

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: "F", NEW DELHI**

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA No.3929/Del/2016  
Assessment Year: 2013-14

M/s. Rolls Royce Industrial Power (I) Ltd., K-39, Connaught Place, New Delhi	<b>Vs.</b>	DCIT (International Taxation), Circle-3(1)(1), New Delhi
<b>PAN :AAACR7629B</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri R.K. Kapoor, Adv.
Respondent by	Shri G.K. Dhall, CIT(DR)

Date of hearing	07.03.2019
Date of pronouncement	29.03.2019

**ORDER**

**PER O.P. KANT, A.M.:**

This appeal by the assessee is directed against the final assessment order dated 21.04.2016 passed by Ld. Dy. Commissioner of Income Tax, Circle-3(1)(1), International Taxation, New Delhi (in short 'the Assessing Officer') for assessment year 2013-14, pursuant to the direction dated 02.03.2016 of the Ld. Dispute Resolution Panel-2, New Delhi (in short 'DRP'). The grounds raised by the assessee are reproduced as under:

- 1) *That the order passed u/s 143(3) read with section 144C of the Income-tax Act, is bad in law.*

- 2) *That the Hon'ble DRP and consequently the AO have erred in law and on the facts of the appellant's case in treating the interest on income tax refund of Rs. 43,37,380/- as associated with the business activity of PE in India and taxing the same @ 42.23% especially when there were no PE activities in India during the year and refund arose out of taxes paid against past completed assessments.*
- 3) *Without prejudice to the Ground 2 above, the Hon'ble DRP and consequently the AO have erred in law in ignoring the provision of Sec 90(2) of Income Tax Act read with Article 12(2) of the DTAA between India-UK which tax the gross amount of interest arising in India @15%.*
- 4) *That the Hon'ble DRP and consequently the AO have erred in law in applying the provision of Article 12(6) of DTAA between India and UK and alleging that the tax refundable is clearly linked with PE in India.*
- 5) *Without prejudice to above grounds, the Ld. AO as well as DRP has erred in law in ignoring the provisions of Sec 115A of the Act which is a special section taxability of non-resident companies for interest income.*
- 6) *That the Ld. AO has erred in law and on the facts in not giving the credit for prepaid taxes of Rs. 18,31,675/-.*
- 7) *That the LD. AO has erred in law in computing the interest u/s 234B and 234C on the alleged tax payable.*
- 8) *That the Ld. AO has erred in law in initiating penalty proceedings u/s 271 for alleged concealment of income.*
- 9) *That each ground is independent of and without prejudice to the other grounds raised herein.*
- 10) *The appellant craves leave to add, amend, alter, change vary or substitute any of the aforesaid grounds or raise an additional ground if it becomes necessary to do so in the interest of justice.*

**2.** Briefly stated facts of the case are that the assessee is a company incorporated under the laws of United Kingdom and is one of the group companies of "Rolls Royce Group". The assessee company was engaged in the activities of procurement, erection, commissioning, supervision, installation, and operations of power

projects and maintenance of huge power plants and other projects along with supply of engine auxiliaries and pumps for pipelines and other projects in India. The assessee operated its activities through various project offices in India which constitute its Permanent Establishment (PE) in India under Article 5 of the DTAA between India and United Kingdom; however, during the relevant period all the projects of the assessee have been closed. No revenue has arisen from any of its Projects. During the year under consideration, the assessee earned interest of Rs.43,37,377/- on income tax refund, interest Rs.11,89,363/- from UK bank account and gain of Rs.6,96,332/- on foreign exchange fluctuation. The assessee filed return of income electronically, declaring nil income. However, the assessee has declared interest income on income tax refund of Rs.43,37,377/-, taxable at a special rate of 15%. The case was selected for scrutiny and notice under Section 143(2) of the Act (in short 'the Act') was issued and complied with. In the draft of assessment order passed on 16.11.2015, the Assessing Officer proposed to tax the interest on income tax refund received from Govt. of India @ 42.23%. According to the Assessing Officer, the interest income of the assessee was connected with the PE situated in India. The assessee challenged the draft assessment order before the learned DRP, however, could not succeed. Aggrieved, the assessee is in appeal before the Tribunal.

**3.** At the outset, the learned counsel for the assessee submitted that an identical issue in dispute that, whether the interest received on income-tax refund is liable to be taxed @ 15% as per the provisions of Article 12(2) of the DTAA between India and UK or same is to be taxed @40.23% by treating it to be

business income associated with the activities of the PE in India, has been adjudicated by the Tribunal in assessment year 2006-07 and matter was restored to the Assessing Officer. Learned counsel submitted that the Assessing Officer in remand proceeding accepted the submissions of the assessee and taxed the interest income on income tax refund @ 15% of gross receipts. He further submitted that the Tribunal in the case of assessee for assessment year 2012-13 has directed the Assessing Officer to tax the interest on income tax refund @ 15% on gross basis. In view of the above, the learned counsel submitted that as the issue in disputed is covered in favour of the assessee, the appeal of the assessee might be allowed.

**4.** On the contrary, the learned DR could not controvert this fact that identical issue has been decided in favour of the assessee by the Tribunal in assessment year 2012-13.

**5.** We have heard the rival submissions and perused the relevant material on record, including the orders of the Tribunal in the case of the assessee itself. We find that the Tribunal in ITA No. 801/Del/2014 (AY: 2006-07) in the case of the assessee itself vide order dated 11.08.2016, restored this issue to the file of the Assessing Officer observing as under:

*“37. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, nothing is clear from the orders of the authorities below that what were the clauses in the DTAA between India and UK. The claim of the assessee that the said income was not connected to execution of any profit conducted during the year and was not connected to the PE of the assessee, however, in the absence of the clear facts on record, it is difficult to take a just decision. Therefore, we deem it appropriate to remand this issue back to the file of the AO to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee. The AO while deciding this issue shall also consider the judgments cited by Id. Counsel for the assessee and the*

*Id. CIT DR. Accordingly, this issue is remanded back to the file of the AO.”*

**6.** In remand proceeding, the Assessing Officer has given effect to the direction of the Tribunal and has accepted the contention of the assessee, that such interest is taxable under Article 12(2) of the DTAA between India and UK @ 15%. The relevant part of the order dated 13.09.2018 of the Assessing Officer passed under Section 254/144C/143(3) of the Act is reproduced as under:

*“7.7 The issue of taxability of interest income earned on Income Tax refund is examined in the light of directions of Hon’ble ITAT and the details filed by the AR of the assessee. Ld. Counsel of the assessee has placed the reliance on the decisions of Hon’ble Uttarakhand High Court in the case of BJ Services Company Middle East Ltd. vs ACIT, R-1, Dehradun reported at 2015- TII-55-HC-UKHAND- INTL. The facts of the above referred case are entirely different from the assessee’s case. The same was on the issue of re-opening of assessment. Hence, the same is not applicable in this case. Further, the reliance placed by Ld. CIT(DR) on the decision of Hon’ble ITAT, Delhi Bench B(Special Bench) in case of ACIT, Range-1, Dehradun vs Clough Engineering Ltd. reported at 130 ITD 137. The facts of the decision on which Ld. CIT(DR) has relied are applicable in the case of assessee where it has been held that the interest of Income Tax refund cannot be treated as effectively connected with PE of the assessee and has to be taxed as per beneficial provisions of the treaty between the two countries. Keeping in view the facts of the case mentioned above the interest of Rs. 1,05,54,212/- earned on Income Tax refund is being taxed as income from other sources as per Article 12(2) of DTAA between India and UK taxable @ 15% on gross basis. It is pertinent to mention here that Ld. Counsel for the Assessee has also submitted the above proposal before Hon’ble ITAT. This Interest income, which is being taxed at special rate, cannot be adjusted against brought forward unabsorbed depreciation or brought forward business losses. Hence, the same is being taxed separately.”*

**7.** Further, subsequent to the order of the Assessing Officer in assessment year 2006-07, this issue again came up before the Tribunal in the case of assessee for assessment year 2012-13. The Tribunal in ITA No. 6100 & 6069/Del/2015 (AY : 2012-13)

directed the Assessing Officer to tax the interest on income tax refund @ 15% on gross basis, observing as under:

*“10. In view of the decisions in the case of Clough Engineering Ltd. (supra) and the stand taken by the revenue in assessee’s own case for earlier years, we are of the considered opinion that the interest earned on income-tax refund has to be taxed as income from other sources as per Article 12(2) of the DTAA between Indian and UK at 15% on gross basis. With this view of the matter, we uphold the contention of the assessee and direct the learned AO to levy the tax on the interest of income-tax refund at 15% on gross basis.”*

**8.** As the issue involved in the present appeal is identical to the issue involved in assessment year 2012-13, respectfully following the decision of the Tribunal (supra), we direct the Assessing Officer to accept the contention of the assessee, taxing of the interest on income tax refund @ 15% on gross basis. Accordingly, the grounds of appeal of the assessee are allowed.

**9.** In the result, the appeal of the assessee is allowed.

***Order pronounced in the open court on 29<sup>th</sup> March, 2019.***

**Sd/-  
[BHAVNESH SAINI]  
JUDICIAL MEMBER**

**Sd/-  
[O.P. KANT]  
ACCOUNTANT MEMBER**

Dated: 29<sup>th</sup> March, 2019.

RK/-[d.t.d.s]

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi