

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D'NEW DLEHI**

**BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**I.T.A.No.5142/Del/2016
Assessment Year: 2013-14**

**DCIT, Circle 3(1)(2),
New Delhi.**

**vs M/s Sheraton Overseas Management
Corporation, C/o M/s Nangia & Co.,
Suite 4A, Plaza M6, Jasola, New Delhi.
PAN : AALCS8306H**

(Appellant)

(Respondent)

Appellant by: Shri Vijay Kumar Kataria, Sr. DR

Respondent by: Shri Amit Arora, CA

Date of hearing: 06/11/2019

Date of order : 18/11/2019

ORDER

PER K. NARSIMHA CHARY, J.M.

Challenging the order dated 26/7/2016 in Appeal No. 46/2016-17 passed by the learned Commissioner of Income Tax (Appeals)-43, New Delhi, Revenue preferred this appeal on the following grounds:-

- (i) Whether on facts and in the circumstances of the case, the Ld. CIT(A) has erred in holding that the centralised services fee received by the appellant from rendering various services such as sales and marketing, loyalty programs, reservation service, technological services, operational services and training programs etc to customers in India, were not taxable as "Fee 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).

- (ii) The appellant the place for you to add, amend, modify or alter any grounds of appeal at the time of our before the hearing of the appeal.

2. Brief facts of the case are that the assessee is a company engaged in the business of providing hotel related services in several countries around the world and in India it has entered into agreements with various Indian hotels for provision of hotel related services which includes the worldwide publicity, marketing and advertising services through its system of sales, advertising, promotion, public relations and reservations. Pursuant to such agreements it has rendered the services. For the assessment year 2013-14 it has filed its return of income on 30/9/2013 declaring nil income and also claiming a refund of Rs. 56,25,320/-.

3. During the course of assessment learned Assessing Officer found that the assessee received a sum of Rs. 5,51,05,219/- from certain hotel owners for rendering centralised services and it treated the same as Fee for Technical Services (FTS) and brought the same to tax. In appeal, Ld. CIT(A) while following the decision of the Hon'ble jurisdictional High Court in assessee's own case, reached a conclusion that the payments received by the assessee where in the nature of business income, and not in the nature of royalty or Fee for Technical Services (FTS) and therefore, in the absence of any Permanent Establishment (PE) of the assessee in India, such receipts cannot be brought to tax. Aggrieved by the said findings of the Ld. CIT(A), Revenue preferred this appeal.

4. At the outset, Ld. AR submitted that the issue involved in this matter is no longer *res Integra* and in the case of assessee reported in *Director of Income Tax vs. Sheraton International Inc (2009) 313 ITR 267 (Delhi)*, the Hon'ble jurisdictional High Court held that the payments for advertising, publicity and the sales promotion services rendered by the assessee, a company incorporated and tax resident in USA to Indian company, was advisement, publicity and sales promotion keeping in mind the mutual interests and in that context, the use of trademark, trade name etc. and other enumerated services referred to in the agreement with the assessee were incidental to main services and, therefore, the payments received were neither in the nature of royalty under section 9(1)(vi) of the Act, explanation 2, nor in the nature of 'Fee for Technical Services' (FTS) under section 9(1)(vii) of the Act, explanation 2, but business income and assessee not having any PE in India such business income was not taxable in India. He submitted that in the case of a group concern, namely, Starwood Hotels for the Assessment Year 2010-11, a coordinate Bench of this Tribunal, by order dated 28/9/2017 while following the decision of the Hon'ble jurisdictional High Court in *Sheraton (supra)* held that since the assessee is not having any PE in India, its business income earned is not taxable in India and such a finding is upheld by the Hon'ble jurisdictional High Court in *ITA 467/2018* by order dated 18/04/2018. He further submitted that a similar view was taken in *Starwood Hotels (supra)* case for Assessment Year 2011-12 by a coordinate Bench of this Tribunal by order dated 18/12/2018 in *ITA No. 203/Del/2016* while referring to the order of the Tribunal for the Assessment Year 2010-11. Lastly, he brought to our notice, the order dated 2/9/2019 for Assessment Year 2012-13 for a similar result.

He, therefore, prayed that the consistent view taken by the Tribunal and the Hon'ble High Court may be continued since the facts are identical for all these years.

5. Revenue does not dispute the fact of the Hon'ble jurisdictional High Court in assessee's own case reported in Director of Income Tax vs. Sheraton International Inc (2009) 313 ITR 267 (Delhi) took the view that the payments for advertising, publicity and the sales promotion services rendered by the assessee, a company incorporated and tax resident in USA to Indian company, was advisement, publicity and sales promotion keeping in mind the mutual interests and in the context, the use of trademark, trade name etc. and other enumerated services referred to in the agreement with the assessee were incidental to main services and, therefore, the payments received were neither in the nature of royalty under section 9(1)(vi) of the Act, Explanation 2, nor in the nature of 'Fee for Technical Services' (FTS) under section 9(1)(vii) of the Act, Explanation 2, but business income and assessee not having any PE in India such business income was not taxable in India.

6. Further, on identical set of facts, in the case of Starwood (supra), Tribunal took a consistent view following the above decision of the Hon'ble High Court for the AY 2010-11 and 2011-12, and such view was upheld by the Hon'ble jurisdictional High Court in ITA No. 467/2018 by order dated 18/4/2018 for Assessment year 2010-11, in ITA No. 713 of 2019 by order dated 02/08/2019 for Assessment Year 2011-12. Since the facts are identical and the issue is no longer res Integra, we do not find any reason to take a different view from the view taken by the Tribunal and the Hon'ble High Court for the immediately preceding years. Accordingly,

we do not find any merits in the grounds of appeal of the Revenue and consequently dismiss the same.

7. In the result appeal of the Revenue is dismissed.

Pronounced in open court on 18th November, 2019.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 18th November, 2019.
'VJ'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Draft dictated	6.11.2019
Draft placed before author	8.11.2019
Approved Draft comes to the Sr.PS/PS	18.11.2019
Order signed and pronounced on	18.11.2019
File sent to the Bench Clerk	18.11.2019
Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	
Date of uploading on the website	