



IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.3915/Mum./2018
(Assessment Year : 2010-11)

Dy. Commissioner of Income Tax (I.T)
Circle-2(1)(2), Mumbai

..... Appellant

v/s

DNV GL SE-India Branch
6th Floor, Equinox Business Park
Tower-II, LBS Marg, Kurla (W)
Mumbai 400 070 PAN - AAACG7903R

..... Respondent

Assessee by : Shri Avaneesh Tiwari
Revenue by : Shri Kunal Shah

Date of Hearing - 26.09.2019

Date of Order - 25.10.2019

ORDER

PER SAKTIJIT DEY. J.M.

Captioned appeal by the Revenue is against the order dated 23rd March 2018, passed by the learned Commissioner of Income Tax (Appeals)-56, Mumbai, for the assessment year 2010-11.

2. Grounds no.1 to 3, are against deletion of addition made by the Assessing Officer on account of share of the Branch in the fees received by the Head Office. Whereas, in grounds no.4 to 7, the Revenue has challenged the deletion of addition made on account of

transfer pricing adjustment in respect of similar transaction i.e., the Indian Branch share in the fees received by the Associated Enterprise (AE).

3. Brief facts are, the assessee is a foreign company and is a tax resident of Germany. It is also governed by the India–Germany Double Taxation Avoidance Agreement (DTAA). As could be seen from the facts on record, the assessee is basically engaged in the activity of providing inspection and certification service for ships and maritime installation. For its business activities, the assessee had opened Branches in India at Mumbai and Kolkata. The Indian Branches are mainly engaged in the activities of inspection and certification of ships, certification of marine related materials and components, certification relating to International Safety Management Co. For the assessment year under consideration, the assessee filed its return of income on 30th November 2011, declaring loss of ₹ 21,19,554. During the assessment proceedings, the Assessing Officer issued a show cause notice to the assessee calling upon it to explain as to why fees retained by the Head Office should not be taxed in India, as was held by him in the earlier assessment years. In its reply, the assessee stated that the services performed by the Head Office and the Indian Branches are clearly distinguishable and independent of each and other. Therefore, the fees / income retained by the Head Office being

for certification rendered by it outside India is not attributable to Indian Branches, hence, not chargeable to tax in India. Further, it was submitted by the assessee that as per Article-7 of the India-Germany Tax Treaty, business profit of the Head Office will be taxed in India only to the extent they are attributable to Permanent Establishment (PE) in India. Therefore, the income received by the Head Office from the services rendered outside India being not attributable to PE in India is not taxable. In this context, the assessee relied upon the decision of the Tribunal in its own case. The Assessing Officer, however, did not accept the explanation of the assessee and proceeded to work out the share of the Indian Branches in the income / fee received by the Head Office and brought to tax. In addition, the international transaction between the assessee and the AE was referred to the Transfer Pricing Officer to determine the arm's length price and as per the order passed by the Transfer Pricing Officer, an amount of ₹ 1,13,98,722, was added towards transfer pricing adjustment. Being aggrieved with the aforesaid additions, the assessee preferred appeal before the first appellate authority.

4. After considering the submissions of the assessee and examining the material on record, learned Commissioner (Appeals) found that identical issue was decided in favour of the assessee in the preceding assessment years. Following the same, he decided the issue in favour

of the assessee. Thus, he deleted the addition made on account of attribution of Head Office income / fee to the Indian Branches. As regards the transfer pricing adjustment, learned Commissioner (Appeals) following his earlier order held that the Transfer Pricing Officer has not followed any of the specified methods for determining the arm's length price. Accordingly, he deleted the transfer pricing adjustment as well.

5. At the outset, the learned Counsel for the assessee submitted, the issue has been decided in favour of the assessee in its own case in assessment years 2007-08 and 2011-12. In this context, he specifically drew our attention to the Para-9 and 11 of the order in ITA no.3139/Mum./2018, dated 29th May 2019.

6. The learned Departmental Representative though fairly submitted that the issues are covered by the earlier decisions of the Tribunal, however, he relied upon the observations of the Assessing Officer and the Transfer Pricing Officer.

7. Having considered the submissions of the parties, we find that while deciding identical issue relating to attribution of income / profit earned by the Head Office to the Indian Branches in the assessment year 2007-08, the Tribunal in ITA no.8975/Mum./2010, dated 5th June 2013, held that the income earned by the Head Office outside India

cannot be taxed in India unless they are attributable to the Indian Branches. After verifying the facts on record, the Tribunal recorded a factual finding that the income / revenue of the Head Office is not attributable to the Indian Branches, hence, as per Article-7 of the India-Germany Tax Treaty, it is not taxable in India. The same view was reiterated by the Tribunal while deciding Revenue's appeal in assessment year 2011-12, vide ITA no.3139/Mum./2018, dated 29th May 2019. Further, in the aforesaid order, the Tribunal had also dealt with the identical issue of transfer pricing adjustment by upholding the decision of the learned Commissioner (Appeals) in deleting the addition. On a careful examination of the facts involved in the impugned assessment year as well as assessment years 2007-08 and 2011-12, wherein, identical issues were decided earlier by the Tribunal, we find no difference. Therefore, respectfully following the decisions of the Co-ordinate Bench in assessee's own case, as referred to above, we uphold the decision of learned Commissioner (Appeals) on the disputed issue. Grounds raised are dismissed.

8. In the result, appeal is dismissed.

Order pronounced in the open Court on 25.10.2019

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 25.10.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai