

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

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No. 1705/DEL/2016 ( A.Y 2011-12)  
(THROUGH VIDEO CONFERENCING)**

Expeditors International of Washington Inc. 61, 5 <sup>th</sup> Floor, Chimes Building, Sector-44, Gurgaon AACCE4315R <b>(APPELLANT)</b>	Vs	DCIT Circle-1(2)(2) New Delhi  <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Deepak Chopra, Adv, Sh. Vishal Kalra, Adv, Sh. Harpreet Ajmani, Adv, Sh. Rohan Khare, Adv</b>
<b>Respondent by</b>	<b>Sh. Prabhakant, CIT</b>

<b>Date of Hearing</b>	<b>17.12.2020</b>
<b>Date of Pronouncement</b>	<b>11.02.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the assessee against the order dated 15/01/2016 passed under Section 143(3) read with Section 144C of the Income Tax Act, 1961 passed by DCIT, Circle 1(2)(2) New Delhi, for Assessment Year 2010-11.

2. The grounds of appeal are as under:-

*The Appellant respectfully submits:-*

1. *That on the facts and in the circumstances of the case and in law, the order passed under section 144C of the Income-tax Act, 1961 ("the Act") by*

*the Learned Assessing Officer (“Ld. AO”) is erroneous and bad in law as well as in facts.*

*2. That the Ld. AO and Ld. Dispute Resolution Panel (‘Ld. DRP’) on the facts and in the circumstances of the case, has erred in holding that the cost allocation of international freight logistic support services, amounting to INR 2,587,266,319 for services rendered outside India is in nature of fee for Technical Services / Fee for Included Services (‘FIS’) as per the provisions of section 9(l)(vii) of the Act as well as under Article 12 of the India- USA Double Taxation Avoidance Agreement (‘DTAA’).*

*3. That the Ld. AO and Ld. DRP, on the facts and in the circumstances of the case, has erred in holding that the reimbursement of Global Account Management (‘GAM’) expenses amounting to INR 24,673,043 received by the Appellant from El India is in nature of Technical Services / Fee for Included Services (‘FIS’) as per the provisions of section 9(l)(vii) of the Act as well as under Article 12 of the India-USA Double Taxation Avoidance Agreement (‘DTAA’).*

*4. That on the facts and circumstances of the case and in law, the Ld. AO has erred in initiating penalty proceedings u/s 271(1)(c) of the Act mechanically for furnishing inaccurate particulars without recording any adequate satisfaction for such initiation.*

*5. That the Ld. AO erred in facts and in law in charging and computing interest under section 234B of the Act.*

3. The Expeditors Group is engaged in providing global logistic services. The group headquarters in Seattle, Washington operates in three segments i.e., Air Freight, Ocean Freight and Ocean Services and custom brokerage and import services. The group’s services primarily included consultation or forwarding of Air & Ocean freight. Additionally the group also provides services related to distribution management vendor consolidation Cargo Insurance, purchase order management and Customise logistics information and value added Services. The customers of the Group include retailers and

wholesalers, and electronics and manufacturing companies around the world. The operations of the Group span over United States, North America, Far East, India, Europe, Australia, New Zealand, Latin America, and the Middle Eastern countries. The assessee, incorporated in USA, operates in three primary segments: airfreight, ocean freight & ocean services, and customs brokerage and other services. The assessee provides similar services globally through wholly or majority-owned subsidiaries. The assessee, a tax resident of USA as per the domestic laws of USA and filed its tax residency certificate vide submission dated 13.01.2015. In India, the assessee provides services through its wholly-owned subsidiary Expeditors International (India) Pvt. Ltd. During the year under consideration the assessee had undertaken international transactions with its associated enterprises. The international transaction entered into by the assessee with the Associated Enterprise was referred to the transfer pricing officer (TPO) for determining the arm's length price. Order of TPO dated 19.12.2014 has been received wherein no adverse inference has been drawn by the TPO in respect of the international transactions undertaken by the assessee during the financial year 2010-11. The assessee filed its return of income on 30/11/2011 for Assessment Year, 2011-12 declaring income of Rs. 35,43,86,009/-. During the Assessment proceedings, the Assessing Officer asked the assessee to submit the details of receipts from India along with the copy of agreements/contracts with Indian Customers or any other party in India from whom payment is received during the subject year . Accordingly the following details of receipts were filed as under:-

S. No	Nature of Transaction	Amount in Rs.
1	Sale of Capital Equipment	22,66,176/-
2	Royalty income	35,43,86,010/-
3	International Freight Logistic Services	2,58,72,66,319/-
4	Reimbursement of Global Account Management Expenses	2,46,73,043/-
5	Sale of consumables	10,08,768/-
6	Cost reimbursement received	76,70,102/-

7	Lease line charges received	10,90,173/-
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Out of the above receipts, the assessee has declared the royalty income in its return of income. Further, the assessee was asked to show case as to why the International Freight Logistic Services and Reimbursement of Global Account Management Expenses would not constitute Fee for Technical Services as per the section 9(1)(vii) of the Income-tax Act, 1961 and India-USA tax treaty. Out of the above receipts, the assessee filed detailed reply on 25/02/2015. The Assessing Officer specifically mentioned in Para 3 that the contentions of the assessee was formed on the basis of DRP Direction for Assessment Year 2010-11. The Assessing Officer passed draft assessment order dated 30/03/2015. The assessee filed objection before DRP and the DRP vide order dated 23/12/2015 passed certain directions. The Assessing Officer passed the assessment order on 15/1/2016 thereby assessing the total income at Rs. 296,63,25,372/- as royalty and fees for technical services.

3. Being aggrieved by the assessment order, the assessee has filed present appeal before us.

4. The Ld. AR submitted that Ground No. 1 is general Ground. As regards, Ground No. 2 relating to addition on account of cost allocation of international flight logistics support services and Ground No. 3 relating to addition on account of reimbursement of Global Account Management (GAM) charges. The Ld. AR submitted that the issues in questions are no longer res integra and have been decided in favour of the Assessee by the Tribunal vide order dated 30.09.2020 passed for AY 2010-11. The Tribunal whilst dismissing the appeal of the Revenue has held that services i.e. GAM re-imburements and cost allocation of International Freight Logistic Support Services do not fall within the purview of managerial , consultancy or technical services and hence, neither falls under Section 9(1 )(i) or Section 9(1)(vii) nor under Article 12 of the DTAA.

5. The Ld. DR submitted that in Assessment Year 2010-11, the Tribunal has not considered the agreement as well as the DRP is also silent on the terms and conditions of the agreement. But in the present Assessment Year i.e. 2011-12, the agreement was considered by the DRP and it is very much applicable in the present assessment year regarding addition on account of releasing of GAM charges and addition on account of cost allocation of international flight logistic support services.

6. We have heard both the parties and perused all the relevant material available on record. As regards Ground No. 2, the Assessing Officer held that the services to the managerial/consultancy has to be considered in respect of fee for technical services/fee for included services in terms of Section 9 (1)(vii) of the Income Tax Act, read with Article 12(5) of the Double Taxation Avoidance Agreement. The DRP confirmed the order of the Assessing Officer thereby holding that the GAM reimbursement and consideration received on account of cost allocation of flight logistic Support Services where in the nature of FIS and make available technical knowledge, experience, skill, knowhow in terms of Article 12(4)(v) of the DTAA. The Tribunal in Assessment Year 2010-11 being ITA No. 1740/Del/2015 held as under:-

*“28. Thus, on going through the provisions of the Act, facts of the case, business operations of the assessee, we hold that the services rendered by the assessee do not fall within the purview of managerial, consultancy or technical services. The payment for freight and logistics cannot be treated as technical services. Similarly, the provisions of Section 9(1)(i) are not attracted in this case as no income has accrued or arised from the business connection abroad in India. The explanation states that only that part of income from business operations can be said to be accruing or arising in India only if it is relatable to the carrying of operations in India. Thus, the payment received by the assessee neither falls under Section 9(1)(i) or Section 9(1)(vii). Hence, we*

*hereby decline to interfere with the directions of the Dispute Resolution Panel in this case.”*

After going through the directions of DRP as well as the agreements in consonance with present Assessment Year, it is found that the activities mentioned by the assessee do not fall within the purview of Managerial/Consultancy or Technical Services. Thus, the payment towards the same cannot be treated as technical Services. The Support Services are very much of a general services in nature and does not require any Managerial/Technical or Consultancy Expertise. The assessee during the assessment year 2011-12 has categorically mentioned that the nature of these operations is purely logistic support provided by the assessee for shipment of transport of goods perform outside in India and the contract is entered between expertise international India Pvt. Ltd. and the customers i.e. at the consigner sent in the case of expert of Consignment from India to overseas countries found USA and between the assessee and the customer that is at the consignment end in the case of import of consignment from other countries i.e. USA to India. As regards GAM charges/expenses, the cost of these group is allocated to a respective countries benefited to these services and are incurred outside India. The GAM staff is employed with the assessee and there is no employer-employee relationship between the employees and the expeditor international India. These actual expenses incurred by the assessee are allocated in proportion to the Revenue by the relevant expedite group entity in that country from that particular customer account which is managed by the GAM team. These so called expenses without any income element embed in them are then reimbursement to the assessee on actual basis by Expeditors International India. These facts were neither disputed by the Revenue before the DRP in Assessment Year 2010-11 nor in the present Assessment Year i.e. A.Y 2011-12. The activities were not changed in the present assessment year as well. Therefore, though the contention of the Ld. DR was that the agreement was not taken into account as well as the TP Study was not taken into account

in Assessment Year 2010-11 does not stand correct as the agreement related to freight logistic support services and global account management charges were very much mentioned in order dated 30/09/2020 by the Tribunal. There are no distinguishable facts pointed out by the Ld. DR. Hence, the issues in the present year are squarely covered/identical to that of Assessment Year 201-11. Thus, the appeal of the assessee is allowed.

7. In result, the appeal of the assessee is allowed.

**Order pronounced in the Open Court on this 11th Day of February, 2021.**

Sd/-

**(R. K. PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)**  
**JUDICIAL MEMBER**

Dated: 11/02/2021  
R. Naheed

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI