

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

Before Sh. Kul Bharat, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

(Through Video Conferencing)

ITA No. 4524/Del/2017 : Asstt. Year : 2012-13

Inter Continental Hotels Group (Asia Pacific) Pte. Ltd., 230, Victoria Street, #13-00, Bugis Junction Towers, Singapore	Vs	ACIT, Circle-2(1)(1), New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABCI6407M		

Assessee by : Sh. S. K. Agarwal, CA

Revenue by : Sh. Umesh Takyar, Sr. DR

Date of Hearing: 20.09.2021

Date of Pronouncement: 24.09.2021
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of Id. CIT (A)-42, New Delhi dated 28.04.2017.

2. Following grounds have been raised by the assessee:

"1.1 That on the facts and in the circumstances of the case and in law, the order passed by the CIT(A) confirming the addition made by the Ld. AO under section 144C(3) r.w.s. 143(3) in relation to Management Support Charge is wrong and bad in law.

1.2 That on the facts and in the circumstances of the case and in law, the CIT(A) has erred in treating the amount received by the Appellant from InterContinental Hotels Group (India) Pvt. Ltd ('IHG India') towards provision of Management Support Charge to be in the nature of Fee for Technical

Services ('FTS') under Article 12 of India- Singapore Double Taxation Avoidance Agreement ('DTAA/ Treaty).

1.3 That on the facts and in the circumstances of the case and in law, the CIT(A) failed to appreciate that merely because the services are managerial, technical and consultancy in nature, the same will not ipso-facto result into FTS under Article 12 of India-Singapore DTAA, unless the services results into making available technical knowledge, experience, skill, know-how or processes, which enables the service recipient to apply the technology contained therein.

1.4 That on the facts and in the circumstances of the case and in law, the CIT(A) has erred in concluding that the Management Support Services 'make available' technology, knowledge, skill, experience to the recipient ignoring the explicit language of Article 12(4)(b) of the DTAA which provides that the recipient should be in a position to apply the technology contained in the services.

1.5 That on the facts and in the circumstances of the case and in law, the CIT(A) has failed to appreciate that the support services provided by the Appellant are required by IHG India on an on-going basis and hence the technology, experience etc., cannot be said to be made available by the Appellant to IHG India.

1.6 That on the facts and in the circumstances of the case and in law, the CIT(A) has erred in observing that interpreting the term 'make available' in reference to other tax treaties, is not permissible.

2. The above grounds of appeal are independent and without prejudice to one another."

3. **Brief facts of the case as taken from the order of the Ld. CIT(A) are that** the Assessee is a private company incorporated in Singapore and is a part of the InterContinental Hotels Group

('IHG'). The primary business of the Assessee is to franchise/license, operate and manage hotels operating under different hotel brands of IHG in the Asia Pacific region the Assessee being the regional headquarters for the Asia Pacific region of the IHG Group, is the economic and beneficial owner of various hotel brands including 'InterContinental', 'Holiday Inn' and 'Crowne Plaza'. The Assessee is in receipt of royalty fees from various hotels within Asia Pacific region, including India, from licensing of the various hotel brands. Further, during the subject year the Assessee has also received interest income from a group entity in India, M/s IHG IT Services (India) Private Limited. Both the streams of income i.e. royalty fees and interest have been duly offered to tax on a gross basis in India in the previous year relevant to AY 2012-13.

4. The return of income for AY 2012-13 was filed by the Assessee under section 139(1) of the Act on 30 November 2012 vide acknowledgement No. 535691281301112 declaring total income of Rs.7,37,95,029/- and claiming withholding tax credit of Rs.1,38,47,577/-, under the normal provisions of the Act. The Assessee thereafter filed a revised return on 31st March 2014, vide acknowledgement No. 169839431310314, declaring a total income of Rs.7,37,95,029/- and claiming enhanced withholding tax credit of Rs.1,69,15,416/-.

5. During the year, an amount of Rs. 5,43,76,923/- has accrued to the Assessee from another group company in India, InterContinental Hotels Group (India) Private Limited ('IHG India'), on account of management support costs. Based on the nature of services enumerated under the support service

agreement entered with IHG India, the Assessee is providing services in the nature of **operational support, accounting and legal support information technology related services etc.** During the year, the Assessee, was also in receipt of Rs.75,53,276/- from various Indian hotels on account of Travel Agent Commission (TACP), not taxable in the hands of the Assessee being in the nature of reimbursement of expenses.

6. The assessment was completed under section 144C(3) r.w.s 143(3) of the Act vide AO's order dated 20th May 2015, assessing the income of the Assessee under the normal provisions of the Act at Rs.13,57,25,228/- after making the following additions on account of TACP and management support charges.

7. Before the Id.CIT(A), the assessee has challenged the treatment of Management support services charge of Rs.5,43,76,923/- from Inter Continental Hotels Group (India) Private Limited ('IHG India') on account of support services provided by the Assessee as Fee for Technical Services (FTS) under the India- Singapore Double Taxation Avoidance Agreement('DTAA').

8. The assessee, being the regional headquarters, has centralized departments which provide services in the nature of **operational support, accounting and legal support, information technology related services** etc. to its subsidiaries/affiliates in the Asia-Pacific region for operational efficiency and consistency. The amount charged by IHG AP to IHG India for such support services is determined based on certain allocation keys (fee charged) to be applied to 'total management pool

costs'. During AY 2012-13, management support charges of an amount of Rs.5,43,76,923/- has accrued to the Assessee for providing such support services to IHG India. In this regard, support services agreement was submitted during the course of assessment proceedings.

9. The assessee did not offer the aforesaid receipts to tax on the plea that the support services do not constitute FTS as envisaged under Article 12(4) of India-Singapore DTAA.

10. The assessee submitted the summarized view of the nature of services rendered by the Assessee along with illustrative list of benefits, which is as under:

Operational support	Responsibility towards hotels managed across Asia Pacific region in providing support to General Managers.	<ul style="list-style-type: none"> • Provide broad guidelines on operations of hotels in accordance with the brand standards; and • Providing advise on safety, insurance and risk aspects of the properties.
Analytical and accounting support	Responsible for a number of finance related areas, including global financial reporting, global treasury, fl and global tax.	<ul style="list-style-type: none"> • Report and analysis of regional financial performance and preparing of budget for the region; and • Providing assistance in maintenance of accounting books and backend accounting services e.g. accounts receivable collection, invoking etc.
Legal Advice	Responsibility for providing support in the form of advise, counsel and opinions to legal problems connected with the business activities.	<ul style="list-style-type: none"> • Provide assistance in reviewing tax computation, submission, letter to be filed before tax authorities, etc.; • Provide advice, counsel and opinions on national and international legal issues; and • Assistance on risk management and conduct internal audit for hotels and corporate offices.

Information Technology	Responsibility for providing IT support including installation of hardware and software.	<ul style="list-style-type: none"> • Assistance on and support the implementation or correction of hardware and software systems, as well as local area networks; and • Provide ad-hoc IT support as necessary.
Personnel	Responsibility for employee recruitment, training, managing the employer brand, as well as resourcing and talent.	<ul style="list-style-type: none"> • Laying broad guidelines for initiation and implementation of recognition programs; • Assist in recruitment, selection and development of workforce; and • Co-ordinate international manpower planning and manage secondment opportunities.

11. The Assessee submitted Tax Residency Certificate of Singapore. Therefore, by virtue of provisions of section 90(2) of the Act, IHG AP claimed the shelter of the provisions of the India- Singapore DTAA to the extent these are more beneficial vis-a-vis the Act.

12. As per Article 12(4) of the tax treaty between India and Singapore, the term 'fees for technical services' means payments of any kind received as a consideration for services of a managerial, technical or consultancy nature if such services:

- (a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 3 is received; or
- (b) make available technical knowledge, experience, skill, know-how or processes, which enables the person acquiring the services to apply the technology contained therein; or
- (c) consist of the development and transfer of a technical plan or technical design, but excludes any service that does not enable the person acquiring the service to apply the technology contained therein.

13. The Assessee submitted that since the services were not ancillary or subsidiary to enjoyment of a right for which royalty is being received by the Assessee, therefore, such receipts cannot be taxed as FTS under Article 12(4)(a) of the India-Singapore tax treaty. Further, the assessee averred that the support services rendered by IHG AP do not entail any transfer or development of technical plan or design and claimed that the support services in question should not constitute FTS as per clause (c) of Article 12(4) of the India-Singapore DTAA.

14. As regards Article 12(4)(b) of the India-Singapore DTAA, Assessee submitted that the aforesaid clause of treaty defines FTS in a restrictive manner to mean payments received in consideration for rendering of any managerial, technical or consultancy services, if such services make available technical knowledge, experience, skill, know-how, or processes, which enables the person acquiring the services to apply the technology contained therein. In this regard, the Assessee relied upon various judicial precedents which have interpreted the term '**make available**'. The Assessee also tried to draw inference of similar term under the India-US DTAA which provides that a technical service would '**make available**' technical knowledge, skill etc. **only where the person availing the services is enabled to apply the services availed in his own right without recourse to the person providing the services.**

15. The assessee emphasized on the fact that mere rendering of services shall not qualify as FTS unless the person utilizing the services is in future able to make use of the technical knowledge, skill, etc. embedded in such services by himself

without recourse to the provider of services. The assessee invited attention to the India-Singapore DTAA which specifically provides that the services would be covered under this provision only if the services provided 'enables the person acquiring the services to apply the technology contained therein'.

16. The main observations of the AO in this regard are as under:

- *Make available is not defined in the India Singapore DTAA, and the Appellant cannot take benefit of India-USA DTAA where the term "Fee for including services" has been defined in the Act.*
- *The Appellant is taking benefit of India-USA DTAA to import the meaning of Make Available, as the same is not defined under India- Singapore DTAA. However, the same is not permitted in light of following judgement:-
ONGC vs. ACIT, Dehradun [2006] 9 SOT 8 (Delhi) (SMC)*
- *From the observation of the services being provided, it is clear that the assessee is providing organizational change management assistance, development of coaching skills, or operational improvement services. It is bringing its own, proprietary methodologies or frameworks to guide the identification of problems and to serve as the basis for recommendations for more effective or efficient ways of performing work tasks. Thus the services of the assessee are not merely support services but Managerial Consultancy Services which fall in purview of Consultancy Services.*

- *Any managerial, technical, consultancy service can be provided only when the provider possesses the expertise, skill, knowledge or know how etc., in the relevant field and once it is so, the further act of providing such services to the recipient enables the recipient in many ways including enabling it to apply such technology on its own.*
- *AO made reference-to section 80-0 of the Income Tax Act which is the only section that refers to the expression 'made available' and relied on decision of Hon'ble Supreme Court in the case of CBDT Vs. Oberoi (India) (P.) Ltd. 97 Taxmann 453 (SC).*
- *AO relied on the decision in the case of Areva T&D Ltd. (order dated 7.2.2012 in AAR No. 876 of 2010), Mersen India Pvt. Ltd. [2012] 20 taxmann.com 475 (AAR - New Delhi) and Shell India Markets Pvt. Ltd. (order dated 12.1.2012 in AAR No. 833 of 2009).*

17. The Id. CIT (A) concurred with the Assessing Officer and held that it is evident from the plain reading of the nature of services provided by IHG India to third party owners that IHG first availed the knowledge set in respect of operational support, analytical & accounting support, legal advice, information technology, purchasing, personnel & training and miscellaneous and delivered the same to third party owners of CMH Hotels. It is noted that while describing the services, the term "advise/advice" has been repeatedly used and the services are themselves called "support services". This itself indicates that while providing services, the employees of the assessee worked closely with the employees of the IHG India and supported/advised them. Thus, the transfer of knowledge and

experience is inherent in this process which leads to "make available" of services. The assessee company has a stake involved in delivery of services because any lapse at the last end would be detrimental to the brand value of the assessee company. Therefore, the larger interest of the assessee company is to ensure the complete transfer of knowledge base, experience and skill set so as to deliver the best services in line with global best practices to be a lead brand in hotel industry.

18. The Id. CIT (A) held that it is not merely a service but equipping of the resource of the recipient entity for their capacity building in order to manage the operations hotels owned by third parties. The Id. CIT (A) held that the payment for management, support service is held to be FTS except for payment of Information Technology Services.

19. Before us, during the hearing, the Id. AR reaffirmed the submissions taken up before the authorities below. The same have been perused. The same are reproduced from the order of the Ld. CIT(A).

20. The assessee submitted that on receipt of such services, IHG India is not getting equipped to render these services without recourse to the Assessee. The assessee stressed on the fact that the services are required by IHG India from the Assessee on an ongoing basis, year after year and argued that in case services conferred any technology, skill set, knowledge etc., by the Assessee to IHG India, there was no need of availing such services by IHG India on an ongoing basis.

21. The Assessee relied upon the following judicial precedents to support its contention that technology, skill and technical know-how etc. cannot be held to be made available to service recipient where similar services are required by it on an ongoing basis, year after year.

- R. R. Donnelley India Outsource Private Ltd (241 CTR 305)
- Pan AmSat International Systems Inc. (9 SOT 100)

22. The Assessee also relied on following case laws wherein it is held that the similar services as provided by the Assessee to IHG India are not in the nature of FTS.

- Bharti AXA General insurance Co. Ltd (234 ITR 62)AAR
- Shell Technology India Private Limited (AAR No 850 of 2009) AAR
- Invensys Systems Inc. (317 ITR 438) AAR
- Ernst & Young (P) Ltd (323 ITR 184) AAR
- Measurement Technologies Limited [305 ITR 37[305 ITR 37 (AAR)] AAR
- Intertek Testing Services India (P.) Ltd., In re (175 Taxman 375) AAR

23. It was argued that the aforesaid principal and meaning of 'Make Available' has been upheld in plethora of judicial precedents, in the context of tax treaty, apart from India-Singapore DTAA. Some of these are as under:

- De Beers India Minerals Pvt. Ltd. (21 taxmann.com 214) Karnataka High Court
- Pro-Quip Corporation In re(255 ITR 354) AAR

- Federation of Indian Chamber of Commerce and Industry (320 ITR 124) AAR
- Viceroy Hotels Ltd. (11 taxmann.com 216)ITAT Hyderabad
- Raymond Ltd. vs. Deputy Commissioner of Income-tax (86 ITD 791) ITAT

24. On analysis of the facts, we find that the assessee started charging management support services from FY2011-12 only. So, it is the first year when the management support services were provided to IHG India, Assessee submitted that the size of hotel management operations of IHG India were relatively small in prior years.

25. The detailed analysis of services rendered by the assessee to M/s IHG India to appreciate whether 'make available' condition gets satisfied in delivery of such services by the assessee. As regards the reliance place by the applicant to the meaning of "make available" in the MOU in India-US DTAC, it may be noted that a Convention is a treaty entered into by two sovereign States relating to rights and duties of subjects or citizens of the respective States in one another's possession. No doubt one can look into the Protocol attached to a treaty between two countries to find the meaning of an expression used in the treaty, but to refer to a treaty to which two countries are not parties, would not be appropriate. It can at the best have persuasive value. The expression "make available" only means that the recipient of the service should be in a position to derive an enduring benefit and be in a position to utilize the knowledge or know-how in future on his own. The list of services rendered by the assessee to M/s IHG India, as

per schedule 1 of the service agreement between IHG (Asia Pacific) i.e. the assessee company and IHG India, are as under:

1. Operational support

- Provide advice to and assist local general CMH. Hotel management in the production of data in line with the AA Region strategic plan and co-ordinate the implementation of such plan;
- Provide advice, information and competitive expertise to local general CMH Hotel management on the operation of Hotels in accordance with brand standards.
- Maintain the highest qualification available with regard to the international hotel business and its management techniques.
- Co-ordinate the managerial plan and actions within the AA Region;
- Advise local general CMH Hotel management on trends and changes in the hotel business in general.
- Provide advice on the production of operating and capital budgets at the level of the CMH Hotels, which are consistent with the strategic plan;
- Provide to local general CMH Hotel management on a periodic basis regional financial reports and statements for operating performance comparisons which allow local management to make business decisions;
- Improve finance resources of CMH Hotels which are subject to seasonal fluctuation by provision of treasury assistance;
- Provide financial advice on the viability of new projects;

- CO-ordinate the implementation of the rules of operations in CMH Hotels;
- Advise CMH Hotels in applying the rules of operations, taking into account the fact that CMH Hotels operate in a number of countries in the AA Region;
- Centralize information on the quality performance of CMH Hotels;
- Provide advice on technical aspects of site selection for new CMH hotels
- Provide advice and support for the maintenance of the existing properties of the AA Region;
- Maintain a list of selected contractors available to local management;
- Advise on safety, insurance and risk aspects of the properties;
- Provide technical services, including engineering, architectural, interior and graphic design advisory services required for new hotel construction and renovation programs and any associated property related services

2. Analytical and Accounting Support

- Assist and advise participant in the production of reports regarding budgets, cash-flow,
- capital requirements and annual accounts/quarterly reports;'
- Monitor and ensure consistency in application of accounting standards and policies.

- Assist and advise on the implementation and the use of accounting systems for the AA Region including front and back office systems;
- Provide support as necessary from the global and regional finance functions and the business service centre.

3. Legal advice

- Provide advice, counsel and opinions on national and international legal problems connected with the business activity in particular with respect to legal aspects of management contracts, lease, real estate, litigation, form of organizations, taxation, employee relations and industrial property rights, trademark and copyright protection in the countries where participant operates, including the legal management of all affiliates;
- Provide support, as necessary, from the business reputation and responsibility function.

4. Information Technology

- Advise on and support the implementation of hardware and software systems as well as local area networks in the CMH Hotel (s);
- Provide IT support, as necessary, to CMH Hotels.

5. Purchasing

- Co-ordinate international purchasing of furniture, equipment and supplies;

- Negotiate, execute and implement service agreements and agreed pricing structures with third party suppliers of goods and services.
- Perform price and quality comparisons and negotiate with suppliers on volume purchase;

6. Personnel and Training

- Provide advice on and co-ordinate the career planning of all management employees and CMH Hotels;
- Provide advice on and co-ordinate compensation and benefit plans including pensions plans for CMH Hotel employees in the AA region;
- Provide employees of the Regional Pooling Company or its Affiliates, to participant from time to time on secondment;
- Assist and advise on the development of an individual manpower specification and its application to managerial selection;
- Assist in recruitment, selection and provision for senior personnel for CMH Hotels;
- Provide support as necessary from the Global Human Resources team and the business services centre;
- Assist in obtaining necessary visas, work permits and in defining relocation requirements;
- Co-ordinate international manpower planning and uniform employment policies;
- Monitor and negotiate on labour relation issues.

7. Miscellaneous

- Provide all other relevant areas of advice and support in connection with the owning and-or managing of CMH Hotels.

26. It is not in dispute that IHG India has received the above services from the assessee company in terms of management service agreement. It is obvious that the assessee company provides highly technical services which are used by IHG India for taking managerial decision, budgeting & accounting decision, risk management decision, etc. The knowledge & expertise in the field of hotel operation & management & related areas which was accumulated through study, experience and experimentation with regard to management, budgeting, risk, etc. of the same business is nothing but a technical knowledge. Further, Andhra Pradesh High Court in G.V.K. Industries Ltd. v. ITO [1997] 228 ITR 564/(1998] 96 Taxman 179, held that the advice given by non-resident company in taking a financial decision either to procure loan or to strengthen the finance would be a technical or consultancy services. This shows that the advice given related to managerial including operational and financial aspects would tantamount to delivery of managerial, consultancy or technical services. Furthermore, in the case of CBDT vs. Obreroi Hotels (India) Pvt. Ltd., Hon'ble Supreme Court of India echoed the fact that management support involve great deal of expertise, skill and technical knowledge. The relevant extracts are reproduced as under:

"There is no gain saying that running a well equipped modern hotel is no ordinary affair. Once needs a great deal of expertise skill and technical knowledge for the purpose..."

27. In view of the above, there is no doubt that the services rendered by the assessee were in the nature of managerial /technical/consultancy services.

28. The rationale of the Ld. CIT(A) while confirming the order of the Assessing officer is as under:

"On the basis of the input, advice, assistance and service provided by the assessee company, the decision is taken by IHG India to manage the hotels in India and other parts of South West Asia ("SWA"). It is also to be remembered that the assessee company is giving services in respect of Personnel & Training to the IHG India employees in making use of the inputs, experience, experimentation, assistance and advice rendered by them for taking a better and possible decision in order to achieve the desired objectives / goal. Therefore, in the context of professional management and decision making process, the advice and service rendered by the assessee company which was made use by IHG India in managerial decision making process is in the nature of technical services which facilitate IHG India to take correct and suitable decision towards achievement of the desired objects and business goal. Para 8.1(a) of the management agreement between Today Hotels Pvt. Ltd. (Hotel Crowne Plaza Gurgaon) and SC Hotels & Resorts (India) Pte. Ltd. (IHG India) (submitted vide letter dated 28.02.2017) states that the Manager (IHG India) shall second the General manager to owner (the Crowne Plaza hotel) who shall employ that person directly throughout the period of secondment. The process of engagement of seconded employees from the IHG India to third party owned hotels clearly reflects the transfer of knowledge & expertise of a particular

institution to other institute. Further, para 3.3 of aforesaid Management Agreement states that the Manager (IHG India) will have the right to determine all policies and procedures relating to operation of the hotel including marketing and sales policies, personnel policies etc. IHG India has played the role of bridge in connecting the assessee company to the third party owners. Therefore, it may not be correct to say that the services delivered by the assessee company did not make available the knowledge, knowhow and skill to IHG India to apply/use the same in its decision making process. The assessee relied on the various case laws to support its claim without appreciating that the facts of the present case are distinguishable from the facts of the cited cases.

The extracts of the services rendered by IHG India as per the transfer pricing study report of IHG India is reproduced as under:

"To provide operational assistance to the Family of Hotel Brands in South West Asia, as IHG AP/SCHI may reasonably request. Such assistance may include, but is not limited to, technical services, financial management guidance, legal services, human resources, risk management and insurance, tax, treasury, marketing advice, and other general corporate services.

With respect to management services, pre-commencement services and technical services, these services are provided to third-party hotel owners. The agreement for the provision of these services is between IHG India and third party hotel owner. For the pre-commencement services, IHG India has this separate design and engineering team of personnel to work with third party hotel owners on design and engineering aspects of the hotels. The team works with the owners of hotels to manage the construction or refurbishment of the hotels, putting in place the pre-commencement processes for the hotels to ensure that the hotels can open on time and on brand.

The team provides reviews the design concept, detailed schematic and activities; related to construction, review and approve the design and drawings, monitor the progress of the projects, conduct pre-opening reviews and inspections, assist in the selection of vendors and materials, and provide necessary guidance and support to other external consultants hired by the owner (viz. architects, interior designers, engineers etc.). The team may also provide recommendation to the hotel owner on which external consultants may be hired for the project. The guidance provided by the team relate to aspects such as brand standard, engineering, fire safety etc. Some of the key objectives for the design and engineering team are to ensure that the constructed hotel meets the brand standards and the same adheres to the relevant safety norms and local regulations so as to bring out the brand proposition which the owner wishes to operate the hotel as.

For the hotel management services, IHG India is responsible for managing the hotels on behalf of third party owners. The services typically comprise of support in the areas related to hotel operations, commercial support (sales and marketing), and other business support functions (finance, human resources, IT etc.). IHG India works closely with hotel owners to develop and monitor business plans, capital expenditure budgets, operational strategies, communicating and providing guidance to the hotels in rolling out various initiatives, conduct annual review and operational audits of the hotels etc. Guidance are provided to the General Managers ("GM") of the hotels in analyzing information and diagnosing operational issues and develop action plans to improve the performance of the hotels including coordination between various corporate functions and the hotels. The respective functional teams in the areas of human resource, IT and new hotel openings support the related needs for the third party hotel management business."

29. In this background, the only issue remains to be adjudicated is whether the meaning of 'make available' is applicable to the services mentioned under sub-clause (b) of Article 12(4) of the treaty or not. The Id. CIT (A) gave the reasons the services of operation support, analytical and accounting support, legal advice, purchasing, personal training should be treated as the services which have been covered under 'make available'. The arguments of the assessee are that the services were not made available but only rendered to the clients.

30. We have gone through the agreement and the TP study report of the IHG India with regard to the services provided. We find that the operational support such as Providing advice, information and competitive expertise to local general CMH Hotel management on the operation of Hotels in accordance with brand standards, maintaining the qualification available with regard to the international hotel business and its management techniques and Coordinating the managerial plan and actions, advising local general CMH Hotel management on trends and changes in the hotel business in general and provide advice on the production of operating and capital budgets at the level of the CMH Hotels, which are consistent with the strategic plan can at best be the managerial consultancy service but not the services made available so that the recipient can use or replicate the such services received from the assessee.

31. With regard to accounting support the Bench has posed a pertinent question as to why not the accounting support given be treated as the technical knowledge 'made available'. It was answered that the accounting support given was in relation to the preparation of balance sheet and modalities and to advice production of reports regarding the budgets from time to time and the services are rendered repeatatively based on the requirements of the clients and hence it cannot be treated as a service which was 'made available' to be applied independently and in times to come. We, after going through the type of services rendered, hereby concur with the explanation given by the Id. AR.

32. Similarly, the services rendered in connection with training & recruitment and manpower specification, we find that there is neither technology transfer, knowledge transfer nor transfer of any skill or know-how.

33. Hence, we hold that the provisions of the Article 12(4) could not be applied to the services rendered by the assessee in the strict sense of the provisions of DTAA. Hence, we hold that the decision of the Id. CIT (A) cannot be supported.

34. In the result, the appeal of the assessee is allowed.
Order Pronounced in the Open Court on 24/09/2021.

Sd/-

(Kul Bharat)
Judicial Member

Dated: 24/09/2021

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member