

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.17/PUN/2021

निर्धारण वर्ष / Assessment Year : 2017-18

Sandvik IT Services AB (Formerly known as Sandvik Information Technology AB) C/o Sandvik Asia Private Ltd. Mumbai – Pune Road, Dapodi, Pune – 411012 PAN: AADCA5375J	Vs.	ACIT (International Taxation), Circle – 2, Pune
Appellant		Respondent

Assessee by
Revenue by

Shri Nikhil Pathak
Shri Anurag Srivastava

Date of hearing 01-04-2021
Date of pronouncement 01-04-2021

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the final assessment order dated 01-06-2020 passed by the Assessing Officer u/s 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') in relation to the assessment year 2017-18.

2. The appeal was filed on 29-01-2021 against the final assessment order dated 01-06-2020, thereby causing delay of 166

days. Here it is pertinent to note that as per the Gazette of India dated 29-09-2020 providing relaxation of limitation in the specified Acts, it has been stated that where, any time-limit has been specified under the specified Act, which falls within the period from 20th day of March, 2020 to 31st day of December, 2020, or as further extended, the limitation shall stand extended up to 31st March, 2021 or as further directed by the Central Government. Thus, it is apparent that the case of the assessee is fully covered under the relaxation of the limitation provided under the Gazette of India. The delay is accordingly condoned and the appeal is admitted for hearing.

3. The only issue raised in this appeal is against the treatment of Rs.34,93,09,947/- towards IT Support services provided by the assessee to its four Indian affiliates as 'Fees for technical services' (FTS) within the meaning of Article 12 of India-Sweden Double Taxation Avoidance (hereinafter also called 'the DTAA') read with India-Portugal DTAA (via Protocol).

4. Briefly, the facts of the case are that the assessee is a Non-Resident Company incorporated in Sweden, who filed its return declaring Nil income. It rendered IT support services to four

entities in India: Sandvik Asia Pvt. Ltd.; Walter Tools India Pvt. Ltd.; Seco Tools India Pt. Ltd.; and Dormer Tools India Pvt. Ltd. for a total consideration of Rs.34,93,09,947/-. Such an amount was claimed to be not chargeable to tax in India as not falling within the ambit of 'Fees for technical services' under Article 12 of the DTAA. The AO considered the Agreement dated 01-04-2002 between the assessee and Sandvik Asia Private Limited (hereinafter referred to as SAPL) under which the IT support services were provided by the assessee. He treated such receipts as 'Fees for technical services' u/s 9(1)(vii) of the Act and further came to hold that since the technology was embedded in the hardware and if the Indian entity was enabled to use the same, it amounted to 'making available' technical services and know-how etc. The same was consequently held to be covered within Article 12 of the DTAA and hence chargeable to tax in India. The AO further held that the services rendered by the assessee constituted Royalty and FTS u/ss. 9(1)(vi) and 9(1)(vii) of the Act. In reaching this conclusion, he relied on the direction given by the DRP in the case of the assessee for the assessment year 2016-17. The Dispute Resolution Panel (DRP) did not provide any reprieve

to the assessee, which led to the treatment of Rs.31,29,96,084/- from SAPL; Rs.3,00,40,632/- from Walter Tools India Pvt. Ltd.; Rs.34,17,749/- from Seco Tools India Pvt. Ltd. and Rs.28,60,882/- from Dormer Tools India Pvt. Ltd., as FTS covered under Article 12 of the DTAA. The assessee has approached the Tribunal against such inclusion.

5. We have heard both the sides through Virtual Court and gone through the relevant material on record. The assessee, a non-resident, received IT Support service fee from four Indian entities. Firstly, we espouse for consideration a sum of Rs.31.29 crore received from SAPL. There is no dispute on the nature of services rendered by the assessee to SAPL, being, that of data communication, operational services backup and recovery services, help desk, etc. It is fundamental that the amount in question would be chargeable to tax, if the same is taxable under the Act and is not immune from taxation under the DTAA. The ld. AR fairly conceded that the receipt in question is covered u/s 9(1)(vii) of the Act as 'Fees for technical services'. He however, contested its chargeability under Article 12 of the DTAA.

6. Before reaching any conclusion as to the applicability or otherwise of Article 12 of the DTAA in this regard, it is *sine qua non* to ascertain the true nature of services rendered by the assessee. The assessee provided services to SAPL under an Agreement dated 01-04-2002, which is stated to be prevalent for the year under consideration as well. This factual assertion by the ld. AR has not been denied by the ld. Departmental Representative. Thus, it is evident that the nature of services rendered by the assessee to SAPL during the year under consideration is similar to that provided in the earlier years including the immediately preceding assessment year. The matter as to taxability or otherwise of such a sum came up for consideration before the Tribunal for the assessment year 2016-17. Vide order dated 25-11-2020, the Tribunal in ITA No.1310/PUN/2019 has held that the amount received by the assessee from SAPL is not chargeable to tax under Article 12 of the DTAA even though the same is in the nature of FTS covered u/s.9(1)(vi) of the Act. To buttress its view, the Tribunal took into consideration its orders for the earlier assessment years 2009-10 and 2012-13 holding similarly. As the authorities below have relied on their respective views taken in the

assessee's own case for the assessment year 2016-17, which has been overturned by the Tribunal, respectfully following the precedent, we hold that the amount of Rs.31.29 crore received by the assessee from SAPL is not chargeable to tax within the meaning of Article 12 of the DTAA.

7. In addition, the assessee also received IT support services fee from Walter Tools India Pvt. Ltd.; Seco Tools India Pt. Ltd.; and Dormer Tools India Pvt. Ltd. amounting to Rs.3.00 crores, Rs.34.17 lakhs and Rs.28.60 lakhs respectively. The AO held such amount to be chargeable to tax under Article 12 of the DTAA because the assessee could not provide the correct nature of services.

8. After considering the rival submissions and going through the relevant material on record, we find that similar issue came up for consideration before the Tribunal for the immediately preceding assessment year. Relevant discussion has been made in para nos. 5 and 6 wherein the matter has been restored to the file of AO for fresh determination of the issue in accordance with the direction given by the Tribunal for preceding years. Insofar as the factual scenario for the year under consideration is concerned, both

the sides fairly agreed that the same is identical to that for the immediately preceding assessment year, 2016-17. Respectfully following the precedent, we set-aside the impugned order on this score and remit the matter to the file of AO for a fresh determination of the nature of services offered by the assessee to Walter Tools India Pvt. Ltd.; Seco Tools India Pvt. Ltd.; and Dormer Tools India Pvt. Ltd. in the terms as given in the orders for the earlier years and thereafter determine its taxability or otherwise in law after affording due opportunity of hearing to the assessee.

9. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 01st April, 2021.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 01st April, 2021
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-13, Pune
4. The Pr.CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“C” / DR ‘C’, ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	01-04-2021	Sr.PS
2.	Draft placed before author	01-04-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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