

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No.203/Del/2016
Asstt. Year: 2011-12

DCIT Circle-3(1)(2) New Delhi.	Vs.	M/s. Starwood Hotels & Resorts Worldwide Inc. C/o M/s. Nangia & Co., CAs Suite-4A, Plaza M-6 Jasola, New Delhi – 110 025.
(Appellant)		(Respondent)

Department by:	Shri G. Johnson Sr. DR
Assessee by :	Shri Amit Arora, CA Shri Vishal Mishra, CA
Date of Hearing	05/12/2018
Date of pronouncement	18/12/2018

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal filed by the revenue against impugned order dated 12.10.2015 passed by Ld. CIT(Appeals) 43 New Delhi for the quantum of assessment passed u/s 144C (3)/143(3) for the assessment year 2011-12. Revenue has raised following ground :-

1. *“Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the Centralized services fee*

received by the appellant for rendering various marketing, advertisement & other services to customers in India, were not tax able as “Fees for Technical Services” (‘FTS’), in terms of Section 9 of the Income Tax Act, 1961 as well as Article 12 of the India-US Double Taxation Avoidance Agreement (‘DTAA’).”

2. At the outset Ld. Counsel informed that this issue stands covered by the decision of the Tribunal in assessee’s own case for the assessment year 2010-11 vide order dated 28.9.2017 passed in ITA No. 202/Del/2016 which has also been confirmed by the Hon’ble High Court vide judgment dated 18.4.2018 passed in ITA No. 467/2018. On the other hand Ld. DR strongly relied upon the order of the AO.

3. The facts in brief as culled out from the impugned orders are that the appellant company is incorporated in USA and carries on the business of providing various centralized services to the hotels in several countries across the world. During the year under consideration, the appellant had provided worldwide marketing and advertising services of the hotels through Starwood's worldwide system of sales, advertising, promotion, public relations and reservations, in the usual course of its business to some hotels owned/ managed by the Indian companies, all such services are provided from outside India. In terms of the understanding, the Assessee Company has agreed to provide the following services to various hotels operating in India. The range of the aforesaid services have been broadly classified as under

S. No.	Assistance in relation to
1.	Sales & Marketing
2.	Loyalty Programs
3.	Reservations Service
4.	Technological Services
5.	Operational Services

The nature of services rendered by the Assessee Company is as under:

A. Sales & Marketing

Under this category of services, Starwood will undertake marketing of hotel outside India.

B. Loyalty Programs

Various Loyalty Programs viz. Starwood Preferred Planner ("SPP"), Star Choice, Team Hot, Starwood Preferred Guest ("SPG") and Airline Programs are undertaken by Sheraton to generate business. Hotels are required to pay certain amount of fee for enjoying this program.

C. Reservation Services

Under this category, the Assessee Company will provide reservation services interalia offering, booking, modifying and communicating Guest Rooms and Meeting Space reservations for the Hotel. These services are rendered using the internet / telephone.

D. Technological Services

These services include Network Support Services ("NSS") and Starwood Portal Services ("SPS"). NSS manages and maintains Global Infrastructure (Wide Area Network) and emails to provide connectivity of hotel to Technology Centre. NSS supports day to day operations of

WAN, email and remote access. SPS is the portal which acts as a tool for knowledge sharing and access to business content.

E. Operations Services

It includes Guest Satisfaction Index Administration (GSI), which offers guests various ways to provide key information on their stay experience, including in-room video, Internet and paper. It is intended to maximize the independent collection of data. It also includes Customer Services and Service Complaint Resolution.

F. Human Resources /Training Courses

Training courses are directed at various levels of hotel personnel to assist in Employee Development and to enhance guest satisfaction.

4. According to the assessee, these services were provided outside India and the income received as in the form of marketing fees and fees for Frequent Flier Program and Starwood Preferred Guest. Further, it does not have a PE in India which fact has not been disputed in many of the years. The AO held that receipt earned by the assessee for sums aggregating to Rs. 5,49,73,932/- is in the nature of Fees for Technical Services (FTS). In this regard assessee's submission was that, since as per India US DTAA, for taxing FIS there has to be make available of technical knowledge, experience, skill, know-how and processes which here in this case has not been made available. It was further brought to the notice of the AO that exactly similar issue on taxable had come up before the Tribunal in the case of group concern. Sheraton International Inc. 107 ITD 120 (Delhi). However the AO held that the aforesaid judgment of the Hon'ble Delhi High Court has not been accepted and SLP has been filed. The extract of the judgment of Hon'ble High Court has also been incorporated. Thereafter, he examined the taxability of the receipts in 9(1)(vii) of

Income Tax Act as well as Article 12 of DTAA held that in both the provisions the said amount is taxable as FTS. For coming to the conclusion he has given the detailed finding. Ld. CIT(A) noted that similar issue stands covered in the case of group concern M/s. Sheraton International Inc. for the assessment years 1997-2001 and also incorporated the relevant finding of the order which has now been confirmed by the Hon'ble Delhi High Court also. Following the same he held that said receipt cannot be brought to tax in India as its receipt.

5. We find that, this Tribunal not only in the earlier years in the case of group concern, but also in assessee's own case for the assessment year 2010-11 has decided this issue following the judgment of Hon'ble Delhi High Court in the case of DIT vs Sheraton International Inc. . Thus respectfully following, the judgment of the Tribunal which has been affirmed by the Hon'ble Delhi High Court also, holding that the, issue in question, is covered by the ruling of this court in the case of DIT vs. Sheraton International Inc.. Thus, respectfully following the binding judicial precedents in the earlier year, we hold that the payment received by the assessee from the aforesaid services is not taxable in India as FTS, either in terms of section 9 of the Income Tax Act, 1961 or under Article 12 of the India US DTAA. Accordingly, the appeal of the revenue is dismissed.

6. In the result appeal of the revenue is dismissed.

Order pronounced in the Open Court on 18th December, 2018.

sd/-

sd/-

(L.P. SAHU)
ACCOUNTANT MEMBER

(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 18/12/2018

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi