

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

I.T.A. No. 2014/DEL/2019
Assessment Year 2015-16

Starwood Development Consulting Services (AP) Pte Ltd., C/o Nangia & Co. LLP, A-109, Sector-136, Noida.	v.	Assistant Commissioner of Income Tax, Circle-3(1)(2), Intl. Taxation, New Delhi.
TAN/PAN: AANCS3847B		
(Appellant)		(Respondent)

Appellant by:	Shri Tarandeep Singh, Adv.		
Respondent by:	Shri Sukesh Kumar Jain, CIT-DR		
Date of hearing:	20	06	2022
Date of pronouncement:	24	06	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-XLIII, New Delhi ('CIT(A)' in short) dated 04.12.2018 arising from the assessment order dated 06.02.2018 passed by the Assessing Officer (AO) under Section 143(3) r.w. Section 144C(3)(a) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. As per the grounds of appeal, the assessee has challenged the addition of income amounting to Rs.1,65,38,334/- towards fee received by non-resident assessee company from hotel design related consultancy services rendered in India.

3. Briefly stated, the assessee is a tax resident of Singapore and consequently claims that it is entitled to take benefit as available under the provisions of Double Taxation Avoidance Agreement between India and Singapore [DTAA]. The assessee is engaged in the business of providing hotel design related consultancy services to various hotels across the world. During the year under consideration, consultancy services were provided by the assessee to various hotel properties/hotel owners in India. The assessment of the return of income filed by the assessee was completed under Section 143(3) r.w. Section 144C(3)(A) of the Act and the Assessing Officer *inter alia* made an addition of Rs.1,65,38,334/- holding that the payment received by the assessee for rendering Hotel related services to various customers in India were taxable as a 'Fees for Technical Services' [FTS] on both terms of Section 9 of the Act as well as Article 12 of India-Singapore DTAA.

4. Aggrieved, the assessee preferred appeal before the CIT(A) and challenged the action of the Assessing Officer on the ground that the services rendered by the assessee does not qualify as FTS in terms of Article 12 of the DTAA between India and Singapore. The CIT(A) however did not find any merit in the plea of the assessee and confirmed the action of the Assessing Officer.

5. Further aggrieved, the assessee preferred appeal before the Tribunal.

6. When the matter was called for hearing, the ld. counsel for the assessee, at the outset, submitted that the nature of services provided by the assessee does not fall within the purview of FTS as defined in Article 12 of India-Singapore DTAA and secondly such services rendered do not pass the tests of expression 'make available' as delineated by various Courts and the Co-ordinate

Benches. It was next contended that the CIT(A) has proceeded to adjudicate the appeal of the assessee based on totally incorrect set of facts/nature of services by wrongly adopting services provided by affiliates of the appellant/services which are not the same as what has rendered by the assessee herein. The Ld. counsel referred to paragraph 5.3.6 and 5.3.7 of the first appellate order and contended that the CIT(A) has incorrectly noted that the assessee has provided services to Indian Hotels in the nature of sales and marketing, reservation support, royalty programme, human resources and other centralize services which fact has been wrongly imported from the case of group companies while deciding the appeal of the captioned assessee. It was submitted that the assessee is actually engaged in the business of providing hotel design related consultancy services which is not akin to sales and marketing, reservation support, etc. It was submitted that the CIT(A) has decided the appeal and passed order on a wrong set of services, i.e., other than services that have been actually performed by the assessee. The ld. counsel submitted that the incorrect facts in nature of services rendered has a material impact on taxability of services qua Article 12 of the India-Singapore Treaty. It was thus submitted that aforesaid first appellate order suffers from foundational defects and is thus not sustainable in law and requires to be appropriately dealt with.

7. The ld. DR, on the other hand, placed reliance upon the order of the CIT(A).

8. We have carefully considered the rival submissions. We have persuaded by the plea raised on behalf of the assessee. On a bare reading of the first appellate order and paragraphs 5.3.6 and 5.3.7 in particular, we observe that CIT(A) has adjudicated the first appellate proceedings on the premise that the assessee is engaged in

rendering marketing services, use of reservation platform and other services instead of hotel design related consultancy services actually provided by the assessee. This being the case, the conclusion drawn by the CIT(A) is based on facts which are premised on wrong tangent. It is well settled that where the adjudicating authority has proceeded to determine the issue on facts which are partly relevant and partly irrelevant, it is difficult to ascertain the extent of impact of irrelevant consideration or facts in determining the issue. This being so, we consider it expedient to remit the matter back to the file of the first appellate authority for *denovo* adjudication of the issue in the light of correct facts and in accordance with law.

9. It shall be open to the assessee to appraise the first appellate authority with all relevant facts as may be necessary for determination of the issue. The assessee shall also be at liberty to adduce such evidences and furnish such information and explanations as may be considered necessary for objective determination of the issue.

10. Accordingly, the matter is set aside to the file of CIT(A) for fresh adjudication in accordance with law after giving proper opportunity to the assessee.

11. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 24/06/2022.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

DATED: **24/06/2022**

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER