

**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. 5601/Del/2010 : Asstt. Year : 2007-08**

Travelport Global Distribution system BV (earlier known as Galileo Nederland BV) BSR & Co., DLF Building No. 10, 8 <sup>th</sup> Floor, Tower-B, DLF Cyber City, Phase-II, Gurgaon-122002	Vs	Asstt. Director of Income Tax, Circle-1(2), New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2258D</b>		

**ITA No. 426/Del/2012 : Asstt. Year : 2008-09**

Travelport Global Distribution system BV (earlier known as Galileo Nederland BV) Taurusavenue 33A-2132, LS Hoofddorp, P.O. Box 3064-2130, KB Hoofddorp, Nederland	Vs	Asstt. Director of Income Tax, Range-1, Intl. Taxation New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2258D</b>		

**ITA No. 357/Del/2013 : Asstt. Year : 2009-10**

Travelport Global Distribution system BV (earlier known as Galileo Nederland BV) Taurusavenue 33A-2132, LS Hoofddorp, P.O. Box 3064-2130, KB Hoofddorp, Nederland	Vs	Dy. Director of Income Tax, Circle-1(2), Intl. Taxation New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2258D</b>		

**ITA No. 746/Del/2014 : Asstt. Year : 2010-11**

Travelport Global Distribution system BV (earlier known as Galileo Nederland BV) Taurusavenue 33A-2132, LS Hoofddorp, P.O. Box 3064-2130, KB Hoofddorp, Nederland	Vs	Dy. Director of Income Tax, Circle-1(2), Intl. Taxation New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2258D</b>		

**ITA No. 2101/Del/2015 : Asstt. Year : 2011-12**

Travelport Global Distribution system BV (earlier known as Galileo Nederland BV) Taurusavenue 33A-2132, LS Hoofddorp, P.O. Box 3064-2130, KB Hoofddorp, Nederland	Vs	Dy. Commissioner of Income Tax, Circle-3(1)(1), Intl. Taxation New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2258D</b>		

**ITA No. 6162/Del/2015 : Asstt. Year : 2012-13**

Dy. Commissioner of Income Tax, Circle-3(1)(1), Intl. Taxation New Delhi	Vs	Travelport Global Distribution system BV (earlier known as Galileo Nederland BV) Taurusavenue 33A-2132, LS Hoofddorp, Netherlands C/o KPMG Officer, Building No. 10, Tower-B, 8 <sup>th</sup> Floor, Cyber City, Gurgaon
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2258D</b>		

**CO No. 01/Del/2021 : Asstt. Year : 2012-13**

Dy. Commissioner of Income Tax, Circle-3(1)(1), Intl. Taxation New Delhi	Vs	Travelport Global Distribution system BV (earlier known as Galileo Nederland BV) Taurusavenue 33A-2132, LS Hoofddorp, Nederlands C/o BSR & Co. LLP, Building No. 10, Tower-B, 8 <sup>th</sup> Floor, Cyber City, Gurgaon
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2258D</b>		

**ITA No. 3032/Del/2016 : Asstt. Year : 2008-09**

**ITA No. 3033/Del/2016 : Asstt. Year : 2009-10**

**ITA No. 3034/Del/2016 : Asstt. Year : 2010-11**

Travelport Global Distribution system BV (earlier known as Galileo Nederland BV) Taurusavenue 33A-2132, LS Hoofddorp, P.O. Box 3064-2130, KB Hoofddorp, Nederland C/o BSR & Co. LLP, Building No. 10, Tower-B, 8 <sup>th</sup> Floor, Cyber City, Gurgaon	Vs	Dy. Commissioner of Income Tax, Circle-3(1)(1), Intl. Taxation New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2258D</b>		

**ITA No. 6515/Del/2017 : Asstt. Year : 2014-15**

Travelport Global Distribution system BV (earlier known as Galileo Nederland BV) Taurusavenue 33A-2132, LS Hoofddorp, P.O. Box 3064-2130, KB Hoofddorp, Nederland	Vs	Dy. Commissioner of Income Tax, Circle-3(1)(1), Intl. Taxation New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AACCG2258D</b>		

**Assessee by : Sh. Ajit Jain, CA &  
Sh. Siddesh Chaugule, Adv.  
Revenue by : Sh. Bhuvnesh Kulshrestha, CIT DR**

<b>Date of Hearing: 28.09.2021</b>	<b>Date of Pronouncement: 13.10.2021</b>
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## **ORDER**

### **Per Bench:**

The Composite order deals with the following appeals filed by the revenue as well as the assessee.

AY	Appeal No. (against final order)	Appeal No. (against rectified order)
2007-08	5601/Del/2010	-
2008-09	426/Del/2012	3032/Del/2016
2009-10	357/Del/2013	3033/Del/2016
2010-11	746/Del/2014	3034/Del/2016
2011-12	2101/Del/201	-
2012-13	6162/Del/2015 CO 1/Del/2021	-
2014-15	6515/Del/2017	-

2. The Assessee is a company incorporated in The United Kingdom. The Assessee provides electronic global distribution services in the 'rest of the world' territory (including the Indian region) for the travel industry, by utilizing a Computer Reservation System ('CRS'), which is an automated system which processes booking data.

3. The CRS is an automated system, which process booking data and other data to provide the following functions:

- a) The ability to display flight schedule and seat availability
- b) The ability to display and/or quote airline fare
- c) The ability to make airline seat reservation
- d) The ability to issue airline tickets, etc.

4. The Assessee appoints distributors for marketing its CRS services. In India, the authorized distributor is Interglobe Technologies Quotient India Private Limited (ITQPL/ 'the distributor'). ITQPL is entitled to receive distribution fees from the Assessee for each segment booked in the Indian Territory. The Distributor/ ITQPL independently signs an agreement with the Travel Agent's, to provide booking services.

5. The master computer system (MCS) stationed in USA is connected to travel agents in India through a communication network owned by SITA (third party service provider). SITA does not own local communication lines within India and the same forms the responsibility of the distributor.

6. The CRS is connected to the Airline Servers to which data regarding seat requests, reservations, etc. is constantly sent and updated on a real-time basis. When a customer approaches a travel agent who is using the CRS to book a ticket or seeking information like the flight schedule, flight availability, seat availability, fare etc., customers' requirements are transmitted by the travel agents to Travelport's Mainframe Master Computer Server ('MCS').

7. The MCS, in turn, checks the availability, etc. from the Airline Server and communicates availability back to the travel agents. The Travel Agent, on the basis of such communication, finalizes the booking requirements, which are sent back to the CRS by the Travel Agent, through the communication network.

8. If, at the point of time such finalized booking requirements reach the Airline Server through the Travelport's MCS in the USA, such seats are still available, the Airline Server accepts the Travel Agent's request. It is only upon such acceptance that the booking is completed and the Assessee earns its booking fee from the Airline. The MCS then displays the acceptance of the offer by the Airline Server, which is communicated to the Travel Agent's computer screen.

### **History of Assessee and its predecessor entities i.e. GII and TGDSBV**

9. The CRS was earlier owned and managed by Galileo International Inc. (GII), which operated worldwide. Thereafter, in year 2002, the territory of operations of GII was split into two part: T-1 (USA and Canada) and T-2 (Rest of the world). The responsibility of carrying out business in T-2 territory was given to the TGDSBV. TGDSBV was a Netherland based entity and carried on such CRS business till 31 December 2015.

10. With regards to the grounds taken up, the profitability statement of the assessee is as under:

India Specific Profitability statement for AY 2007-08 to AY 2012-13 and AY 2014-15 (Amounts in USD)							
Description	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2014-15
Booking Fees (A)	55,029,465	70,035,529	66,511,669	75,676,788	79,826,594	77,519,539	67,339,472
Less: Subscriber / Distribution fees or Commission	37,136,627	47,658,043	45,981,980	51,036,204	58,011,833	56,922,872	49,691,247
Less: IBM Service fee	1,845,674	2,908,608	3,180,261	2,801,139	2,871,024	7,745,314 <sup>1</sup>	6,311,271

India Specific Profitability statement for AY 2007-08 to AY 2012-13 and AY 2014-15 (Amounts in USD)							
Description	A.Y. 2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2014-15
Less: Core licence	3,249,999	2,906,229	2,591,673	2,919,311	3,122,012		
Less: Royalty fees	12,030,725	14,818,090	19,810,463	20,061,605	21,579,830	15,593,965	14,965,612
Less : Vendor costs	618,260	41 1,486	117,901	112,575	86,719	119,71.8	145,258
<b>Total expenses (B)</b>	54,881,285	68,702,456	71,682,279	76,930,834	85,671,418	80,381,869	71,113,388
<b>(Loss) (A) - (B)</b>	148,180	1,333,073	(5,170,610)	(1,254,046)	(5,844,824)	(2,862,330)	(3,773,916)

11. Effectively, the grounds involved in all these appeals are as under:

1. Related to business connection (BC) and Permanent Establishment ('PE') in India.
2. Related to excessive attribution to alleged PE of the company in India.
3. Related to allowability of distribution expenses.
4. Related to allowability of other expenses.

## **Adjudication**

### **On the issue of Business Connection and Permanent Establishment:**

12. The issue of Company's BC/PE in India is covered against the assessee by the decisions of Hon'ble Delhi High Court and Delhi ITAT in Company/it's predecessor's case for the earlier AYs. 1995-96 to 2006-07. For AY 2017-18 in case of Company's successor entity i.e., Travelport International Operations Limited, the issue on BC/PE has been held against the TIOL by Hon'ble Delhi ITAT vide order dated 27 September 2021 (ITA No. 163/Del/2021) by relying on the decisions of Hon'ble Delhi High Court and Hon'ble Delhi ITAT in Company/it's predecessor's case for AY 1995-96 to AY 2006-07.

13. The adjudication of this issue taken from ITA No. 163/Del/2021 dated 27.09.20201 in the assessee's own case which is as under:

### **"Ground No. 4 and 5 are related to Assessee's Business Connection PBO and Permanent Establishment ('PE') in India**

22. Ground No.4 and 5 are **covered against the Appellant** by the decisions of Hon'ble Delhi ITAT and Hon'ble Delhi High Court in case of Appellant's predecessor entity i.e. GII and TGDSBV.

23. In the first batch of 4 years i.e. from AY 1995-96 to 1998-99 in case of GII, the Hon'ble Delhi ITAT vide its dated 30 Nov. 2007 (19 SOT 257 (DELHI) held that GII has a fixed place PE and Agency PE in form of the Interglobe in India. (Page 194 to 251 of Paperbook Part 1.) The relevant extracts from this order are re-produced as under:

*"17.1 In the present case it is seen that the CRS, which is the source of revenue is partially existent in the machines namely various computers installed at the premises of the subscribers. In some cases, the appellant itself has placed those computers and in all the cases the connectivity in the form of nodes leased from SITA are installed by the appellant through its agent. The computers so connected and configured which can perform the function of reservation and ticketing is a part and parcel of the entire CRS. The computers so installed require further approval from appellant/Interglobe who allows the use of such computers for reservation and ticketing. Without the authority of appellant such computers are not capable of performing the reservation and ticketing part of the CRS system. The computer so installed cannot be shifted from one place to another even within the premises of the subscriber, leave apart the shifting of such computer from one person to another. Thus, the appellant exercises complete control over the computers installed at the premises of the subscribers. In view of our discussion in the immediately preceding paragraph, this amounts to a fixed place of business for carrying on the business of the enterprise in India. But for the supply of computers, the configuration of computers and connectivity which are provided by the appellant either directly or through its agent Interglobe will amount to operating part of its CRS system through such subscribers in India and accordingly PE in the nature of a fixed place of business in India. Thus the appellant can be said to have established a PE within the meaning of paragraph 1 of Article 5 of Indo-Spain Treaty."*

*"17.4 .....The dependent agent is not to be considered as PE unless he has authority to conclude contract on behalf of such enterprise."*

*The authority to conclude contracts must be in respect of contracts relating to operations, which constitute the business proper of the enterprise. The appellant in the present case in order to enhance its business operations has appointed Interglobe as its agent who promote the 'Galileo System' in India. Interglobe in its turn has appointed various subscribers for use of 'Galileo System'. Though the revenue flows only from participants who have entered into PGA with the appellant, yet the revenue could not have been generated but for the subscribers using the 'Galileo System'. In a way the revenue is generated from the participants but only on the basis of use of CRS by the subscribers. But for such use no revenue would accrue to the appellant. Thus the agreements entered into by the Interglobe with the subscribers under an authority granted to it, are contracts relating to operations which constitute business proper and not merely in the nature of internal operations. Such contracts are habitually exercised and there is nothing on record to suggest that such authority was cancelled at any point of time. We, therefore, hold that Interglobe is dependent agent of the appellant who has habitually exercised the authority to conclude contracts on behalf of the appellant. To that extent the appellant has a PE in India. Since we have held that Interglobe is a dependent agent of appellant in India, we need not discuss para (5) of Article 5 of the treaty regarding independent agent form of PE."*

24. The Hon'ble Delhi High Court vide its order dated 25 Feb 2009 (ITA No. 1048 to 1055/2008 and ITA Nos. 17408/2008, 17437/2008, 17409/2008, 17438/2008, 17473-74/2008, 17469-70/2008, 17410/2008, 17439/2008 and 17471/2008 ) in case of GII for such first batch of 4 years

from AY 1995-96 to AY 1998-99 held the issue of PE/BC as academic as overall taxability of GII was held to be Nil. The relevant extracts from this order are re-produced as under:

*"These appeals were listed along with the appeals filed by Revenue against the same judgment. The appeals filed by Revenue have been dismissed by us vide our orders passed in today's date in WP(C) No. 851/2008.*

*In view of this dismissal of those appeals of the Revenue, learned counsel for appellant submits that the question raised in these appeals have become academic and are therefore, dismissed."*

25. Against the Hon'ble Delhi High Court order for AY 1995-96 to AY 1998-99, both the Income-tax department and Appellant's predecessor entity i.e. GII filed an appeal before Hon'ble Supreme Court of India vide SLP No. 6511 to 6518/2010. The Hon'ble Supreme Court vide its order dated 22 November 2019 dismissed (as withdrawn) SLP Nos. 6512 to 6515/2010 and 6517 to 6518/2010 pertaining to AY 1995-96, 1996-97 and AY 1998-99 on account of low tax effect, in consonance with circular No. 17 of 2019, leaving the question of laws open. For remaining SLPs, the matter is pending for adjudication before the Hon'ble Supreme Court.

26. In the second batch of 4 years i.e. from AY 1999-00 to 2002-03 in case of GII, the Hon'ble Delhi ITAT vide its order dated 17<sup>th</sup> March 2011 (ITA No.2971-2974 /Del/2010) (Page 281 to 284 of Paperbook Part 1), held as under :

*"4. Regarding various grounds raised by the assessee in the cross objections relating to existence of business connections in India and accrual and arising of Income in India and the deemed accrual and deemed arising of Income in India and existence of PE in India etc., it was submitted that these issues were decided by the tribunal against the assessee in assessment year 1995-96 to 1998-99. He submitted a copy of tribunal decision in assessee's own case for these assessment years 1995-96 to 1998-99 in ITA Nos. 1733/D/2001, 2473-2475/D/2000 and 820-823/D/2005 and CO. No. 47 to 54/D/2006 dated 30.11.2007. It is also submitted that against this tribunal order; both the assessee and revenue were in appeal before the Hon'ble High Court of Delhi. It is submitted that revenue's appeal were dismissed by the Hon'ble High Court of Delhi in its judgment dated 25.02.2009 in ITA No. 851 to 860/2008 and it was held by Hon'ble Delhi High Court that no questions of law arises in this matter which needs further determination by this court. It is also submitted that in the assessee's appeal, it was held by the Hon'ble Delhi High Court that in view of the dismissal of appeals of the revenue, the question raised by assessee in these appeals have become academic and are therefore dismissed. It is submitted that this judgement of Hon'ble High Court of Delhi in respect of assessee's appeal is also dated 25.02.2009 in ITA Nos 17408, 17409, 17437, 17438, 17473-74, 17469-70, 17410, 17439 and 17471- 72/2008. He submitted a copy of both these judgements of Hon'ble Delhi High Court rendered in the assessee's appeals as well as revenue's appeals. Ld. DR also agreed that these issues are covered as per these judgements."*

27. Hon'ble Delhi High Court in its order dated 25<sup>th</sup> September 2012 (ITA No. 1148 to 1151/2011 and ITA No. 466 to 472/2012) in case of GII for such second batch of 4 years from AY 1999-00 to AY 2002-03 relied on the decisions of Hon'ble Delhi ITAT and Hon'ble Delhi High Court in case of GII for first batch of 4 years and held that since factual matrix is same, the earlier decision of Hon'ble Delhi High Court in case of 25.02.2009 is squarely applicable i.e. issue of PE/BC is academic.

28. Against the Hon'ble Delhi High Court order for AY 1999-00 to 2002-03, both the Income-tax department and Appellant's predecessor entity i.e. GII filed an appeal before Hon'ble Supreme Court of India vide SLP Nos. 2956 of 2014, 2242 of 2013, 7222 of 2013, 2241 of 2013. These SLPs are pending adjudication by Hon'ble Supreme Court.

29. In the third batch of 4 years i.e. from AY 2003-04 to AY 2006-07 in case Galileo Netherland BV (GNBV) (now known as Travelport Global Distribution System BV) (TGDSBV) (Predecessor of the Appellant and Successor of GII), the Delhi ITAT vide its order dated 29<sup>th</sup> June 2012 (ITA No. 1306 to 1309/Del/2012), dismissed the cross objections raised by GNBV on PE/BC ground. It was held that:

*"21. Now coming to the cross objections filed by the assessee in all these years four years. The Ld. AR did not argue the cross objections and therefore these cross objections are treated as not pressed. Therefore, the assessee's cross objections in all four years are dismissed"*

30. The Hon'ble Delhi High Court in its order dated 25<sup>th</sup> August 2014 (ITA No. 654/2012 656/2012, 659/2012 & 661/2012) in case of Galileo

Netherlands B.V (GNBV) (Successor of GII and Predecessor of the Appellant) for third batch of years i.e. AY 2003-04 to AY 2006-07 refrained from forming any opinion on GNBV's PE/BC in India. Relevant extract of this order is reproduced as under:

*(Please refer Para 2 on Page 313 of Paperbook Part 1)*

*"2. We begin with a caveat that a limited issue and question arises for consideration in these appeals and we are not required are not pronouncing any opinion and finding on whether the appellant-assessee had a Permanent Establishment (PE) in India and other related issues. The only question and issue raised in these appeals relates to profit attribution to Indian Operations on the assumption that the appellant-assessee had a PE in India."*

31. Against the Hon'ble Delhi High Court order for AY 2003-04 to AY 2006-07, both the Income-tax department and Appellant's predecessor entity i.e. GNBV/TGDSBV filed an appeal before Hon'ble Supreme Court of India vide SLP Nos. 391 of 2015, 3780 of 2015, 3779 of 2015 and 1297 of 2015. These SLPs are pending adjudication by Hon'ble Supreme Court.

**32. Thus, the issue of Appellant's PE/BC in India is covered against it by the above decisions of Hon'ble Delhi High Court and Hon'ble Delhi ITAT in Appellant's predecessor's case."**

14. Hence, respectfully following the established judicial pronouncement, we hereby hold that the assessee has Business Connection and Permanent Establishment (PE) in India.

On the issue of attribution to the PE in India:

15. The issue of attribution in India is covered in favour of Company by the decisions of Hon'ble Delhi High Court and Delhi ITAT in Company/it's predecessor's case for AYs. 1995-96 to 2006-07. The Hon'ble Delhi High Court and the Delhi ITAT in Company's own/ predecessor's case, has held that attribution rate to the alleged India PE is 15% of gross booking fees.

16. For AY 2017-18 in case of Company's successor entity i.e., TIOL, this issue on attribution has been held in favour of TIOL by Delhi ITAT vide order dated 27 September 2021 (ITA No. 163/Del/2021) by relying on the decisions of Hon'ble Delhi High Court and Delhi ITAT in Company/it's predecessor's case for AY 1995-96 to AY 2006-07.

17. In para 38 of the said order reads as under:

*"38. AY 2017-18, PE attribution at 15% of gross revenue less the expenses (as already allowed by the Ld. AO and Ld. DRP), as per the decision of the Hon'ble Delhi ITAT Benches and Hon'ble Delhi High Court, reduces the taxable income to Nil and thus, no income is taxable in India. "*

18. The adjudication of this issue taken from ITA No. 163/Del/2021 dated 27.09.2021 in the assessee's own case which is as under:

"Ground No.6 is covered in favour of the Appellant by virtue of the application of the decisions of Hon'ble Delhi ITAT and Hon'ble Delhi High Court in case of Appellant and its predecessor entities i.e. GII and TGDSBV. The Hon'ble Delhi High Court and Hon'ble Delhi ITAT in Appellant's own/ predecessor's case i.e. GII and GNBV, have held that attribution rate to the alleged India PE is 15% of gross booking fees and since Indian related

expenses are more than attributed gross booking fees to the PE in India, it would extinguish the assessment as no further income is taxable in India.

34. The ITAT in the case of Galileo International Inc (GII) (Predecessor of the Appellant) in the first batch of 4 years- AY 1995-96 to 1998-99 vide its order dated 30 Nov. 2007 (19 SOT 257 (DELHI) on the basis a Function, assets and risk (FAR) analysis, held that only 15% of the revenue could be attributed to India which got completely exhausted by the commission paid to the Indian distributor/ ITQPL, resulting in no income remaining to be taxed in India. It was held as under:

*"9. ....In the present case, we find that only part of CRS system operates or functions in India. The extent of work in India is only to the extent of generating request and receiving end-result of the process in India. The major functions like collecting the database of various airlines and hotels, which have entered into PCA with the appellant takes place outside India. The computer at Denver in USA processes various data like schedule of flights, timings, pricing, the availability, connection, meal preference, special facility, etc. and that too on the basis of neutral display real time on line takes place outside India. The computers at the desk of travel agent in India are merely connected or configured to the extent that it can perform a booking function but are not capable of processing the data of all the airlines together at one place. Such function requires huge investment and huge capacity, which is not available to the computers installed at the desk of subscriber in India. The major part of the work or to say a lion's share of such activity, are processed at the host computer in Denver in USA. The*

*activities in India are only minuscule portion. The appellant's computer in Germany is also responsible for all other functions like keeping data of the booking made worldwide and also keeping track of all the airlines/hotels worldwide that have entered into PCA. Though no guidelines are available as to how much should be Income reasonably attributable to the operations carried out in India, the same has to be determined on the factual situation prevailing in each case. However, broadly to determine such attribution one has to look into the factors like functions performed, assets used and risk undertaken. On the basis of such analysis of functions performed, assets used and risk shared in two different countries, the income can be attributed. In the present case, we have found that majority of the functions are performed outside India. Even the majority of the assets, i.e., host computer which is having very large capacity which processes information of all the participants is situated outside India. The CRS as a whole is developed and maintained outside India. The risk in this regard entirely rests with the appellant and that is in USA, outside India. However, it is equally important to note that but for the presence of the assessee in India and the configuration and connectivity being provided in India, the income would not have generated. Thus the initial cause of generation of income is in India also. On the basis of above facts we can reasonably attribute 15 per cent of the revenue accruing to the assessee in respect of bookings made in India as income accruing or arising in India and chargeable under section 5(2) read with section 9(1)(i) of the Act."*

**(Para 10 on Page 224 of Paperbook Part 1)**

**"10. Next question to be decided is if it is found that the income accruing in India is consumed by the payment made to the agents in India, whether any income still is left to be taxed in India. The activities of the appellant in India are entirely routed through the efforts of NMC namely Interglobe India (P.) Ltd. (Interglobe). Interglobe is responsible for monitoring the activities of the subscribers enrolled in India. The request originated from the computers at the desk of travel agent is once again routed through the facility of processing such information at Interglobe. If Interglobe finds that the subscriber accessing the CRS is authorized to do so, the request is further forwarded. Interglobe is also responsible for establishing connectivity of the computers of the subscribers and maintaining them. Interglobe is also responsible for training of the subscribers in respect of use of CRS. For all these services rendered by Interglobe to the appellant, it is being paid remuneration in terms of distribution agreement. Broadly the assessee receives three 'Euros' as fees per 'net booking', i.e., gross booking minus cancellation. The assessee passed one dollar to Interglobe for each net booking processed through Galileo system by subscriber. Thus, in respect of the activities carried out in India and considering the income accruing in India, remuneration paid to the Indian agents consumes the entire income accruing or arising in India....."**

*(Para 18 on Page 251 of Paperbook Part 1)*

*"18.....While dealing with the question as to what is such part of income as is reasonably attributable to the operations carried out in India, we have held that only 15 per cent of the revenue generated*

*from the bookings made within India is taxable In India. The same proportion has to be adopted here while computing profit attributable to the PE. We have also held that since the payment to the agent in India is more than what is the income attributable to the PE in India, it extinguish the assessment as no further income is taxable in India. It is to be noted that even in the first assessment framed by the Assessing Officer, the entire expenses in the form of remuneration paid to Interglobe was held as allowable deduction and was reduced while computing the income of Appellant. If that be the case, the income attributable to PE in India being less than the remuneration paid to the dependent agent, it extinguishes the assessment and requires no further exercise for computation of income. We accordingly hold so and in view of the same the income of the Appellant will be NIL."*

35. The revenue authorities thereafter filed,

**(Para 5 on Page 260 of Paperbook Part 1)** a Miscellaneous Application (MA) before the ITAT to revise the earlier order on the ground that, even after holding that the Appellant's predecessor i.e. GII has a PE in India the Hon'ble ITAT erred in holding that no income was attributed to the said PE. The questions posed also included manner of attribution i.e. whether attribution is on sales or the net profits. The revenue authorities contended that the attribution should be on the net profits and not Sales - This contention of the revenue authorities was rejected by the Hon'ble ITAT vide its MA order dated 21 November 2008 (MA No. 108/Del/2008, 311 to 318/Del/2008 and 220 to 223/Del/2008), in case of GII in the first batch of 4 years- AY 1995-96 to 1998-99, wherein it was held that for computation of income of an Indian PE, first step is to attribute the revenues to India and

then allow deduction of India related expenses from such attributed revenue. The relevant extract of order is re-produced as under:

*"5. The next contention of applicant is that instead of estimating or apportioning income or profits the Tribunal has attributed the revenue. In our opinion this is not a mistake apparent from record. For computation of any income, the first point is to apportion the revenue from the operations carried out in India. Unless the revenues are attributed, the income which is a second step cannot be attributed. However, after apportioning revenue, since it was found that out of the apportioned revenue, the remuneration payable to the agent in India exceeds such apportioned revenue, no further income is taxable in India....."*

*".....9. We find that all issues arising in the appeal have been answered. Neither any argument nor any ground is left out. In view of overall situation if the tribunal has consciously come to the conclusion that no income accrues in India and in respect of which elaborate reasons are given, if the applicant do not agree with the reasoning, it cannot be said that any mistake has crept in the order of the Tribunal which is rectifiable under section 254(2) of the Act. We therefore decline to interfere".*

36. The Hon'ble Delhi High Court in case of Galileo International Inc (GII) (Predecessor of the Appellant) in the first batch of 4 years- AY 1995- 96 to 1998-99 upheld the decision of Hon'ble Delhi ITAT for these years, vide its order dated 25th Feb 2009 (ITA No. 851 to 856 of 2008, 859 to 860 of 2008), it was held as under:

*"The Tribunal thereafter discussed the principle which is to be followed in apportioning the Income-tax accruing in India and the Income accruing outside India. The Tribunal found that only a part of CRS order operates and functions in India. The extent of working in India is only to the extent of channelizing the request and receiving the result of the process in India and the major functioning and collecting the data base of various airlines and hostels which have entered into PCA with the respondent takes place outside the India. The Tribunal also took into consideration the fact that the computer of Denver at USA processes various data like schedule of flights, timings, pricing, the availability, connection, meal preference, special facility, etc. and that too on the basis of neutral display real time on line takes place outside India. Insofar as the role played in India is concerned, that is limited to the computers at the desk which are merely connected or configured to the extent that it can perform a booking function but are not capable of processing the data of all the airlines together at one place. The Tribunal was also influenced by another important fact viz., such functioning requires huge investment and huge capacity which is not available in the computers installed at the desk of the subscriber in India. On this basis, the Tribunal formed the opinion that major part of the work are processed at the host computer in Denver in USA and the activities in India are only minuscule portion. Taking into consideration all these factors the Tribunal was of the opinion that one could reasonably attribute 15 per cent of the "revenue" accruing to the respondent in respect of bookings made in India as major expenses in that behalf is incurred in activities carried out in US....."*

*(Please refer Para on Page 272 of Paperbook Part 1)*

*"Thus, the approach adopted by the Tribunal was to first arrive at the figure relating to the revenue generated in India and abroad. It concluded that out of the revenue accrued to the respondent in respect of these bookings 15 per cent thereof should be attributed to India, keeping in view a very minor portion of the activity being carried out here"*

*(Please refer Para on Page 273 of Paperbook Part 1)*

*"After formulating the aforesaid question, the Tribunal answered the same holding that since the revenue attributable in respect of the booking made in India is only 0.45 Euro (15 per cent of Euro 3) and commission paid to Interglobe was Euro 1, there was no income which was taxable in India."*

*"The Tribunal in this behalf has noted that the entire payment made by the respondent to the Interglobe has been allowed as expenses while computing total Income of the respondent. After arriving at these findings of facts, the Tribunal referred to Circular No. 23 of 23-7-1969 which prescribes that no income can be further charged to tax in India. To same effect is the judgment of the Supreme Court in Morgan Stanley & Co. Inc.'s case (supra)"*

*(Please refer last Para on Page 276 of Paperbook Part 1)*

*"We, therefore, are of the opinion that no question of law arises in these matters which needs any further determination by this Court. These appeals are accordingly dismissed in limine."*

37. Against the Hon'ble Delhi High Court order for AY 1995-96 to AY 1998-99, both the Income-tax department and Appellant's predecessor entity i.e. GII filed an appeal before Hon'ble Supreme Court of India vide

SLP No. 6511 to 6518/2010. The Hon'ble Supreme Court vide its order dated 22 November 2019 dismissed (as withdrawn) SLP Nos. 6512 to 6515/2010 and 6517 to 6518/2010 pertaining to AY 1995-96, 1996-97 and AY 1998-99 on account of low tax effect, in consonance with circular No. 17 of 2019, leaving the question of laws open.

38. AY 2017-18, PE attribution at 15% of gross revenue less the expenses (as already allowed by the Ld. AO and Ld. DRP), as per the decision of the Hon'ble Delhi ITAT Benches and Hon'ble Delhi High Court, reduces the taxable income to Nil and thus, no income is taxable in India.”

19. Hence, we hereby hold that the correct attribution rate be taken at 15% of the gross booking fee for the years in appeal before us.

20. As per the table above, Indian related expenses are more than attributed gross booking fees to the PE in India, it would extinguish the assessment of tax as no further income is taxable in India. The AO may check the correctness of the figures before giving effect to this order.

On the issue of allowability of distribution expenses:

21. For AYs 1995-96 to 2006-07, the Assessing Officer was allowed the distribution expenses incurred by the Company. The Delhi ITAT and Hon'ble Delhi High Court for AY 1995-96 to AY 2006-07 in the predecessor company namely Galileo International Inc. allowed 100% deduction of distribution expenses and held overall taxability as Nil of the alleged PE in India.

22. For AY 2016-17 and AY 2017-18 in case of Company's successor entity namely, Travelport International Operations Ltd., the Assessing Officer and

Ld. DRP allowed deduction of distribution expenses (70%) from attributed revenue.

23. For AY 2012-13 (one of years in captioned matter), both Id. DRP and the Assessing Officer has allowed 100% distribution expenses by relying on Hon'ble Delhi High Court's decision in case of Company/its predecessor company for AY 1995-96 to AY 2006-07. The relevant extract is as under:

*"The Panel taking note of the above Jurisdictional High Court Order in the 'a' own case is of the firm view that any departure from the stated stand of the Hon'ble High Court of Delhi shall tantamount to judicial indiscipline and breach of doctrine of binding precedent and consistency. Respectfully following the verdict of the Hon'ble Court, the Panel is pleased to concede the grounds of appeal pressed by 'a'."*

24. For AY 2015-16, the Id. DRP in its direction in Company's own case accepted that distribution expenses are integral expenses for CRS companies like Company and therefore a deduction should be allowed of such expenses. The relevant extract of DRP directions is enumerated as under:

*"3.5 ....Perusal of various cases of CRS systems operators such as Amadeus, Sabre and Travel port (Galileo) it is seen that amounts varying: from 25% to 70% is paid / payable to the GPS/ NMC companies in India. In some cases such companies claim to be located outside India. Be that as it may, such payments are made by the CRS company of their affiliates for maintaining the network of subscribers / travel agents who are the revenue earners as points of sale. Such GPS operators, Inter Globe TO in the present case are the nodal agency in a given territory to establish and develop the network of subscribers and the requisite IT infrastructure and servers for the business. We are of the view that where such direct expenses attributed to the revenue, earned from the sources of India are identifiable, they need to be deducted at source and in the first place."*

25. Thus, it was duly accepted by the revenue authorities that the distribution expenses incurred by the assessee is for maintaining their network of subscribers/ travel agents and thus, an inseparable part of the business and thus it cannot be denied that the expenses have been incurred for the purpose of the business.

26. It is also an accepted fact that there is only one business of the Company i.e., the CRS business. Therefore, all expenses incurred by Company including distribution expenses can only be related to such business. Thus, the AO's argument that distribution fees is not related to its business since its nomenclature in invoices is specified as 'data processing charges' instead of distribution fees lacks basic fallacy. The similar issue has come up before the Delhi ITAT in case of another CRS entity i.e., Amadeus IT Group SA for AY 2007-08 to AY 2012-13 dated 26 October 2020 (ITA No. 4906/Del/2010, ITA No. 5150/Del/2011, ITA No. 60/Del/2013, ITA No. 1824/Del/2014, ITA No. 1204/Del/2015 and ITA No. 1626/Del/2016, wherein the distribution expenses incurred by the assessee were allowed.

27. Relevant extract is re-produced as under:

*"17. We have gone through the history of such expenditure and find that the addition is being made owing to confusion in the description of the services as "export of processed data/software "or" distribution fee."*

*"18. This expenditure has been allowed by the Co-ordinate Bench of Tribunal from the assessment years 1996-97 to 2006-07. Since, the facts have not been disputed in the absence of any material change, we hereby allow the claim of distribution expenses."*

28. It is also on record that the distribution commission has been made to resident of India and duly offered to tax. Hence, the provisions of Section 40(a)(ia) are not attracted in the instant case. Since, there is no change in the factual matrix and legal proposition, **we hereby allow the claim of the assessee.**

Allotability of other expenses:

29. The following table depicts the position of negative profits computed post allowance of booking fee and distribution expenses:

Particulars	AY 2007-08	AY 2008-09	AY 2009-10	AY 2010-11	AY 2011-12	AY 2012-13	AY 2014-15
Booking fee (USD)	55,029,465	70,035,529	66,511,669	75,676,788	79,826,594	77,519,539	67,339,472
15% of booking fee	8,254,420	10,505,329	9,976,750	11,351,518	11,973,989	11,627,931	10,100,921
Less: Distribution expenses (USD)	37,136,627	47,658,043	45,981,980	51,036,204	58,011,833	56,922,872	49,691,247
Net Loss Position (USD)	(28,882,207)	(37,152,714)	(36,005,230)	(39,684,686)	(46,037,844)	(45,294,941)	(39,590,326)

30. The AO disallowed entire amount (100%) claimed by the assessee on account of other expenses such as royalty, vendor cost, license fee owing to non-deduction of withholding tax. From the above table, the position of the profit/loss of the assessee is evident. After deduction of the distribution expenses and 15% booking fee, the assessee is left with no taxable profit. Considering the disallowance @ 30% u/s 40(a)(ia) in accordance with the law laid down by the Hon'ble Delhi High court in case of CIT Vs. Herbalife International India (P.) Ltd. 69 taxman.com 205 wherein the High Court struck down discriminating treatment of disallowance u/s 40(a)(i) **and Section 40(a)(ia) of the Act by relying on Article 26(3) of the DTAA between India and US, we hereby direct the AO to re-compute the net losses computing the disallowance on other expenses @ 30%.**

31. Additional grounds taken up by the assessee stands withdrawn, hence not required to be adjudicated.

32. Cross Objection No. 1 & 2 in ITA No. 6162/Del/2015 for A.Y. 2012-13 are infructuous in view of the adjudication above.

33. Cross Objection No. 3 in ITA No. 6162/Del/2015 for A.Y. 2012-13- Due credit for the TDS be given.

34. In the result, all the appeals of the assessee and CO are allowed and the appeal of the revenue is dismissed.

Order Pronounced in the Open Court on 13/10/2021.

Sd/-

**(Kul Bharat)**  
**Judicial Member**

**Dated: 13/10/2021**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

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

Sd/-

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

**ASSISTANT REGISTRAR**