

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

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

ITA No.1001/Del/2022
Assessment Years: 2018-19

Country Inn & Suites By Redisson, Inc. (FKA Country Inn & Suites ByCarlson Incorporated), Redisson Hotel (South Asia) Private Limited (formerly known as Carlson Hotels (South Asia) Private Limited), First Floor, Block-A, Chimes, Plot No.61, Sec.44, Gurgaon, Haryana, 122003	Vs.	ACIT, Circle 1(2)(1), International Taxation, Delhi
PAN :AADCC9578P		
(Appellant)		(Respondent)

Assessee by	Ms. Pallavi Dinodia, CA
Department by	Shri Gangadhar Panda, CIT- DR

Date of hearing	12.10.2022
Date of pronouncement	31.10.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

Captioned appeal has been filed by the assessee challenging the final assessment order dated 27.03.2022 passed under Section 143(3) read with section 144C(13) of the Income-Tax Act,1961 for the assessment year 2018-19, in pursuance to the directions of learned Dispute Resolution Panel (DRP).

2. The issue arising in the appeal relates to taxability of payment received by the assessee under Master Franchise Agreement as Royalty/Fee for Technical Services (FTS), both under the Domestic Law as well as India-USA Double Taxation Avoidance Agreement - (DTAA).

3. Briefly, the facts are, the assessee is a resident corporate entity incorporated under the laws of USA and is a resident of that country. The assessee is owner of a hotel system which provides hotel services through its business, system under various names viz. “Country Inn by Radisson”, ‘Country Suites by Radisson’ and Country Inn & Suites by Radisson’.

4. For the assessment year under dispute, assessee filed its return of income on 30.11.2018 declaring income of Rs.2,31,24,130.

5. In course of assessment proceedings, the assessing officer, on verifying the material on record, observed that apart from royalty income offered by the assessee, various other receipts aggregating to Rs.4,30,79,600 was not offered as income. Therefore, he called upon the assessee to explain the reason for not doing so. In response to the query raised, the assessee submitted that the amount received towards a package of services provided under the Master Franchise Agreement, is neither in the nature of royalty nor FTS as it relates to third party reservation, Club Carlson marketing fee, reservation fee etc. Assessing Officer, however, was not convinced with the submissions of the assessee. While framing the draft assessment order, the assessing officer following the decision taken in assessment year 2014-15 held that the amount received by the assessee under the Master Franchise Agreement would fall into different categories, hence, have to be treated either as royalty or FTS. Accordingly, he added back the amount of Rs.4,30,79,400 to the income of the assessee. Though, the assessee objected to the said addition before

learned DRP, however, following their decision in assessee's own case in earlier years, the addition was upheld.

6. We have heard the parties and perused the material available on record.

7. It is a common point before us that the issue in dispute is squarely covered in favour of the assessee by the decision of the Tribunal in assessee's own case in assessment year 2016-17.

8. In this context, our attention was drawn to the relevant observations of the Tribunal in order dated 29.04.2022 passed in ITA No.9689/Del/2019.

9. Having considered rival submissions, we find, identical issue came up for consideration before the Tribunal in assessee's own case in assessment year 2016-17, in the order referred to above. While deciding the issue, the Tribunal has held as under:

“32. We have heard Shri Pradip Dinodia, learned counsel for the assessee and Shri Sanjay Kumar, learned Departmental Representative. Though, the only differentiating factor in these appeals is, the assessee has entered into a single agreement for license to use brand name and provision of centralized services, however, all other facts relating to centralized service fee are identical to the facts involved in the appeals related to other assessee dealt by us in earlier part of the order. In fact, while disposing of the objections of the assessee in the impugned

assessment year, learned DRP has followed its directions in assessment year 2015-16. In assessment year 2015-16, though, learned DRP has agreed that the nature of service fee received by the assesseees is identical to the receipts in case of Sheraton International Inc., however, the ratio laid down in case of Sheraton International Inc. (supra) was not applied only for the reason that the applicability of Article 12(4)(a) was not examined in case of Sheraton International Inc. (supra). We have already deliberated how the aforesaid finding of the departmental authorities are thoroughly misconceived and not borne out from the materials on record. We have noticed, observations of the Tribunal in case of Sheraton International Inc. (supra) reproduced 44 ITA Nos. 2011/Del/2019; 2012/Del/2019; 2013/Del/2019; 2015/Del/2019; 9265/Del/2019 & 9689/Del/2019 in the earlier part of the order would clearly reveal that the applicability of Article 12(4)(a) of the treaty to the centralized service fee was examined and discarded. Therefore, the basic premises on which the departmental authorities have not applied the decision of Sheraton International Inc. (supra) are flawed. Merely because the grant of license to use brand name and provision of centralized services are contained in a single agreement, it cannot be said that centralized services, which includes marketing, promotion, reservation and other allied services flow out of grant of license to make them ancillary and subsidiary to grant of license. Even, the quantum of service fee received if compared to the royalty income, would not make it ancillary and subsidiary so as to make it FIS under article 12(4)(a) of the treaty. In our view, service fee received by the assesseees would clearly fit in to the illustration given in example 2 of MoU to India-USA DTAA.

33. Therefore, after in depth analysis of the relevant facts arising in these appeals, the agreement between the assesseees and the Indian hotels and other materials on record, we are of the view that our reasoning given in case of Starwood Hotels & Resorts Worldwide Inc. in ITA No.2011/Del/2019, in the earlier part of 45 ITA Nos. 2011/Del/2019; 2012/Del/2019; 2013/Del/2019; 2015/Del/2019; 9265/Del/2019 &

9689/Del/2019 the order, would equally apply to these appeals, as well, as it cannot be said that the payment received towards centralized service fee is ancillary and subsidiary to the license fee. Accordingly, we delete the additions.”

10. The factual position relating to the disputed issue being identical in the impugned assessment year, respectfully following the decision of the Tribunal in assessment year 2016-17, referred to above, we hold that the amount received by the assessee under the Master Franchise Agreement, cannot be treated either as a royalty/FTS/FIS. Accordingly, addition is deleted.

11. In the result, the appeal is allowed.

Order pronounced in the open court on 31st October, 2022.

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

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

Dated: 31st October, 2022.
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi