

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'I' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1758/Mum/2021 & 1759/Mum/2021
(Assessment Year :2013-14 & 2015-16)**

Asst. Commissioner of Income-Tax (International Tax)-4(1)(1), Mumbai 17 th Floor, Air India Building Nariman Point, Mumbai- 400 021	Vs.	M/s. Renaissance Services BV C/o. Marriott Hotels India Pvt. Ltd., 303A, 304, Fulcrum B-Wing, Hiranandani Business Park Sahar Road Andheri (E), Mumbai- 400 099
PAN/GIR No.AAECR4995E		
(Appellant)	..	(Respondent)

**ITA No. 1453/Mum/2021
(Assessment Year : 2015-16)**

M/s. Renaissance Services BV C/o. Marriott Hotels India Pvt. Ltd., 303A, 304, Fulcrum B-Wing, Hiranandani Business Park Sahar Road Andheri (E), Mumbai- 400 099	Vs.	Asst. Commissioner of Income-Tax (International Tax)-4(1)(1), Mumbai 17 th Floor, Air India Building Nariman Point, Mumbai- 400 021
PAN/GIR No.AAECR4995E		
(Appellant)	..	(Respondent)

Assessee by	Shri Paras Salva & Shri Pratik Poddar
Revenue by	Shri Rajneesh Yadav
Date of Hearing	28/04/2022
Date of Pronouncement	27/06/2022

आदेश / ORDER**PER BENCH:****ITA No.1758/Mum/2021 (A.Y.2013-14)**

This appeal in ITA No.1758/Mum/2021 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-58, Mumbai in appeal No.CIT(A)-58, Mumbai/10018/2016-17 dated 25/06/2021 (Id. CIT(A) in short) against the order of assessment passed **u/s.143(3) r.w.s. 144C(3)** of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/04/2016 by the Id. Dy. Commissioner of Income-Tax, International Taxation-4(1)(1), Mumbai (hereinafter referred to as Id. AO).

ITA No.1759/Mum/2021 Revenue Appeal & ITA No.1453/Mum/2021 (A.Y.2015-16) Assessee Appeal

These cross appeals in ITA No.1758/Mum/2021& 1453/Mum/2021 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-58 in appeal No.CIT(A)-58,Mumbai/10573/2017-18 dated 25/06/2021 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 144C(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 04/01/2018 by the Id. Asst. Commissioner of Income Tax, International Taxation-4(1)(1), Mumbai (hereinafter referred to as Id. AO).

Identical issues are involved in all these appeals and hence they are taken up together and disposed of by this common order.

2. Let us take up the appeal of the revenue in ITA No. 1758/Mum/2021 for Asst Year 2013-14.

3. The revenue has raised the following grounds of appeal before us :-

“The Ld' CIT(A) erred in holding that the amount of Rs 1,15,42,835 received by the Assessee on account of conducting core managerial training programs for managerial employees of the Indian hotels under the Training and Computer Systems Agreement (TCSA) were not in the nature of fees for technical services under section 9(1)(vii) of the Income-tax Act, 1961 (the Act) as well as under Article 12(5) of the India-Netherlands tax treaty;

2. The Ld' CIT(A) erred in holding that the amount of Rs 9,47,56,685 received by the Assessee on account of providing access to the centralized reservation systems, property management systems and other systems to the Indian hotels under the TCSA were not in the nature of royalty under section 9(1)(vi) of the Act respectively as well as under Article 12 of the India-Netherlands tax treaty;

3. The Ld' CIT(A) erred In holding that the amount of Rs 1,83,37,856 received towards human resources related costs incurred by the Assessee under the TCSA (such as medical insurance premium, stock compensation and like benefits) were not in the nature of fees for technical services under section 9(1)(vii) of the Act as well as under Article 12(5) of the India-Netherlands tax treaty;”

4. We have heard the rival submissions and perused the materials available on record. We find that assessee is a company incorporated in the Netherlands and is tax resident of Netherlands. The assessee is part of the Marriott Group. It is engaged in conducting training programs and providing access to various 'Computer Systems such as Centralised Reservation Systems (CRS) to Marriott Chain of Hotels located worldwide. The cost and expense incurred by the assessee for rendering the aforesaid services are allocated amongst hotels, on a fair and reasonable basis. The assessee submitted that no separate fee or any other form of mark up was ever charged by or was payable to the assessee for such services.

4.1. The assessee filed its return of income for the Asst Year 2013-14 on 30.9.2013 declaring total income of Rs 21,70,771/-. The Id AO observed that the assessee during the year had received the following amounts from the Indian Hotels :-

For Core Managerial Training Services	- Rs 1,15,42,835/-
For Non-Core Managerial Training Services	- Rs 21,70,771/-
For Computer Reservation Systems	- Rs 9,47,56,685/-
For Reimbursements	- Rs 1,83,37,856/-

4.2. We find that the Id. AO treated the payment received for providing training services as Fees for Technical Services (FTS) u/s 9(1)(vii) of the Act as well as under the Double Taxation Avoidance Agreement (DTAA) between Indian and Netherlands as per Article 12(5) thereon. Further, the Id. AO treated the payment received for providing CRS facility as royalty as well as FTS. With regard to reimbursement of expenses, the Id. AO held that the reimbursements will partake the character of the amounts received from rendering services under the Training and Computer Systems Agreement (TCSA) and will be taxable accordingly. We find that the Id. CIT(A) had deleted the additions made by the Id. AO by following the orders passed by this Tribunal in assessee's own case for the earlier years.

4.3. We find that the Id. AR stated that the issues are squarely covered by the orders passed by this tribunal in assessee's own case for Asst Years 2009-10, 2010-11, 2011-12, 2012-13 and 2014-15, wherein this tribunal had considered each of the receipts separately and had held that the same cannot be construed as FTS or Royalty, as the case may be. Per Contra, the Id. DR argued that the receipts from CRS should be treated as

Equipment Royalty. We find that this aspect is also covered by the order of this tribunal in assessee's own case for the Asst Years 2010-11 and 2014-15 vide para 12.1. in pages 20 to 21 of the order wherein it was held that receipts cannot be classified as Equipment Royalty. Hence the entire arguments advanced by the Id. DR are already covered in the orders passed by this tribunal in earlier years. For the sake of convenience, the relevant operative portion of the order passed by this tribunal for Asst Year 2009-10 in ITA No. 7159/Mum/2012 dated 8.6.2018 are reproduced hereunder:-

For Consideration received in relation to conducting Core training, Technical and Managerial services

10. We shall now advert to the claim of the assessee that the consideration received for conducting training programs had wrongly been held by the CIT(A) as FTS in its hands. The assessee had assailed the observations of the CIT(A), viz. (i). the training programs conducted by the assessee did "make available" technical knowledge; and (ii). that as the conducting of training programs by the assessee was "ancillary and subsidiary" to the royalty agreement, hence the consideration received therefrom was liable to be assessed as FTS under Article 12(5)(a) of the India-Netherland tax treaty. We find that as per the agreement entered into between the assessee and the Indian Hotels the assessee was to provide (i) certain core-training programs for management level personnel; and (ii). other training for other employees of the above referred Indian Hotels. However, during the year under consideration the assessee had only provided certain core-training programs for management level personnel. We are of the considered view that the claim of the assessee before the lower authorities that as the training services provided to the management level personnel were in the nature of general managerial/leadership training and the same did neither involve „make available" or transfer of any technology to the personnel, had neither been dislodged before the lower authorities, nor anything has been placed on record before us by the Id. D.R, which could persuade us to hold otherwise. We find ourselves to be in agreement with the view taken by the ITAT, Bangalore in the case of ITO Vs. Veeda Clinic Research P. Ltd. (2011) 13 taxmann.com21 (Bang), that in order to successfully invoke the coverage of training fees by „make available" clause in the definition of technical services, the onus is on the revenue authorities to demonstrate that the services do involve transfer of technology. We have further perused the case laws relied upon by the Id. A.R to impress upon us to return a finding that the consideration received by the assessee from providing training services being in the nature of managerial/leadership training, thus could not have been assessed as FTS in the hands of the assessee, as under:

(i). *Llyods Register Industrial Services (India) P. Ltd. vs. ACIT (2010) 36 SOT 293 (Mum)*:

The Tribunal observed that the expenses incurred by the assessee which was engaged in the business of survey of ships, on the training of its employees who would inspect various mechanical and electrical equipments in the ship and ultimately issued a fitness certificate, could not be held as payments made for technical services. The Tribunal while concluding as hereinabove, observed that the employees by taking training from the Principal company had acquired only inputs to enable them to perform their work with desired state of efficiency.

(ii). *Ershisanye Construction Group India (P) Ltd. vs. DCIT (2017) 84 taxmann.com 108 (Kol)*:

The Tribunal had observed that payments which were made by a Chinese company in respect of training of Chinese engineers of the assessee in english language would not constitute FTS.

(iii). *ACIT Vs. PCI Ltd. (2011) 12 taxmann.com 59 (Delhi)*:

The High Court observed that payments made by the assessee to a non-resident party for training its personnel or customers to explain to the proposed buyers the salient features of the products imported by the assessee in India and to impart training to the customers to use the equipments cannot be held to be FTS.

(iv). *ITO Vs. Veeda Clinic Research P. Ltd. (2011) 13 taxmann.com 21 (Bang)*:

Where training services to the employees of the assessee company was general in nature, not involving any transfer of technology, the fees for providing such services was not taxable as FTS as per Article 13 of India-U.K tax treaty.

(v). *Wockhardt Ltd. Vs. ACIT (2011) 10 taxmann.com 208 (Mum)*:

The services rendered by the employees of a non-resident company being in the nature of sharing management experiences and business strategies could not be termed as technical services.

We have deliberated at length on the aforesaid judicial pronouncements in the backdrop of the facts involved in the case of the assessee before us, and are of the considered view that the consideration received by the assessee for the managerial/leadership training provided to the employees of the Indian Hotels cannot be held as FTS.

11. We have further deliberated on the reliance placed by the CIT(A) on the judgment of the Hon'ble Supreme Court in the case of CBDT Vs. Oberoi Hotels (India) Pvt. Ltd (1998) 231 ITR 148 (SC), wherein it was observed that technical services" included „professional services“. Still further, we find that the A.O also had relied on certain judgments/orders, viz. (i). Intertek Testing Services (2008) 307 ITR 418 (AAR); (ii). G.V.K Industries (1997) 228 ITR 564 (AP); (iii). Continental Construction Ltd. Vs. CIT (1992) 195 ITR 81 (SC); (iv). CBDT Vs. Oberoi Hotels (India) Pvt. Ltd (1998) 231 ITR 148 (SC); and (v).Dean, Goa Medical College Vs. Dr. Sudhir Kumar Solanki (2001) 7 SCC 645, to support his view that „technical services" included" professional services". We find substantial force in the contention of the ld. A.R that in case training services rendered by the assessee to the Indian Hotels were to be construed as professional services, than the same would fall within the sweep of Article 14 of the India-

Netherland tax treaty, which exclusively pertained to “Independent Personal Services” and would automatically be excluded from Article 12 dealing with “Fees for technical services”. Still further, a perusal of Article 14 reveals that the same could be assessed in the contracting state i.e India, subject to satisfaction by the assessee of either of the two conditions therein provided, viz. (a). fixed base for performing of the professional activities in the contracting state; or (b). stay for a period or periods exceeding 183 days in the fiscal year.

12. We shall now advert to the observations of the CIT(A) that as the Training and Computer systems agreements (for short „TCSA”) entered into by the assessee with the Indian Hotels, viz. M/s Viceroy Hotels Ltd., Hyderabad and M/s Chalet Hotels Ltd., Mumbai were an integral part of the licensing/royalty agreement, thus both the agreements were complementary to each other. The CIT(A) was of the view that as the training services rendered by the assessee were “ancillary and subsidiary” to the enjoyment of the rights, property or information pursuant to the royalty agreement, thus the consideration received by the assessee from rendering such services could safely be held as FTS as per Article 12(5)(a) of the India-Netherland tax treaty. We have deliberated at length on Article 12(5)(a) of the tax treaty, which reads as under:

“Article 12(5): For the purposes of this Article, “fees for technical services” means payment of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) 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 4 of this Article is receives; or”

We find that for invoking Article 12(5)(a) and holding the consideration received by an assessee from certain “ancillary and subsidiary” technical or consultancy services rendered for the application or enjoyment of the right, property or information as FTS, presupposes receipt by the assessee of a consideration towards royalty as provided in Article 12(4) of the tax treaty.

We are of the considered view that as the assessee was not the owner of any brand or trademark for which any royalty would have been received by it under Article 12(4) of the India-Netherland tax treaty, hence the services provided to the Indian Hotels were in the ordinary course of its business, and could not be brought within the sweep of “ancillary and subsidiary” services as provided in Article 12(5)(a) of the India-Netherland tax treaty. We thus, are of a strong conviction that the CIT(A) loosing sight of the fact that as the assessee was not in receipt of any royalty as per Article 12(4) of the India-Netherland tax treaty, hence had failed to appreciate that the training services rendered by it could not have been held to be “ancillary and subsidiary” services under Article 12(5)(a). We thus, are of the view that the consideration received by the assessee for providing training services to the Indian Hotels could not be held as FTS under Article 12(5)(a) of the India-Netherland tax treaty. We are of the considered view that in terms of our aforesaid observations, as neither the training services rendered by the assessee to the Indian Hotels could be held to be technical services, nor the same could have been characterised as “ancillary and subsidiary” services as per Article 12(5)(a), hence the consideration received by the assessee for rendering the training

services could not be held as FTS in its hands. We thus, not being persuaded to subscribe to the view taken by the CIT(A) that the consideration received for providing training services to the Indian Hotels was chargeable as FTS in the hands of the assessee, set aside his order. The **Ground of appeal No. 2** is allowed in terms of our aforesaid observations.

For Consideration received in relation to providing access to

Computer System

13. We shall now advert to the assailing of the order of the CIT(A) by the assessee, on the ground that he had erred in holding that the amounts received by the assessee for providing access to the international CRS, Property Management Systems and Other Systems was ancillary and subsidiary to the enjoyment of the right "Marriott" and hence, taxable as FTS under the India-Netherland tax treaty, as well as under the Act. We find that since inception, it has been the claim of the assessee that as the providing of access to CRS, Property Management Systems and Other Systems to the Indian Hotels, were standard facilities/services, thus they could not be characterised as „technical services" and the consideration received in lieu thereof be subjected to tax as FTS receipts. We find from a perusal of the agreement entered into between the assessee and the Indian Hotels that the assessee had made available the CRS, Property Management Systems and Other Systems for use by the Indian Hotels in their business. We find that the ld. A.R in support of his contention that the consideration received by an assessee for granting license to use its copyrighted software for the licensees own business purpose only, could not be brought to tax as royalty, had relied on the judgment of the Hon"ble High Court of Delhi in the case of DIT Vs. Infrasoftware Ltd. (2013) 39 taxmann.com88 (Delhi) and host of other judicial pronouncements. However, as the CIT(A) had concluded that the consideration received by the assessee from the Indian Hotels for providing access to CRS, Property Management Systems and Other Systems was FTS in the hands of the assessee, hence we refrain from referring to and dealing with the contentions advanced by the ld. A.R in support of his claim that the same could not be held as royalty. We find that the High Court of Delhi in the case of DIT Vs. Sheraton International Inc.(2009) 313 ITR 267 (Del) had observed that consideration received by the assessee for providing access to reservation system could not be brought to tax as FTS in the hands of the assessee. We further find that the Hon"ble Supreme Court in the case of CIT vs. Kotak Securities Ltd. (2016) 383 ITR 1 (SC) had in the backdrop of the facts involved in the case before it, had observed that services made available by Bombay Stock Exchange [BSE Online Trading (BOLT) System] for which transaction charges were paid by members of BSE were for common services that every member of Stock Exchange was necessarily required to avail of to carry out trading in securities in Stock Exchange, thus such services did not amount to „technical services" provided by Stock Exchange, as the same were not services which were specifically sought for by the user or consumer. The Hon"ble Apex Court following the aforesaid view, had thereafter observed in the case of CIT (IT)-1 Vs. A.P Moller Maersk A S (2017) 392 ITR 186 (SC), that where the assessee, a foreign shipping company had set up a telecommunication system in order to enable its agents across globe including India to perform their role more effectively, the payment received for providing such facility was not taxable as fee

for technical services. We have perused the facts of the case before us and after deliberating on the same in the backdrop of the aforesaid judicial pronouncements are of the considered view that as the access to CRS, Property Management System and Other Systems provided to the Indian Hotels by the assessee were common facilities provided to the members of the Marriott chain of hotels across the world by the assessee, and were not tailor made services to suit their specific requirements, thus the said facility could not be construed as „technical services“.

*14. We shall now advert to the observations of the CIT(A) that as the consideration received by the assessee on account of providing access to CRS, Property Management Systems and Other Systems facility was ancillary and subsidiary to the enjoyment of the right to use the brand “Marriott”, thus the same would be taxable as FTS under Article 12(5)(a) of the India-Netherlands tax treaty. We are of the considered view that as observed by us hereinabove, invoking of Article 12(5)(a) and holding the consideration received by an assessee from certain “ancillary and subsidiary” technical or consultancy services rendered for the application or enjoyment of the right, property or information as FTS, itself presupposes receipt by the assessee of a consideration towards royalty as provided in Article 12(4) of the tax treaty. We are of the considered view that now when the assessee was not the owner of any brand or trademark for which any royalty would have been received by it under Article 12(4) of the India- Netherland tax treaty, hence the services of providing access to CRS, Property Management System and Other Systems to the Indian Hotels were provided by it in the ordinary course of its business and could not be brought within the sweep of “ancillary and subsidiary” services under Article 12(5)(a) of the tax treaty. We thus, are of a strong conviction that the CIT(A) loosing sight of the fact that as the assessee had neither granted any right of enjoyment of the brand “Marriott” to the Indian Hotels and thus was not in receipt of any royalty as provided in Article 12(4) of the India-Netherland tax treaty, thus the consideration received by it from the Indian Hotels for providing access to CRS, Property Management System and Other Systems, could not have been brought within the sweep of “ancillary and subsidiary” services under Article 12(5)(a). We thus, in terms of our aforesaid observations are of the considered view that as providing of access to CRS, Property Management Services and Other services could neither be held to be technical services, nor the same in terms of our aforesaid observations could have been characterised as “ancillary and subsidiary” services under Article 12(5)(a), hence the consideration received by the assessee for rendering the said services/facility could not be held as FTS in its hands. We thus, set aside the order of the CIT(A) holding that the consideration received by the assessee for providing of access to CRS, Property Management Services and Other Systems was chargeable as FTS in the hands of the assessee. The **Ground of appeal No. 3** is allowed in terms of our aforesaid observations.*

4.4. We find that this Tribunal for Asst Years 2011-12 and 2012-13 in ITA Nos. 5678/Mum/2016 and ITA No. 764/Mum/2017 respectively vide order dated 9.8.2019 had held that the computer system receipts do not qualify as Royalty. This order was also followed by this tribunal in assessee’s

own case for the Asst Years 2010-11 and 2014-15 in ITA Nos. 5677/Mum/2016 and ITA No. 1629/Mum/2020 respectively vide order dated 24.2.2022.

4.5. The Id. DR placed reliance on the decision of Pune Tribunal in the case of Vanderlande Industries Private Limited vs ACIT in ITA no. 48/Pun/2018 dated 9.2.2022 in support of his arguments that receipts from training services and computer reservation systems should be treated as Equipment Royalty. We have gone through the decision of the Pune Tribunal which was placed on record by the Id. DR at the time of hearing. In our considered opinion, it is abundantly clear from the agreement entered into by the assessee that the hotel owners are required to purchase and install at its own cost, the necessary Hardware and Software for accessing the CRS. The main distinguishing feature with Pune Tribunal decision and that of the assessee is that in the case of the assessee, there is no provision of any equipment / infrastructure by the assessee. The assessee herein had merely provided a service by giving a right to access the CRS to the Indian Hotel owners. The servers are not leased to the Indian Hotel owners. Hence rendition of a service by a service provider using the equipment or an apparatus would not constitute Royalty, in contrast to specifically allowing or granting the use or right to use of such equipment or apparatus in the hands of the customer by way of renting or leasing of equipment or allowing the customer to commercially exploit such equipment for the customer's own benefit. Moreover, in our considered opinion, in order for a consideration to be treated for use or right to use of an equipment, both under the provisions of the Act as well as under the Treaty, the same has to be with respect to specifically identified equipment which is not in the assessee's case. At the cost of repetition, in the instant case before us, the assessee

is merely providing an access to CRS. Hence we hold that the decision of Pune Tribunal is factually distinguishable with that of assessee and does not advance the case of the revenue.

4.6. It is not in dispute that the facts prevailing in Asst Years 2009-10, 2010-11, 2011-12, 2012-13 and 2014-15 are identical with the facts prevailing in Asst Year 2013-14 as they form part of the same agreement and same nature of activities carried out by the assessee. Hence we hold that the decision rendered by this tribunal in assessee's own case for Asst Years 2009-10 to 2012-13 and 2014-15 shall apply mutatis mutandis to Asst Year 2013-14 also. Accordingly, the Ground Nos. 1 & 2 raised by the revenue are dismissed.

5. With regard to consideration received in relation to reimbursement of expenses, we find that the Id. AO had held that reimbursement of expenses are nothing but partakes the character of the amounts received from rendering services under the Training and Computer Systems Agreement (TCSA). We find that the Id. CIT(A) held that the taxability of reimbursement of expenses should be the same as the primary receipts i.e training receipts and computer system receipts and hence an offshoot of those receipts only. The Id. CIT(A) held that since the primary receipts are not taxable in India, the off shoot receipts thereon are also not taxable in India. We find that the Id. DR argued that the Id. CIT(A) had not gone into the facts of this issue by ascertaining the details of reimbursement provided by assessee. But we find that the assessee had been rendering only training services and Computer reservation systems services and other than this, does not perform any other function. Hence the claim of the assessee that the reimbursement of expenses would pertain only to the training and CRS activities, deserves to be accepted.

Hence, we do not find any infirmity in the order of the Id. CIT(A) in this regard. Accordingly, the Ground No. 3 raised by the revenue is dismissed.

6. In the result, the appeal of the revenue in ITA No. 1758/Mum/2021 for Asst Year 2013-14 is dismissed.

7. Identical issues are raised by the revenue in Asst Year 2015-16 also. We find that there is a small change in the facts in Asst Year 2015-16 with regard to receipts from training services. We find that in Asst Year 2015-16, the assessee itself had offered receipts from training services as FTS on the basis of offer made by it in Asst Year 2014-15. The assessee has preferred an appeal before us seeking exclusion of the same from chargeability to tax. But we find that this Tribunal while adjudicating the very same issue under similar circumstances in Asst Year 2014-15 vide order dated 24.2.2022 had addressed this issue in the following manner :-

“11.1. The aforesaid grounds have already been adjudicated by this Tribunal in A.Y.2010-11 supra wherein it was held that amounts received by the assessee towards training and computer systems agreement and not taxable in India both under the Act as well as under Indo-Netherlands treaty. But there is a small change on facts during the year under consideration. We find that in A.Y.2014-15, the assessee itself had offered receipts from training services as FTS on the basis of earlier year assessment orders. This was sought to be reversed by the assessee during the course of assessment proceedings which was denied. The Id. CIT(A) also did not agree to this contention of the assessee. In fact the assessee had raised an additional ground before the Id. CIT(A) on this count. We find that the Id. CIT(A) had denied admission of the additional ground raised by him. We find that the Id. CIT(A) had rejected the admission of additional ground raised by the assessee seeking reduction of income from training services from taxable income, on the ground that assessee had not made this claim in the return of income. The Id. CIT(A) in this regard had placed in the decision of the Hon’ble Jurisdictional High Court in the case of Ultratech Cements Ltd., vs. Additional Commissioner of Income Tax, Range 2(2) in Income Tax Appeal No.1060 of 2014 dated 18/04/2017 in support of his decision of refusing to admit additional ground.

12. At the outset, we find that the issue in dispute as far as the taxability of receipts from training services and computer reservation systems had already been decided by this Tribunal in favour of the assessee holding that the said receipts are not taxable in India either as FTS or as royalty as per the Act and as per Indo-Netherlands treaty. Merely because the assessee had offered income from training services to tax in the return of income for the A.Y.2014-15 (i.e. the year under consideration), the assessee should not be unjustly taxed on a receipt which is otherwise not chargeable to tax both as per the Act and as per the treaty. We find that the Hon'ble Supreme Court in the case of Goetze India Ltd., reported in 284 ITR 323 had held that any claim of the assessee could be made only by way of a valid return. In the instant case, the assessee could not file a revised return within the time prescribed under the Act. It is a fact that assessee had offered the income while filing its return for A.Y.2014-15. Thereafter, during the course of assessment proceedings, in view of the subsequent development that had cropped up in assessee's own case wherein the Tribunal for A.Y.2009-10 had taken a decision in favour of the assessee on the very same taxability of receipts from training services, the assessee made a claim before the ld. AO that the said receipt should not be taxed in the hands of the assessee. We find that the decision of Goetze India categorically states in the final paragraph that the restriction of entertaining a claim otherwise than by way of valid return shall not apply to appellate authorities. Hence, we hold that the ld. CIT(A) ought to have entertained the said claim of the assessee. In any case, there is no estoppel against the statute and law is very well settled on the same. As on date, this Tribunal in assessee's own case for A.Yrs 2009-10, 2011-12 and 2011-12 had categorically held that receipts from training services are not taxable in the hands of the assessee either as FTS as per Act as well as under the Indo-Netherlands treaty. The decision relied upon by the ld. CIT(A) on the decision of the Hon'ble Jurisdictional High Court in the case of Ultratech Cement does not apply to the facts of the instant case in view of the fact that in the case before the Hon'ble Jurisdictional High Court, the assessee raised an additional ground for claiming deduction u/s.80 IA of the Act before the Tribunal for the first time when no claim was made before the lower authorities. In that case the facts relevant for adjudication of the claim of deduction u/s.80IA of the Act were not available on record before the lower authorities. Hence, the Tribunal had rejected the claim of admission of additional ground in the case of Ultratech, which was upheld by the Hon'ble Jurisdictional High Court. In the instant case, the entire facts relevant for taxability of receipts from training services are already on record which have already been culled out by the ld. AO in pages 2 & 3 of the assessment order. In these circumstances, the ld. CIT(A) ought to have admitted the additional ground raised by the assessee, even though it results in assessed income below the returned income. Hence, we hold

that income from training services should not be brought to tax in the hands of the assessee in A.Y.2014-15. Even though this would result in a situation where it would go below the returned income, still the assessee would be entitled for the relief. Reliance in this regard is made on the decision of the Hon'ble Gujarat High Court in the case of Gujarat Gas Limited vs. JCIT reported in 245 ITR 84 and Milton Laminates Ltd., vs. CIT reported in 37 Taxmann.com 249 (Hon'ble Gujarat High Court).

12.1. On merits, the ld. DR also pointed out that during the year, the ld. AO treated the receipts from computer reservation system as equipment royalty which was not decided by the Tribunal in earlier years and accordingly he argued that the decision of the Tribunal in earlier years would not be applicable for this assessment year. Per contra, the ld. AR argued that the term "equipment" referred to by the ld. AO only means "server". The very same server was available in earlier years also for rendering the computer reservation system services by the assessee. Hence, there is absolutely no change in the facts. We also find that servers are owned and used by the assessee and not by the Indian entity. The servers are not given on rent to Indian Hotels. Hence, we are in agreement with the argument advanced by the ld. AR in this regard and hold that the year under consideration is no way factually different from earlier years and hence, the decision rendered by this Tribunal in A.Y.2010-11 supra shall apply mutatis mutandis to this assessment year also.

12.2. In view of the aforesaid observations, we hold that receipts of the assessee from training services and computer reservation system services shall not be chargeable to tax both under the Act as well as under the treaty. Accordingly, the grounds raised by the assessee are allowed."

7.1. Respectfully following the aforesaid decision of this tribunal dated 24.2.2022 reproduced supra and the decision of this tribunal for Asst Year 2013-14 hereinabove, we hold that the receipts of the assessee from training services and computer reservation services including reimbursements thereon , shall not be chargeable to tax both under the Act as well as under the Treaty. Accordingly, the grounds raised by the assessee are allowed and grounds raised by the revenue are dismissed.

8. To sum up:-

ITA No.	AY	Appeal By	Result
1758/Mum/2021	2013-14	Revenue	Dismissed
1453/Mum/2021	2015-16	Assessee	Allowed
1759/Mum/2021	2015-16	Revenue	Dismissed

Order pronounced on 27/06/2022 by way of proper mentioning
in the notice board.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 27/06/2022
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai