

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

**I.T.A. No. 5190/DEL/2017 (A.Y 2014-15)
(THROUGH VIDEO CONFERENCING)**

DCIT International Taxation, Circle- 3(1)(2), Room No. 418, E-2, Dr. SPM Civic Centres, New Delhi (APPELLANT)	Vs	M/s Sheraton Overseas Management Corporation, C/o. M/S Nangia & Co. A- 109, Secctdor-136, Noida, Uttar Pradesh PAN:AALCS8306H (RESPONDENT)
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Appellant by	Sh. Satpal Gulati, CIT DR
Respondent by	Sh. Amit Arora, CA

Date of Hearing	20.07.2021
Date of Pronouncement	30.07.2021

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against order dated 06/06/2017 passed by CIT(A)-43, New Delhi for assessment year 2014-15.

2. The grounds of appeal are as under:-

“Whether on the facts and in the circumstances of the case, the CIT(A) has erred in holding that the receipts of the assessee from various activities of hotel management ranging interalia from ticketing, reservation, marketing, advertising, operation, administration, catering, network support services, Starwood Portal Services, imparting of skill sets through trainings etc. were not taxable as "Fee for Technical Services" (FTS) within the meaning and scope of section

9 of the Income Tax Act, 1961 as well as Article 12 of the India-US Double Taxation Avoidance Agreement (DTAA).

3. Sheraton Overseas Management Corporation is a company incorporated in United States of America USA and carries on the business of providing various hotel related services in several countries across the world. The assessee company is a tax resident of USA in terms of the provisions of Double Taxation Avoidance Agreement between India and USA ("India-USA DTAA"). The assessee company filed its return of income for the relevant assessment year under consideration, on September 30, 2014 declaring NIL income. In the return of income, it was claimed that Assessee Company's income from Indian payers does not constitute "Fees for Included Services" under provisions of India-USA DTAA. The assessee company's case was selected for scrutiny and notices under section 143(2)/142(1) of the Income Tax Act, 1961 ("Act") were issued to the Appellant seeking certain information and clarifications. In response to said notices, various submissions were filed by the assessee company furnishing information and documents as requested by the Assessing Officer. The assessment was completed under section 143(3) r.w.s. 144C(3)(b) of the Act at an assessed income of Rs.126,124,353 vide order dated January 30, 2017 wherein the Assessing Officer held that payment received by the assessee company for centralized services rendered to various Indian customer was taxable as "Fee for Technical Services" ("FTS") in India under the provisions of the Act and also taxable as "FTS/FIS" under India-USA DTA.

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 for immediately preceding year i.e. Assessment Year 2013-14, the identical issue of FTS which was challenged by the Revenue before the Tribunal was decided in favour of the assessee vide order dated 18/11/2019 (ITA No. 5142/Del/2016) which was based on the decision of the Hon'ble Delhi High Court in case of DCIT vs. Sheraton International Inc. (2009) 313 ITR 267. The Ld. AR further submitted

that the identical facts in case of Starwood which is a group company was decided by the Hon'ble High Court for Assessment Year 2010-11 and 2011-12 in ITA No. 467/2018 for Assessment Year 2010-11 and ITA No. 713/2019 order dated 2/8/2019 for Assessment Year 2011-12.

6. The Ld. DR submitted that there are no distinguishing facts in the present Assessment Year from the decision of the Hon'ble Delhi High Court and the Tribunal's decision in assessee's case. The Ld. DR relied upon the assessment order.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that Revenue does not dispute the facts of the present assessment year is different that the facts discussed in assessee's own case by the Hon'ble High Court as well as by the Tribunal in A.Y. 2013-14 (ITA No. 5142/Del/2016 order dated 18.11.2019). The Tribunal held as under:-

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.”

Since, the Ld. DR did not distinguish the facts of the case for the present assessment year from that of the earlier assessment year, there is no need to interfere with the findings of the CIT(A). The appeal of the Revenue is dismissed.

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

Order pronounced in the Open Court on this 30th Day of July, 2021.

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated : 30/07/2021

R. Naheed *

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI