.2019

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Copy of order forwarded to:

(1) *The appellant*

(3) *Commissioner*

(5) *Departmental Representative*

(2) *The respondent*

(4) *CIT(A)*

(6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*