

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA Nos.1443 & 1444/PUN/2017

निर्धारण वर्ष / Assessment Years: 2011-12 & 2012-13

Groupo Antolin Irausa S.A. C/o. B-25, MIDC, Ranjangaon, Shirur, Pune 412 220 PAN : AADCG9626L	Vs.	DDIT (International Taxation)-1, Pune
Appellant		Respondent

Assessee by: Shri Jehangir D. Mistri
Revenue by: Shri Piyush Kumar Singh Yadav

Date of hearing 27-07-2022
Date of pronouncement 28-07-2022

आदेश / ORDER

PER R.S.SYAL, VP :

These two appeals by the assessee are directed against the common order passed by the CIT(A)-13, Pune on 23-03-2017 in relation to the assessment years 2011-12 and 2012-13. Since identical grounds have been raised in these appeals, we are, therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. Pithily put, the facts of the case are that the assessee is a non resident company incorporated in Spain. It is engaged in mainly sale of cemented carbide and high speed steel tools for metal

working in Europe. The return of income was filed for both the years and the assessments were made at higher income. No relief was allowed in the first appeal, which has brought the assessee before the Tribunal.

3. Before taking up the appeals on merits, it would be relevant to note that the Id. CIT(A) passed the impugned order in respect of three A.Ys., namely, 2010-11 and 2011-12 and 2012-13. All these three appeals by the assessee were clubbed before the Tribunal for disposal. Both the sides made elaborate arguments in respect of the appeal for the A.Y. 2010-11 and adopted such arguments for the two years under consideration by fairly admitting that the facts and circumstances of all the appeals are similar and further that the view taken for the A.Y. 2010-11 may be followed for the appeals under consideration. We have passed today a separate order for the A.Y. 2010-11.

4. The first issue raised in both the appeals is against the confirmation of addition on account of intra-group services rendered by the assessee to its Indian entity for fee amounting to Rs.4,10,33,751/- (A.Y. 2011-12) and Rs.5,68,19,782/- (A.Y. 2012-13), which has been treated as fees for technical services.

5. This issue has been dealt with in the order of the tribunal for the A.Y. 2010-11. Following the same, it is held that the fees for intra-group services is taxable u/s 9(1)(vii) of the Income tax Act, 1961 (hereinafter also called 'the Act') but the scope of the inclusion in the total income will get shrunked to the extent as held in the said Tribunal order in light of the DTAA between India and USA. Further, such amount cannot be treated either as 'Dividend' or 'Other Sources' income under the DTAA between India and Spain.

6. The second issue raised by the assessee is against the confirmation of addition on account of reimbursement of leased line charges amounting to Rs.43,57,404/- (A.Y. 2011-12) and Rs.52,00,687/- (A.Y. 2012-13).

7. This issue has been determined in favour of the assessee by the Tribunal in the appeal for the A.Y. 2010-11. Following the same, the respective grounds are allowed.

8. The third issue is against the confirmation of addition of Rs.7,33,597/- (A.Y. 2011-12) and Rs.7,18,867/- (A.Y.2012-13) towards reimbursement of software charges, which was treated by the AO as royalty.

9. This issue has also been determined in favour of the assessee in the appeal for the A.Y. 2010-11. Following the same, the respective grounds are allowed.

10. The last issue is against the charging of interest u/s.234B.

11. This issue has been discussed in paras 19 and 20 of the Tribunal order for the A.Y. 2010-11 and decided in favour of the assessee by noting that an amendment has been carried out to section 209(1) by insertion of proviso w.e.f. 1.4.2012 providing, *inter alia*, that for computing liability for advance tax, income-tax calculated under clause (a) or clause (b) or clause (c) shall not be reduced by the aforesaid amount of income-tax which would be deductible during the said financial year under any provision of this Act from any income, if the person responsible for deducting tax has paid or credited such income without deduction of tax. The Hon'ble Supreme Court, while upholding the view similar to the one taken by the Tribunal for the A.Y. 2010-11, in *DIT Vs. Mitsubishi Corporation* (2021) 283 Taxman 273 (SC) has held that the position has changed since the financial year 2012-13, in view of the proviso to section 209(1)(d) made applicable to cases of advance tax payable in financial year 2012-13 and thereafter. In

that view of the matter, the unamended provision will apply to both the A.Ys. under consideration. Thus these grounds are allowed.

12. In the result, both the appeals are partly allowed.

Order pronounced in the Open Court on 28th July, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 28th July, 2022
Satish

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-13, Pune
4. The Pr.CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे “C” / DR
‘C’, ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	27-07-2022	Sr.PS
2.	Draft placed before author	28-07-2022	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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