

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

**BEFORE SHRI G.S. PANNU, PRESIDENT &
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA No.7592/Del/2019
Assessment Years: 2015-16

ACIT, Circle-12(2), New Delhi	Vs.	IQOR India Services Pvt. Ltd., P-24, Green Park Extension, New Delhi
PAN :AABCI2835F		
(Appellant)		(Respondent)

Department by	Shri Sanjay Kumar, Sr. DR
Assessee by	Ms. Rano Jain, Adv.

Date of hearing	25.08.2022
Date of pronouncement	25.08.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

This is an appeal by the assessee against order dated 31.06.2019 of learned Commissioner of Income-Tax (Appeals)-4, New Delhi pertaining to assessment year 2015-16.

2. Briefly the facts are, assessee, a resident corporate entity, is stated to be engaged in providing business process outsourcing services in the nature of collection/accounts receivable management and customer retention services to its overseas Associated Enterprises (AE). For the year under dispute, assessee filed its return of income on 27.11.2015 declaring income of Rs.14,31,61,230.

3. In course of assessment proceedings, the assessing officer noticed that in the year under consideration, assessee has remitted an amount of Rs.9,22,52,255 to an Overseas Entity viz., IQOR Philippines, which has been shown in the financial statement as contractual employees cost. After calling for necessary details and examining them, the assessing officer found that the payment was made to the AE in the form of business auxiliary services without withholding tax under Section 195 of the Act. He, therefore, called upon the assessee to explain why the said amount should not be disallowed under Section 40(a)(i) of the Act. In reply, assessee submitted that in absence of any Fee for Technical Services (FTS) clause in the India-Philippines Double Taxation Avoidance Agreement (DTAA), the payment made by assessee is to be treated as business profit. Therefore, in absence of a Permanent Establishment (PE) of the payee in India, the amount cannot be taxed. Therefore, there is no legal requirement of deducting tax at source. The assessing officer, however, did not accept the submission of assessee. He was of the view that the payment made by assessee is in the nature of FTS. He observed, there being no FTS clause in India

Philippines, DTAA, the domestic law will prevail and the provisions relating to FTS as per domestic law will apply. Thus, he held that, though, the assessee was required to deduct tax at source on payment of FTS, having not done so, the amount has to be disallowed under Section 40(a)(i) of the Act. Accordingly, he disallowed the payment of Rs.9,22,52,255. The assessee contested the aforesaid disallowance before learned Commissioner (Appeals). After considering the submission of the assessee in the context of facts and materials on record, learned Commissioner (Appeals) held that, even, in absence of FTS clause in the relevant Tax Treaty, the income received by the payee from India has to be classified as per other provisions of DTAA. Hence, the income has to be considered as business profit as per Article 7 of the India-Philippines DTAA. Proceeding further, he observed, once the income received is in the nature of business profit, in the absence of PE, the income is not taxable in India.

4. We have heard the parties and perused the material on record. While, learned Departmental Representative strongly relied upon the observations of the assessing officer, learned counsel appearing for the assessee relied upon the observations of learned Commissioner (Appeals) and submitted that there are a number of decisions of the co-ordinate Benches, wherein, with reference to India-Philippines DTAA, it has been held that, even, in absence of FTS clause, the income would be governed under the other provisions of DTAA, hence, has

to be treated as business profit under Article 7, which, in absence of a PE cannot be taxed in India.

5. Having considered rival submissions and perused the material available on record, we find, the issue is settled in favour of assessee in a number of decisions of the co-ordinate Benches, with reference to India-Philippines DTAA itself. In case of Jynga Game Networks India (P) Ltd. vs. ACIT in ITA No.2139/Del/2017 dated 03.08.2018, the co-ordinate bench has held as under:

“15....As far as the case of the assessee that the payment in question is in the nature of ‘FTS’ and since the recipient of payment was a tax resident of Philippines and since there is no FTS clause in the said DTAA, the sum in question can be charged to tax only under Article 7 of DTAA as business profits and since Startpoint does not have a PE in India, even under Article 7, the sum in question cannot be brought to tax, is a correct argument and ought not to have been rejected by the CIT(Appeals). We find support for the above said conclusion from the decision of the Tribunal rendered in the case of ABB FZ LLC (supra) and the decision in the case of IBM India Pvt. Ltd. (supra). The facts of the assessee’s case and the facts in the decisions referred to above are identical. The ratio laid down in the aforesaid cases that a payment in the nature of FTS made to Philippines tax resident in the absence of a PE of such tax resident of Philippines in India, income is not chargeable to tax in India supports the plea of the assessee in this regard. We therefore hold that the sum in question cannot be taxed as FTS in India. Consequently, there was no obligation in the part of assessee to deduct tax at source u/s 195 of the Act. Consequently, there cannot be any disallowance u/s. 40(a)(ia) of the Act.”

6. Similar view has been expressed by the Tribunal in the following cases:

- i) M/s. Paramina Earth Technologies Inc., Philippines Vs. DCIT – (ITA No.539/Del/17 & 540/ /2017) dated 26.02.2020; &
- ii) DCIT vs. IBM India (P) Ltd.[2018] 100 Taxmann.com 230 (IT Appeal nos.1288,1291, 1294, 1297, 1300, 1303, & 1306 order dated 16th Nov. 16/2018.

7. No contrary decision has been brought to our notice by learned Departmental Representative. Therefore, respectfully following the ratio laid down in the decisions, referred to above, we uphold the decision of learned Commissioner (Appeals) on the issue. Grounds raised are dismissed.

8. In the result, the appeal is dismissed.

Order pronounced in the open court on 25th August, 2022.

**Sd/-
(G.S. PANNU)
PRESIDENT**

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 25th August, 2022.
Mohan Lal

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	25.08.2022
2.	Date on which the draft of order is placed before the Dictating Member:	25.08.2022
3.	Date on which the draft of order is placed before the other Member:	25.08.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	25.08.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	25.08.2022
6.	Date on which the final order received after having been signed/pronounced by the Members:	25.08.2022
7.	Date on which the final order is uploaded on the website of ITAT:	31.08.2022
8.	Date on which the file goes to the Bench Clerk	31.08.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	