

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, HON'BLE ACCOUNTANT MEMBER**

ITA No. 960/MUM/2016 (A.Y: 2012-13)

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|---|----|---|
| DCIT (IT)-3(2)(2) R.No. 11, Ground Floor Scindia House, N.M. Road Ballard Estate Mumbai – 400 038 | v. | M/s. MWH Consultants (S) PTE Ltd C/o Deloitte Haskins & Sells LLP Indiabulls Finance Centre 3, 27 th to 32 nd Floor Senapati Bapat Marg, Elphinstone Road (W) Mumbai – 400 013 PAN: AAGCM9041C |
| (Appellant) | | (Respondent) |

Assessee by : **Shri J.D. Mistry &
Shri Niraj Sheth**

Department by : **Shri Vaibhav Jain**

Date of hearing : **21.11.2019**

Date of pronouncement : **07.02.2020**

ORDER

PER C.N. PRASAD (JM)

This appeal is filed by the Revenue against the order of the Dispute Resolution Panel-3, Mumbai [hereinafter in short "DRP"] dated 29.12.2015 passed u/s. 144C(5) of the Act.

2. Revenue has raised the following grounds in its appeal: -

"1. *Whether on facts and in circumstances of the case and in law, the Ld. DRP is justified in holding that services rendered by the*

assessee company are broadly in the nature of "Managerial Services" which are not covered within the scope of definition of the term "Fee for Technical Services" as per Article-12.4 of India-Singapore DTAA,"

2. "Whether on facts and in circumstances of the case and in law and in continuation of (1) above, the services rendered by the assessee company do not make available any technical knowledge as held by DRP despite detailed analysis and observation of the assessing officer in the order of assessment under consideration.

3. The Appellant prays that the order of the Ld. DRP on the above ground(s) be set aside and that of the Assessing officer be restored.

4. The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

3. At the time of hearing, Ld. Senior Counsel for the assessee submitted that tax effect on the issue in the present appeal is below ₹ 50 Lacs and in view of the CBDT Circular No. 17/2019 dated 08.08.2019 in F.No.279/Misc.142/2007-ITJ (Pt), the appeal of the Revenue is not maintainable. In the course of the hearing, Ld. Senior Counsel for the assessee furnished the calculation of tax effect which is as under: -

| Sr.NO. | Particulars | Amount in ₹. | Amount in ₹. |
|--------|---|---------------|---------------|
| 1. | Fees for technical services | 4,84,44,048/- | |
| | Total in IINR | | 4,84,44,048/- |
| | Tax on amounts disputed @ 10% as per Article 12 of the India - Singapore DTAA | | 48,44,405/- |
| | Add: Surcharge @ Nil * | | - |
| | Add: Education cess @ Nil * | | - |
| | Tax effect | | 48,44,405/- |

*No surcharge and education cess is leviable to tax rates as per the DTAA - reliance in this regard is placed on the following decisions:

4. Referring to the said calculation, Ld. Senior counsel submitted that the tax effect in this case is work out at ₹.48,44,405/- being 10% of tax on

fees for technical services and this tax rate is applied as per Article 12 of the DTAA between India and Singapore. Ld. Senior Counsel for the assessee submitted that surcharge and education cess are not applicable in the case of the assessee as the tax rate was applied as per DTAA. In support of his contentions he placed reliance on the following decisions: -

- a. *Soregam SA v. DDIT* [101 taxmann.com 94 (Delhi-Trib)]
- b. *R.A.K. Ceremics, UAE v. DDIT* [104 taxmann.com 380 (Hyd-Trib)]
- c. *Parke Davis and Company LLC v. ACIT* [41 taxmann.com 193 (Mum-Trib)]
- d. *Sunil V. Motiani v. ITO* [33 taxmann.com 252 (Mum-Trib)]

5. Ld. Departmental Representative submitted that in this case if the surcharge and education cess are not included the tax effect is coming to ₹.48,44,405/-.

6. We have heard the submissions and perused the grounds of appeal in this appeal. In this case the DRP in its order has observed that in terms of provisions of section 115A of the Act and also in terms of Article 12 of the India – Singapore DTAA, the rate of tax for “fees for technical services” is 10%. Accordingly, considering the provisions of section 115A, the DRP directed the Assessing Officer to apply the rate of tax as per the provisions of section 115A of the Act. We also observed that in the decisions relied on by the assessee it has been held that when the tax rate is applied as per the DTAA provisions, such tax rate as specified in DTAA provisions is inclusive of surcharge and education cess. Therefore, applying the rate

as per DTAA in this case at the rate of 10% for the fees for technical services, the tax payable excluding surcharge and education cess works out to ₹.48,44,405/- which is below ₹.50,00,000/-. Thus, since the tax effect in this appeal is less than ₹.50 Lakhs the appeal of the Revenue is not maintainable on account of low tax effect in view of the CBDT Circular No. 17/2019 dated 08.08.2019. Hence this appeal is dismissed.

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

Order Pronounced in the Open Court on the 07th February, 2020

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER
Mumbai / Dated 07/02/2020
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
 2. The Respondent.
 3. The CIT(A), Mumbai.
 4. CIT
 5. DR, ITAT, Mumbai
 6. Guard file.
- //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mum