



ITA No.7111/Mum/2017
Buro Happold Ltd.
Assessment Year-2014-15

आयकर अपीलीय अधिकरण “आई” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“I” BENCH, MUMBAI

श्री शक्तिजीत दे, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखक सदस्य के समक्ष।
BEFORE SHRI SAKTIJIT DEY, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.7111/Mum/2017
(निर्धारण वर्ष / Assessment Year:2014-15)

M/s. Buro Happold Ltd. C/o., Sudit K. Parekh & Co. 6 th Floor, Urmi Axis Building Famous Studio Lane Dr. E. Moses Road, Mahalaxmi Mumbai-400 011.	बनाम/ Vs.	DCIT (I.T.)-1(3)(2) Room No.119, 1 st Floor Scindia House, Ballard Pier Mumbai-400 038.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. AABCB-9239-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकी ओरसे/ Appellant by	:	Shri Vijay Mehta-Ld. AR
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri O.P. Meena-Ld. DR
सुनवाईकी तारीख/ Date of Hearing	:	03/10/2019
घोषणाकी तारीख / Date of Pronouncement	:	13/11/2019

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member):-

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2014-15 contest the final assessment order dated 23/10/2017 passed by Ld. Dy. Commissioner of Income Tax (International Taxation) -



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1(3)(2), Mumbai [AO] u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 pursuant to the directions of Ld. Dispute Resolution Panel-1(WZ), Mumbai, [in short referred to as DRP] u/s 144C(5) dated 22/09/2017. Although the assessee has raised as many as 3 grounds of appeal along with Form No. 36B, however, Ld. AR submitted that the assessee would not be pressing Ground No. 2 whereas Ground No.3 which is related with computation of interest u/s 234B would be consequential in nature and therefore, the same would not require any adjudication. At the same time, it has been submitted that the assessee has filed an additional ground of appeal on 14/06/2019 which is related with taxability of consulting and engineering fees as per Article 13 of India-UK DTAA. The said ground was stated to be inadvertently omitted to be raised before Ld. DRP and therefore, it was pleaded that the same may be admitted and restored back to lower authorities for adjudication keeping in view the ratio of judgment of Hon'ble Supreme Court rendered in **National Thermal Power Corp. Ltd. V/s CIT (229 ITR 383) and Jute Corporation of India Ltd. (187 ITR 688)**. Our attention has also been drawn to the fact that the said issue is covered in assessee's favor by the order of this Tribunal for AY 2012-13 in assessee's own case vide ITA No. 1296/Mum/2017 order dated 15/02/2019. The Ld. DR opposed the admission of the same by submitting that the assessee offered the income, in this regard, in its return of income. However, keeping in mind the stated facts and circumstances, the bench acquiesced to admission of additional ground of appeal. Finally, the grounds to be adjudicated would read as under:



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1. Ground No. I - Taxability of amount received as common cost recharge as Royalty and Fees for technical services (FTS)

1.1 On the facts and in the circumstances of the case and in law, the learned DRP ('Dispute Resolution Panel') and DCIT have erred in considering common cost recharge as royalty and Fees for technical services ('FTS') as per Article 13 of India-UK Double Taxation Avoidance Agreement ('DTAA').

1.2 On the facts and in the circumstances of the case and in law, the learned DRP and DCIT have erred in not considering the cost allocation declaration provided by the Appellant and revised cost allocation agreement submitted as additional evidence.

1.3 Without prejudice to ground number 1.1, on the facts and in the circumstances of the case and in law, learned DCIT has erred in considering the entire cost allocation amount of INR 5,16,60,955/- towards income for use of brand name 'Buro Happold' without appreciating the fact that various services were provided by Appellant.

Additional Ground of Appeal

2. On the facts and in the circumstances of the case and in law, learned DRP ought to have held that the consulting and engineering service fee amounting to Rs.1,20,58,336 is not taxable as per the provisions of Article-13 of India-UK Double Tax Avoidance Agreement.

2. With respect to Ground No.1, Ld. AR submitted that the issue is squarely covered in assessee's favor by the decision of Tribunal for AY 2012-13 in assessee's own case vide ITA No. 1296/Mum/2017 order dated 15/02/2019, a copy of which has been placed on record. The Ld. DR could not controvert the same but relied upon the orders of lower authorities.

3.1 Facts on record would reveal that the assessee being non-resident assessee stated to be engaged in providing engineering and consultancy services was assessed for year under consideration vide final assessment order dated 23/10/2017 pursuant to the directions of Ld. DRP, wherein the income of the assessee was determined at Rs.637.19 Lacs as against Nil return filed by the assessee on 30/11/2014. The original return was revised twice wherein the assessee finally declared an income of Rs.120.58 Lacs on account of consulting and engineering services. The assessment was framed on the basis of latest revised return filed by the assessee on



31/03/2016. The assessee is stated to be an entity registered in UK and engaged in the business of providing engineering design and consultancy services with respect to buildings.

3.2 Initially, a draft assessment order was passed on 08/12/2016 as per law, wherein it transpired that the assessee was in receipt of consulting and engineering services of Rs.120.58 Lacs from various entities. The said services were in the form of providing sketch diagrams and concept design criteria / assumptions bound in a report to support the architectural design. This amount was already offered to tax and the same was accepted by the revenue.

3.3 It further transpired that the assessee was in receipt of cost recharge of Rs.516.60 Lacs from its Associated entity in India i.e. Buro India towards various costs incurred. The same was not offered to tax since as per assessee's submissions, these services did not make available any knowledge, skill, process, know-how and experience as per the terms of India-UK DTAA. These costs were stated to be incurred for the benefit of Buro Group as a whole and allocated to various group entities based on certain predetermined cost allocation keys as per the cost allocation agreement. These costs would, *inter-alia*, include costs incurred by the assessee in providing various services viz. IT functions, Business development, finance, Human Resource Management, operations, Project Management function, corporate and commercial services etc. It was submitted that these services would qualify as managerial services and hence not covered by Article 13 of India-UK DTAA. Even, if these services



were considered to be technical or consultancy services, the same would still not be covered since these services do not make available any technical knowledge, experience, skill, know-how or processes to the recipient of service. Therefore, such services would be classified as business income and not taxable in India in the absence of Permanent Establishment (PE) in India as per Article-7 read with Article-5 of India-UK DTAA.

3.4 However, Ld. AO formed an opinion that the income earned by the assessee was taxable in India as per Section-9 of the Act and Article 13 of India-UK DTAA both as royalty as well as fees for technical services. Since, as per the agreement, the assessee was entitled for mark-up of 5%, the said receipts were enhanced to that extent and brought to tax.

3.5 Aggrieved, the assessee raised objections against the proposed addition before Ld. DRP. The Ld. DRP, after considering assessee's submissions, confirmed the stand of Ld. AO by noticing that the services being rendered by the assessee were ancillary and subsidiary to the application or enjoyment of right of the assessee in brand used by the *Buro-India* and the payment was royalty in terms of para 3(a) of Article-13 of the treaty and therefore, its nature was that of *fees for technical services*. Aggrieved, the assessee is under appeal before us.

4. Upon perusal of earlier order of Tribunal in assessee's own case for AY 2012-13, it is evident that two issues were under consideration in the said appeal viz. (i) Taxability of Consulting & Engineering Services; (ii) the taxability of cost recharge which were stated to be ancillary and incidental



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to consulting & engineering services. The co-ordinate bench, in para-20, held that the amount received by the assessee on account of consulting & engineering services were to be treated as business profit and in the absence of assessee's PE in India, it could not be brought to tax. Consequently, the cost recharge which was considered to be ancillary and incidental to consulting & engineering services, was also held to be not taxable in the absence of assessee's PE in India. However, in the year before us, the assessee has already offered the consulting & engineering fees to tax which has been accepted by the revenue. Since we have admitted additional ground of appeal on this point, the issue of taxability of consulting & engineering services would go back to Ld. AO for adjudication. Therefore, logically, the issue of taxability of cost recharge, which has been treated as ancillary and incidental to consulting & engineering services, would also go back to Ld. AO for re-adjudication in the light of stand taken *qua* consulting & engineering services. Therefore, we deem it fit to restore both the grounds to the file of Ld. AO for re-adjudication de-novo after affording reasonable opportunity of hearing to the assessee, who, in turn, is directed to substantiate his claim and demonstrate that the facts in AY 2012-13 and in the year consideration was identical. Needless to add that the adjudication shall be done keeping in view the decision rendered by the Tribunal in AY 2012-13.



ITA No.7111/Mum/2017
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5. The appeal stands allowed for statistical purposes.

Order pronounced in the open court on 13th November, 2019.

**Sd/-
(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-
(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 13/11/2019
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.**