

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No.1022/Del/2020
Assessment Year: 2015-16

ACIT Circle – 1 (3) (1) International Taxation, Room No.501, D-Block, Civic Centre, New Delhi	Vs	Fujistu Americal Inc California 1250, East Arques Avenue Sunnyvala, California
(APPELLAN		(RESPONDENT)

Appellant	Sh. Sanjay Kumar, Sr. DR
Respondent	None

Date of hearing:	09/06/2022
Date of Pronouncement:	09/06/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the revenue is preferred against the order of the CIT(A)-42, Delhi dated 13.12.2019 pertaining to A.Y.2015-16.

2. The grievance of the revenue read as under :-

1. *That on the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in holding that the assessee is beneficial owner of the fee for technical services*

and is entitled to treaty benefit and allowed the appeal of the assessee without considering the facts that the assessee is not beneficial owner of the fee included services as all the branding and management fee received by the assessee from Indian entity Fujitsu Consulting India Ltd. (FCI) is transferred to its sister concern Fujitsu Limited, Japan (FJ) on back to back basis.

2. That the Ld. CIT(A) during the course of appellate proceedings has called for email communication between the assessee and the Indian entity Fujitsu Consulting India Ltd. (FCI) and considered the same before taking his decision and thus allowed additional information without routing it through Assessing Officer as required Rule 46 A.

3. None appeared on behalf of the assessee inspite of notice we decided to proceed exparte.

4. The DR was heard at length who placed strong reliance on the Assessment Order.

5. We have carefully perused the orders of the authorities below. Briefly stated the facts of the case are that the return of

the assessee was selected for limited scrutiny and accordingly statutory notices were issued and served upon the assessee. The assessee returned income of Rs.98856830/- which was offered to tax @ 15% claiming eligibility under the India-USA DTAA.

6. During the course of the scrutiny assessment proceedings a reference was made to the Transfer Pricing Officer u/s. 92 CA of the Act determine Arm's Length Price in respect of international transactions. The TPO vide order dated 30.08.2018 observed that the TP issue that arises in the international transaction between the assessee and its AE are being examined in the case of the AE. Hence, no action is taken in the case of the assessee.

7. Proceeding further the AO noticed that during the year assessee has provided branding and management services to an Indian entity name Fujitsu Consulting India Pvt. Ltd. (FCI). The receipts from the services were Rs.9,87,11,121/-. The assessee explained that the same has been offered to tax as fee for included services under the India-USA DTAA and as per Article 12 of India-USA DTAA fee for included services are to be taxed @15% of gross receipt.

8. During the course of assessment the AO came to know that the assessee has an agreement with its sister concern namely Fujitsu Limited Japan under which the branding and management fee received by the assessee for Fujitsu Consulting India is transferred to Fujitsu Limited, Japan on back to back basis. The AO was of the firm belief that the assessee is only a recipient and not the beneficial owner of the said receipts, as the said receipts are transferred to a separate entity on back to back basis. The AO accordingly taxed the said receipts @ 25% on a gross basis.

9. Assessee carried the matter before the CIT(A) and vehemently claimed that the said receipt is taxable @ 15% as the assessee is eligible for the tax rate as per India-USA DTAA.

Before the CIT(A) the assessee explained as under :-

5.7 As per Inter Company Agreement, the appellant highlighted that the aforesaid management services are provided by the group entities termed as "Supplying Companies" and the services are availed by the group entities termed as "Purchasing Companies" and some companies are both Supplier and Purchaser of Services.

5.8 Under the Inter Company Agreement, the services are termed as "Mutually Beneficial Services" which are being provided to all the entities under the agreement, at an arm's length price of cost plus 5% mark up. The cost to be charged to various region heads for these mutually

beneficial services, inter-alia consists of the following:-

*Direct salary including employee benefit cost of the personnel engaged in providing the services • Office overhead costs IT costs
Global Marketing cost Global Delivery Cost
Business Management and Support* v

5.9 *The appellant submitted that the above costs exclude the shareholder costs which are directly chargeable to Fujitsu Limited (ultimate parent company) and any other non-chargeable/ non-beneficial costs. In this regard, the appellant made reference to the “Appendix 4 - Detailed calculation of the recharges/invoicing information of Global Transfer Pricing documentation”.*

5.10 *The Appellant averred that it paid the purchase price to procure mutual beneficial services from its group entities and therefore, it acquires the right to utilize such services in its own right. The appellant pointed out that the services are in the nature of mutual beneficial services which bring about uniformity in the standards of service delivery to customers of Fujitsu group and its internal processes. The Appellant submitted that it further disseminates the services to other companies including its subsidiaries and other entities under its region i.e. Americas.*

5.11 *These charges were recovered by the Appellant from its wholly owned subsidiaries (including FCI) and other companies falling under its region namely:*

- Fujitsu Consulting (Canada) Holdings Inc Fujitsu Consulting (Canada) Inc.

Fujitsu Consulting India Private Limited Fujitsu Consulting Costa Rica, SA Fujitsu Caribbean (Jamaica) Limited

5.12 *Accordingly, the Appellant claimed that it has a right to recover the charges for the services utilized by the group companies in the region, i.e. acting as a trader of such services has offered the same to companies in its region.*

10. Invoking the powers conferred upon him by the provisions of section 250 (4) of the Act. The CIT(A) called for email communication between the group entities. The assessee submitted seven emails as under :-

A. Email dated May 15, 2014 from Your IT Desk(a) in. Fujitsu.com (India) to FCIN.Entireoffice(a)in.Fujitsu.com (Central ID)

This email is regarding logging of high priority ticket with FAI for resolution. It is raised by Fujitsu Consulting India at the central e-mail id to report downtime of Virtual Private Network ('VPN') primary and secondary links with the Appellant which were not accessible. In the given email, downtime notification mentions about **FAI support** engagement. The response received by the Indian AE was that the alternate SSL VPN link provided by **FAI Service Desk** can be logged in during the intervening period when the primary and secondary VPN are not accessible. By way of this communication, the network service requirements of the Indian AE had been resolved through the ticket raised by the Indian AE to the Appellant.

B. Email dated Oct 24, 2014 from ReqTrack.Support@in .Fujitsu.com to FC. IN. EntireOffice(S)in. fuiuitsu. com

This email is regarding Ticket raised by Fujitsu Consulting India at the central e-mail id to report downtime of ReqTrack and Trioka with the Appellant which were not accessible. In the given email, downtime notification mentions that FAI networking team is working on high priority.

C. Email dated March 21, 2015 from erpprod(a)us.fuiuitsu.com (email ID of FAI) to Sachin.amonkar@in.Fujitsu .com (employee of Indian AE)

This email is by the central email id maintained by the FAI to remind the approver at Indian AE to approve/ reject the time card entries submitted by the employees of the Indian AE in relation to a project.

D. Email dated April 5, 2014 from fai hvperion support@fuiuitsu.com (email id of FAI) to Ashutosh.Prabhudesai(d) in. fuiuitsu.com (employee of Indian AE)

This is an email from Hyperion financial system which is maintained by FAI and used by Indian AE wherein a regular FAICONSO application update, was provided.

E. Email dated January 16, 2015 from Offshore Appsupport(a)in.Fuiuitsu.com FC. IN. Entireoffice(a)in. Fuiuitsu. com

There was a downtime due to technical issue with the FAI for which a notification was sent to Indian users by FAI. The email shows the resolution regarding an update that the Oracle application working normally.

F. Email dated September 9, 2014 to September 29, 2014 from (Johanne. clouatre(d)ca. fuiuitsu. com) (email ID of FAI) to Ashutosh.Prabhudesai(a)in. fuiuitsu.com (employee of Indian AE)

It is a chain of emails where the appellant entity's (FAI) resource Mr. Wen Zhu highlighted that as per JSOX requirement, there is a need to perform financial access review to make sure users have the correct financial access in Oracle. In this regard, FAI released list of active oracle users with their finance responsibilities and was forwarded to the Indian Team for confirmation and modifications if any. The email is for review of names of users to provide access of financial data of Fujitsu Consulting India in Oracle and requires confirmation from the employees of Fujitsu Consulting India. The access was granted to the users requiring the financial access by FAI.

G. Email dated May 18, 2016 from (Sachin.amonkar@in.Fujitsu .com) (employee of Indian AE to Arthur Nussbaum and Ken Fuse (FAI)

It is a chain of emails regarding communication between Fujitsu Consulting India team (Sachin Amonkar) and FAI (Arthur Nussbaum and Ken Fuse) wherein the Indian entity informed the appellant (FAI) regarding site visit of TP authorities to the Pune Office to review the detailed working of FNA(Finance & Accounts) and in this regard requested the appellant to share the detailed calculations of the allocation charge. . //

11. After considering the contents of the email the CIT(A) was convinced that the assessee is a beneficial owner of the fee for technical services and is entitled for treaty benefit. As the facts considered by the CIT(A) has remained uncontroverted before us. We, therefore, do not find any reason to interfere with the findings of the CIT(A). The appeal filed by the revenue is accordingly dismissed.

12. Decision announced in the open court on 09.06.2022.

Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- 09.06.2022

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
 ITAT NEW DELHI

Date of dictation	09.06.2022
Date on which the typed draft is placed before the dictating Member	10.06.2022
Date on which the typed draft is placed before the Other member	10.06.2022
Date on which the approved draft comes to the Sr.PS/PS	10.06.2022
Date on which the fair order is placed before the Dictating Member for Pronouncement	10.06.2022
Date on which the fair order comes back to the Sr. PS/ PS	10.06.2022
Date on which the final order is uploaded on the website of ITAT	10.06.2022
Date on which the file goes to the Bench Clerk	10.06.2022
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	