

THE INCOME TAX APPELLATE TRIBUNAL
"I" Bench, Mumbai
Shri Shamim Yahya (AM) & Ms. Kavitha Rajgopal (JM)

I.T.A. No. 1046/Mum/2021 (A.Y. 2013-14)
I.T.A. No. 1047/Mum/2021 (A.Y. 2015-16)

DCIT(International Taxation)-3(2)(1) Room No. 1630, 16 th Floor, Air India Building Nariman Point Mumbai-400 021.	Vs.	Marubeni Corporation C/o. Marubeni India Pvt. Ltd 25, Mittal Chambers 2 nd Floor, Nariman Point, Mumbai-400021. PAN : AAACM7682D
(Appellant)		(Respondent)

Assessee by	Ms. Shruti Khimta
Department by	Shri Milind S. Chavan
Date of Hearing	17.02.2022
Date of Pronouncement	19.04.2022

ORDER

Per Shamim Yahya (AM) :

These are appeals by the Revenue directed against respective orders of learned CIT(A) for A.Y. 2013-14 & 2015-16.

2. Since the issues are common, these are being disposed of by this common order.

3. For the sake of reference we are referring to grounds of appeal for A.Y. 2013-14, which read as under :-

1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the Assessing Officer has rightly held that the entire trade finance interest is related to Permanent Establishment of the assessee.

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the Assessing Officer has rightly held that the amount received as interest from parties in India be taxed at normal rate instead of rate specified in India-Japan DTAA.

3. The Appellant prays that the order of the Ld.CIT(A) on the above ground(s) be set aside and that of the Assessing Officer be restored.
4. The appellant prays that the appeal is maintainable in this case in view of Circular No. 21/2015 dated 10.12.2015 of the CBDT.
4. Brief facts are that during the year under consideration, the Assessee provided trade finance to Tata Hitachi Construction Machinery Co. Ltd (erstwhile known as Telco Construction Equipment Co. Ltd.) ('TELCO') and Hino Motors Sales India Private Limited ('Hino Motors'). In this regard, the Assessee received interest income aggregating to INR 3,07,86,712 in the captioned year. Copy of Proposal for terms of Supplier's credit dated 29.01.2009 duly acknowledged by Telco Construction Equipment Co. Ltd was also submitted to the Assessing Officer. Further the invoice-wise details of interest received along with sample copy of debit notes issued by the Assessee in relation to above income was also submitted. The invoices in this regard were raised by the head office of the Assessee in foreign currency i.e. Japanese Yen. Furthermore, it was submitted that such trade finance or the offshore supply, in relation to which interest was charged, was not made in relation to any of the project office of the Assessee in India. Accordingly, in absence of PE in India in relation to these services, the aforesaid amount were offered to taxed at the rate of 10 percent under Article-11 of India-Japan DTAA. However, the Ld. AO while passing the assessment order taxed the aforesaid interest income as business profits of the Project Office at the rate applicable to foreign company i.e. 40% (plus applicable cess and surcharge), considering the interest income was effectively connected with the Project Office of the assessee in India.
5. Upon assessee's appeal learned CIT(A) held as under :

"This ground is covered by my predecessor's order for A.Y.2012-13. For ready reference, the order for A.Y.2012-13 is reproduced below:-

"The claim of appellant for non-taxability of interest income offered by appellant for tax is rejected. In view of the judgment cited by AR of appellant and I hold that interest on loan in foreign currency is chargeable to tax at

DTAA rate and is not linked with PE of appellant in India. I direct AO to charge interest at DTAA rate,"

This order was further confirmed by Hon'ble ITAT.

Therefore, following the decision of my predecessor and Hon'ble ITAT, the A.O. is directed to apply DTAA rate for interest income."

6. Against the above order the Revenue is in appeal before us.

7. We have heard both the parties and perused the records. We find that the issue is covered in favour of the assessee by the ITAT order in assessee's own case for A.Y. 2012-13 vide order dated 22.5.2019 in ITA no. 598/Mum/2018. The ITAT has decided identical issue as under :-

7. We have considered the submission of both the parties and have gone through the orders of authorities below. During assessment the Assessing Officer noted that assessee has earned interest on interest from banks and others, which has been offered to tax at the rate of 10% in accordance with [Article 11\(2\)](#) of Double Taxation Avoidance Agreement (DTAA) between India and Japan. The Assessing Officer treated the interest receipt as 'Income from Other Sources' and taxed at 42.024% without specifying any reason. The Assessing Officer also concluded that interest relates to the project office in India which is a permanent establishment and the same is taxable under the head 'Income from Other Sources' at the rate applicable to Foreign Companies plus surcharge and Education cess instead of special rates adopted by assessee. No show cause notice was given by Assessing Officer before treating the said interest receipt at taxable at special rate of tax. The Assessing Officer has not given any finding that the project office have any risk of cost for the fund temporarily deposited in India.

8. The assessee has placed on record the copy of assessment order for Assessment Year 2009-10 dated 09.02.2012 passed under [section 143\(3\)](#) r.w.s. 144C(3), assessment order for Assessment Year 2010-11 dated 17.05.2013 passed under [section 143\(3\)](#) r.w.s. 144C(3) and for Assessment Year 2011-12 dated 29.04.2014 passed under [section 143\(3\)](#) r.w.s. 144C(3). Perusal of above referred assessment order reveals that similar interest was taxed as per the rate prescribed under DTAA i.e. @ 10%. The Id. Commissioner (Appeals) after considering the material placed before her directed the Assessing Officer to treat the interest on loan in foreign currency as chargeable to tax in accordance with DTAA rate being not linked with PE of assessee in India. In view of the discussion, we do not find any justification in the order passed by Assessing Officer in treating the interest income @ 42.024%. No contrary facts or law is brought to our notice to take different view. Therefore, we affirm the order of Id. Commissioner (Appeals).

9. In the result, appeal of the revenue is dismissed.

8. Facts in the present case are identical and it is not the case that Hon'ble High Court has reversed the aforesaid decision. Hence, following the precedent, we uphold the order of learned CIT(A).

9. Our above order applies mutatis mutandis to the appeal for A.Y. 2015-16. Accordingly, both the appeals by the Revenue stand dismissed.

Order pronounced in the open court on 19.04.2022.

Sd/-
(KAVITHA RAJGOPAL)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 19/04/2022

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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