

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

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

I.T.A. No. 5146/DEL/2016 (A.Y 2013-14)

Dy. Commissioner of Income Tax, (International Taxation) Circle – 3(1)(1), New Delhi. (APPELLANT)	Vs	M/s. Westin Hotel Management LP, C/o. Nangia & Co., Suite – 4A, Plaza M 6, Jasola, New Delhi – 110 025. (PAN : AAAFW 9088 N) (RESPONDENT)
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Appellant by	Shri Satpal Gulati, CIT-D.R.
Respondent by	Shri Amit Arora, C.A.

Date of Hearing	02.01.2020
Date of Pronouncement	07.01.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order of the Commissioner of Income Tax [Appeals]-43, New Delhi dated 26.07.2016 for Assessment Year 2013-14.

2. The Grounds of appeal are as under:-

- (i) *"Whether on the facts and in the circumstances of the case, the CIT (A) has erred in holding that the Centralized services fee received by the appellant for rendering various services such as sales and marketing, Loyalty Programs, Reservation Service, Technological Service, Operational Services and Training Program etc. to customers in India, were not taxable as "Fees 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) *That appellant craves leaves to add, amend, modify or alter any grounds of appeal at the time of or before the hearing of the appeal.”*

3. The assessee is a firm incorporated in the USA and carried on business of providing various hotel related services in countries across the world. The assessee had entered into agreements with certain Indian Companies for providing worldwide marketing and advertising services of the hotels covered by the agreement through its worldwide system of sales, advertising, promotion, public relations and reservations, in the usual course of its business to some hotels owned/managed by the Indian companies. All such services are provided outside India. For the relevant assessment year, the assessee filed its return of income declaring income of Rs.6,63,45,204/- on 31st July 2013. During the year, the assessee derived income from Indian Hotels under the new agreements in the form of:

- a. Sales & Marketing Fees
- b. License Fees
- c. Reservation Fees & Charge
- d. Starwood Preferred Planner Program (SPP)
- e. Starwood Preferred Guest Program (SPG)

The assessee offered the license fee to tax as royalty in its return of income. As regards, the payment received for the services, the same were not offered to tax by the assessee stating that the same do not qualify as FTS in terms of Article 12 of the DTAA between India and USA. The Assessing Officer held that the said amounts were taxable as FTS in terms of Article 12 of the DTAA as well as under the Income Tax Act, 1961. The Assessing Officer further held that the receipts of the assessee on account of SPP/SPG programs are also in the nature of FTS taxable in the hands of the assessee. The assessment u/s 143(3) r.w.s. 144C(3) of the Act has been completed at an income of Rs.35,08,94,464/- after making various additions.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. At the time of hearing the Ld. AR submitted that in the previous years, the Tribunal has decided the contesting issues in favour of the assessee in group concern i.e. DCIT vs. M/s Sheraton International LLC (ITA Nos.4244 to 4247/Del/2015 for A.Y. 2008-09 to 2011-12 order dated 11.03.2019 and ITA No.5141/Del/2016 for A.Y. 2012-13 order dated 17.10.2019) as well as in DCIT vs. M/s Starwood Hotels & Resorts Worldwide Inc. (ITA No.203/Del/2016 for A.Y. 2011-12 order dated 18.12.2018). The Ld. AR also pointed out the assessment order, more specifically Para 8.10 at Page 21 wherein it is held that the payments received by assessee in respect of such services are covered under the provisions of Article 12 of the DTAA and the said matter is pending before the Hon'ble Supreme Court by way of Special Leave Petitions in case of Sheraton International Inc. The Assessing Officer further held that in order to keep the issue alive, it is held that revenue received by the assessee for providing centralized services is liable to be tax as FTS/FIS both under the Act and under the Treaty. Thus, the Ld. AR submitted that the issue is decided in favour of the assessee by the Tribunal as well as the said order is confirmed by the Hon'ble Delhi High Court.

6. The Ld. DR relied upon the order of the Assessing Officer.

7. We have heard the parties and perused all the relevant materials available on record. The issue in respect of taxability of marketing fee and amounts received under Frequent Flier and Starwood Preferred Guest (FFP/SPG) programs is already decided in assessee's favour by the Hon'ble Delhi High Court in its group concerns M/s Sheraton International LLC (supra). Therefore, following the decision of the Hon'ble Delhi High Court, despite the fact that the SLP is pending before the Hon'ble Supreme Court, we are dismissing this appeal of Revenue.

8. In result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 07th day of January, 2020.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 07/01/2020
Priti Yadav, Sr. PS *

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	02.01.2020
Date on which the typed draft is placed before the dictating Member	03.01.2020
Date on which the typed draft is placed before the Other Member	07.01.2020
Date on which the approved draft comes to the Sr. PS/PS	07.01.2020
Date on which the fair order is placed before the Dictating Member for pronouncement	07.01.2020
Date on which the fair order comes back to the Sr. PS/PS	07.01.2020
Date on which the final order is uploaded on the website of ITAT	07.01.2020
Date on which the file goes to the Bench Clerk	07.01.2020
Date on which the file goes to the Head Clerk	