

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

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI S.S.VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.18/PUN/2021

निर्धारण वर्ष / Assessment Year : 2017-18

Sandvik AB, C/o. Sandvik Asia Private Limited, Mumbai-Pune Road, Dapodi, Pune – 411 012 Maharashtra PAN : AAHCS7486E	Vs.	ACIT (International Taxation), Circle-2, Pune
Appellant		Respondent

Assessee by Shri Nikhil Pathak  
Revenue by Shri Shishir Srivastava

Date of hearing 12-09-2022  
Date of pronouncement 12-09-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the final assessment order dated 18-05-2020 passed by the Assessing Officer (AO) u/s.143(3) read with sections 144C(13) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2017-18.

2. The appeal is time barred by 166 days. The ld. AR stated that the delay pertains to Covid-19 Pandemic and hence, covered by the judgment of Hon'ble Supreme Court in *Cognizance for Extension of Limitation, In re 438 ITR 296 (SC) read with*

*judgment in Cognizance for Extension of Limitation, In re 432 ITR 206 (SC) dated 08-03-2021 and 421 ITR 314* where the Hon'ble Apex Court has taken a *suo motu* cognizance of the situation arising out of the challenges faced by the country on account of COVID-19 Virus and resultant difficulties that could be faced by the litigants across the country and accordingly extended the time limit for filing of the appeals. We are satisfied with the reason so stated and condone the delay in filing the instant appeal and admit the same for disposal on merits.

3. The first two grounds are against the taxability of a sum of Rs.17,43,73,176/-. Succinctly, the facts of the case are that the assessee is a non-resident company incorporated in Sweden. The return of income was filed declaring total income at Rs.22,34,65,240/-, however, offering only two receipts to tax, namely, interest received on ECB loan amounting to Rs.2.66 crore and receipt of Fees for Technical Services (in short 'FTS') from Walter Tools India Private Limited amounting to Rs.11.46 lakh, both aggregating to Rs.2.77 crore. The assessee received a sum of Rs.17,43,73,176/- named as Management Support fees pursuant to an Agreement with SAPL, its Indian entity, for rendering services in the nature of Commercial, Management,

Marketing and Administrative. It was claimed that this amount was not chargeable to tax because of the Double Taxation Avoidance Agreement (DTAA) between India and Sweden read with the DTAA between India and Portuguese. The AO rejected the assessee's contention and held the amount received as fees for technical services' (FTS) covered under India-Sweden Treaty. He also examined India-Portuguese treaty and found that the amount was also covered within the scope of its Article 12(4). The Dispute Resolution Panel (DRP) echoed the draft order. This is how, the AO made an addition of Rs.17.43 crore towards Management Support fees by taking it as fees for technical services. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

4. We have heard the rival submissions and perused the relevant material on record. The assessee rendered Managerial Support Services to its Indian entity. It claimed the benefit of Most Favoured Nation (MFN) clause contained in Protocol to India-Sweden DTAA, in turn, relying on India-Portuguese DTAA and claimed that the amount was not chargeable to tax. *Per contra*, the AO followed the orders passed by the DRP for earlier years deciding the issue in favour of the Revenue. It is seen that

the subject matter under consideration came up for consideration before the Tribunal for the immediately preceding assessment year 2016-17. Vide order dated 17-06-2021, the Tribunal (in ITA No.1311/PUN/2019), following its order for earlier years, has held that the amount received by the assessee towards Management Service fees is not chargeable to tax. The ld. DR fairly accepted the position. Respectfully following the precedent, we overturn the impugned order and direct not to include Rs.17.43 crore in the assessee's total income. These grounds are allowed.

5. Ground Nos. 3 and 4 are connected with each other. The assessee has challenged the inclusion of Rs.1,17,61,448/- and Rs.20,46,592/- in its total income received towards Human Resources services and Leadership Seminar and Conference services provided to its Indian entity by treating it as 'FTS'.

6. The facts anent to this issue are that the assessee received the above two sums totalling to Rs.1.38 crore for providing HR and Leadership seminar and Conference services it to its Indian entity. The AO discussed both the transactions in a common way in his order by holding them taxable as 'FTS'. In reaching this conclusion, he relied on the directions given by the DRP for

earlier years. The DRP decided this issue against the assessee for the immediately preceding assessment year by taking departure from the Tribunal orders for the earlier years on the ground that the facts were not similar inasmuch as the Revenue has been debarred from this year onwards from contesting the favourable directions before the Tribunal given by the DRP as incorporated in the final assessment order. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

7. After considering the rival submissions and perusing the relevant material on record, it is seen that two receipts, viz., Leadership seminars and Human Resource Services are involved. The assessee claimed the amounts as not chargeable because of India-Portuguese DTAA. In principle, there can be no controversy about the applicability of the India-Portuguese DTAA to the assessee from Sweden because of the MFN clause contained in the Protocol to the India Sweden DTAA, as this issue has been decided in favour of the assessee by the Tribunal in earlier years. The concern is only to examine if the amounts received by the assessee fall within the relevant clause of the India-Portuguese DTAA. Article 12 of the India-Portuguese treaty deals with "Royalties and Fees for Included Services. Para

1 of the Article states that “Royalties and Fees for Included Services” arising in India and paid to a resident of Sweden may be taxed in Sweden. Para 4 of the Article 12 defines “Fees for Included Services” as under:

“4. For the purposes of this Article, "fees for included services" means payments of any kind, other than those mentioned in Articles 14 and 15 of this Convention, to any person in consideration of the rendering of any technical or consultancy services (including through the provisions 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 3 is received, or
(b)	make available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or technical design which enables the person acquiring the services to apply the technology contained therein.

8. On going through the command of para 4 of Article 12, it can be seen that the term “Fees for Included Services” has been defined to mean any consideration for rendering technical or consultancy services, if such services, insofar as it is relevant for our purpose, make available technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of a technical plan or technical design which enables the person acquiring the services to apply the technology contained

therein. This issue came up for consideration before the Tribunal for the immediately preceding assessment year in which the receipt from HR services was Rs.4.72 lakh and Leadership training fees Rs.40.41 lakh. For smallness of the amount, the Id. AR did not press the issue of receipt from HR services and the second component of Leadership training fee, was at the request of the assessee, restored to the AO for considering it afresh in the light of factual verification. The Tribunal in its order for the immediately preceding assessment year took note of its order passed for the A.Y. 2014-15 in which the issue of Leadership training fees was decided in favour of the assessee by holding it to be not chargeable to tax within the meaning of Article 12(4)(b) of the DTAA between India and Portuguese.

9. The Id. AR brought on record certain additional evidence in the shape of decoding of a Power Point Presentation, copy placed at page 289 onwards of the paper book, to contend that the HR services were not chargeable to tax as per the India Portuguese treaty. This additional evidence has admittedly been not considered by the authorities below. The Id. AR emphasized that receipt on account of HR services, when examined in the light of the additional evidence, ceases to be chargeable to tax.

10. On going through the orders passed by the Tribunal for the earlier years, it turns out that the Leadership training receipt has been specifically held to be not chargeable to tax in the light of Article 12(4)(b) of the DTAA between India and Portuguese. However, we find that for the year under consideration there is some overlapping in the receipts from HR services and Leadership Training. In view of the fact that the assessee has placed on record certain additional evidence which, *inter alia*, is required to be examined afresh to precisely determine the nature of HR services, we consider it expedient to set aside the impugned order on the issue of Leadership training and HR services. We order accordingly and remit the matter to the file of the AO for examining if both the receipts are covered under Article 12(4)(b) of the DTAA between India and Portuguese. The AO will examine the details of the receipts under both the heads for evaluating if such receipts, other than Leadership training, are covered under Article 12(4)(b) of the DTAA between India and Portuguese for determining their taxability or otherwise. The receipt on account of Leadership training cannot be charged to tax in the light of the decision of the Tribunal as reproduced in the order for the immediately preceding assessment year. Needless to

say, the assessee will be allowed reasonable hearing opportunity in such fresh proceedings.

11. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 12<sup>th</sup> September, 2022.

Sd/-  
(S.S.VISWANETHRA RAVI)  
JUDICIAL MEMBER

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

पुणे Pune; दिनांक Dated : 12<sup>th</sup> September, 2022  
सतीश

**आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The CIT(A)-13, Pune
4. The PCIT-5, Pune
5. DR, ITAT, 'C' Bench, 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	12-09-2022	Sr.PS
2.	Draft placed before author	12-09-2022	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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