

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.2525/PUN/2017

निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Sandvik IT Services AB,
C/o. Sandvik Asia Private Limited.
Mumbai – Pune Road, Dapodi,
Pune-411 012.
PAN : AADCA5375J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
(International Taxation), Circle-2,
Pune.

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 171/PUN/2019

निर्धारण वर्ष / Assessment Year : 2015-16

Sandvik IT Services AB,
C/o. Sandvik Asia Private Limited,
Mumbai – Pune Road, Dapodi,
Pune-411 012.
PAN : AADCA5375J

.....अपीलार्थी / Appellant

बनाम / V/s.

The Assistant Commissioner of Income Tax,
(International Taxation), Circle-1,
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Nikhil Pathak

Revenue by : Shri M.K. Goutam, CIT

सुनवाई की तारीख / Date of Hearing : 28.08.2019

घोषणा की तारीख / Date of Pronouncement : 28.08.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

These two appeals preferred by the assessee emanates from the directions of Ld.Dispute Resolution Panel (DRP) dated 30.05.2017 and 25.09.2018 for the assessment years 2014-15 & 2015-16 respectively as per the grounds of appeal on record.

2. These cases were heard together. Since issues common, facts are similar, these cases are being disposed of vide this consolidated order. For the sake of convenience, we would first take up ITA No.2525/PUN/2017 for assessment year 2014-15 as lead case.

ITA No.2525/PUN/2017
A.Y.2014-15

3. At the very outset, the Ld. AR of the assessee submitted that the only dispute is with regard to the taxing of the receipt towards IT support services provided by the assessee to its Indian affiliates as Fees for Technical Services (FTS) within the meaning of Article 12 of the India-Sweden Double Taxation Avoidance Agreement ('DTAA' or 'the treaty') read with protocol thereto.

4. The facts on record demonstrates that the assessee has submitted that it has provided IT services related to Operations, Telephony, Communication, Service Desk, Enterprise Computing, Dynamic Work Place and also Software

Development Services to its Indian affiliates, WTIPL and DTIPL, pursuant to the agreements entered by the Company. The assessee has placed on record the agreement entered with WTIPL and also has submitted copies of invoices raised on WTIPL. In respect of DTIPL, the assessee has not submitted copy of the relevant agreement for the said IT services. However, copies of the invoices raised on Pramet Tools India Pvt. Ltd. (now DTIPL) have been submitted on record. The Assessing Officer accepted the submissions of the assessee to the extent that the receipts from rendering of IT Support services to SAPL cannot be considered as 'royalty' or 'FTS' and hence, the receipts are not taxable in India. However, the Assessing Officer ignoring the agreements and invoices submitted by the assessee in relation to WTIPL and DTIPL has proposed to make addition of IT support fees received from them. In this regard, the assessee submitted that the services provided to SAPL are similar to those provided to WTIPL and DTIPL which can be observed from the agreements and invoices produced by the assessee. Accordingly, it was claimed by the assessee that the Assessing Officer has erred in making addition of IT support Fees received from WTIPL and DTIPL. The assessee submitted that the Assessing Officer disallowed the receipts from WTIPL and DTIPL placing reliance the DRP's directions for assessment year 2013-14.

5. The Ld. DRP observed that the assessee has claimed to have received on account of IT Support Services rendered an amount of Rs.1,01,11,734/- from WTIPL and an amount of Rs.24,30,201/- from DTIPL. The assessee has submitted some agreement in the case of WTIPL and also the relevant invoices. However, in the case of DTIPL though the relevant invoices have been submitted, the agreement has not been submitted. Thereafter, the Ld. DRP goes to analyze Article 12 of the India-Sweden DTAA or treaty regarding

taxability of Fees for Technical Services. That with regard to services rendered by WTIPL, since no agreement was furnished by the assessee, the Ld. DRP has taken adverse view confirming the action of Assessing Officer in taxing the payments of Rs.1,01,11,734/- received by the assessee from WTIPL as 'FTS' as per the DTAA between India and Sweden read with protocol thereto. Similarly as regards the payment received by the assessee from DTIPL of Rs.24,30,201/-, in absence of the relevant agreement, the Ld. DRP was unable to decide on the nature of services rendered by the assessee. In absence of these relevant agreements, even in this case also, the Ld. DRP had upheld the action of the Assessing Officer in taxing payment of Rs.24,30,201/- received by the assessee from DTIPL as 'FTS' as per the DTAA between India and Sweden read with protocol thereto.

6. Facts further demonstrate that the Assessing Officer disallowed the receipts from WTIPL and DTIPL placing reliance the DRP's directions for assessment year 2013-14 which is evident from Page 15, Para 8 of the draft assessment order dated 21.12.2016.

7. In view of the above background facts, it was submitted by the Ld. AR of the assessee that for assessment year 2013-14, the Co-ordinate Bench of the Tribunal, Pune in assessee's own case in ITA No.189/PUN/2017 decided on 03.05.2019 on the same set of facts and circumstances has observed and held as follows:

" 9. We have heard the rival contentions and perused the record. The assessee admittedly, was providing IT support services to the entities in India. In respect of first entity, to which major services have been provided by assessee the transaction has been accepted not to be in the nature of royalty or FTS and also not taxable as business receipts under Article 7 of DTAA between India and Sweden. There is no appeal by the Revenue against the findings of DRP in this regard and the final

assessment order passed by the Assessing Officer, following the directions of DRP. In respect of other two concerns i.e. Walter Tools India Pvt. Ltd. and Dormer Tools India Pvt. Ltd., objection of DRP in not accepting the plea of assessee was in the absence of invoices being filed by assessee, the learned Authorized Representative for the assessee has strongly stressed that the nature of services are identical as is clear first from the perusal of invoices which are being filed and also from the fact that the Assessing Officer had acknowledged them to be IT support services along with receipts from Sandvik Asia Pvt. Ltd. The assessee before us has furnished additional evidence in this regard and perusal of aforesaid additional evidence reflects the assessee to have filed invoices which are raised against dues from Walter Tools India Pvt. Ltd. and Dormer Tools India Pvt. Ltd. The assessee has also filed invoices raised on Sandvik Asia Pvt. Ltd. and has drawn our attention to the nature of services being provided to all the concerns which are same. Since the invoices were not before the lower authorities, we are of the view that it would be appropriate for the Assessing Officer to verify the claim of assessee. In case the nature of services provided by assessee to Sandvik Asia Pvt. Ltd. on one hand and to Walter Tools India Pvt. Ltd. and Dormer Tools India Pvt. Ltd., on the other hand, are of same nature, then the said receipts from Walter Tools India Pvt. Ltd. and Dormer Tools India Pvt. Ltd. are not to be taxed as royalty / FTS in the hands of assessee and / or business receipts in the hands of assessee, which is non-resident entity, since the said entity do not have PE in India. For this limited purpose, the matter is set aside to the file of Assessing Officer, who shall afford reasonable opportunity of hearing to the assessee in this regard. The grounds of appeal raised by assessee are thus, allowed for statistical purposes.”

8. The Ld. DR fairly conceded that the issue is covered by the decision of the Co-ordinate Bench of the Tribunal, Pune for assessment year 2013-14 (supra.).

9. We have perused the case records and heard the rival contentions. We have also considered the judicial pronouncement placed before us. Both the parties have agreed that the facts and circumstances of the case for assessment year 2013-14 and 2014-15 are similar. Further, we also observe that as admitted by the assessee and as demonstrated on record, various agreements and invoices have not been produced on record which resulted in effective non adjudication of the matter by the Sub-ordinate Authorities. The Assessing Officer has relied on the directions of the Ld. DRP for assessment year 2013-14 whereas the Ld. DRP in its order has analyzed the lack of

evidences on record and therefore, were left with no option but to uphold the findings of the Assessing Officer.

We also observe that in the assessment year 2013-14, the Co-ordinate Bench of the Tribunal on the same set of facts, has remitted this matter back to the file of Assessing Officer for proper adjudication after considering the relevant agreements and invoices to be placed on record by the assessee. That following the same order, we set aside the order of the Ld. DRP and restore the matter back to the file of the Assessing Officer for adjudication as per similar directions as mentioned in our order for assessment year 2013-14 while complying with the principles of natural justice.

10. In the result, **appeal of the assessee in ITA No.2525/PUN/2017 for the assessment year 2014-15 is allowed for statistical purposes.**

ITA No.171/PUN/2019
A.Y.2015-16

11. Both the parties herein have agreed that the facts and issues raised in ITA No.171/PUN/2019 are identical to ITA No.2525/PUN/2017, therefore, our decision rendered in ITA No.2525/PUN/2017 would **apply mutatis-mutandis** to ITA No.171/PUN/2019. Hence, in this case also, we set aside the order of the Ld. DRP and restore the matter back to the file of Assessing Officer for adjudication as per similar directions as mentioned in our order for assessment year 2013-14 while complying with the principles of natural justice.

12. In the result, **appeal of the assessee in ITA No.171/PUN/2019 for assessment year 2015-16 is allowed for statistical purposes.**

13. In the combined result, both the appeals of the assessee for assessment years 2014-15 and 2015-16 are allowed for statistical purposes.

Order pronounced on 28th day of August, 2019.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th August, 2019.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-13, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	28.08.2019	Sr.PS/PS
2	Draft placed before author	28.08.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		