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

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

ITA No.1464/Del/2022
Assessment Years: 2018-19

Expeditors International of Washington, Inc., 1015, Third Avenue, 12th Floor, Seatte, Washington, USA, USA, 98104 Not listed.	**Vs.**	ACIT, Circle 1(2)(2), International Taxation, Delhi
PAN :AACCE4315R		
(Appellant)		**(Respondent)**

Assessee by	Shri Rohan Khare & Priyam Bhatnagar, Advs.
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 by the assessee challenges the final assessment order dated 23.05.2022 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. At the outset, learned counsel appearing for the assessee submitted, ground no. 1 is general and ground nos. 2 to 6, on instructions of the assessee, are not to be pressed. Accordingly, ground nos. 1 to 6 are dismissed as not pressed.

3. In ground no.7, assessee has challenged the addition of an amount of Rs.5,68,73,38,333 as fee for Technical Services (FTS)/Fee for Included Services (FIS) as per the provisions of section 9(1)(vii) of the Act and Article 12 of the India-USA Double Taxation Avoidance Agreement (DTAA).

4. Briefly, the facts are, assessee is a non-resident corporate entity incorporated in United States of America (USA) and its headquarter is at Seattle, Washington. As stated by the assessing officer, the assessee is primarily engaged in the business of providing global logistic services worldwide. The assessee carries out operations in various segments, such, as airfreight, ocean freight and ocean services, vendor consolidation, cargo insurance, purchase order management and customized logistics information. For the assessment year under

dispute, assessee filed its return of income on 13.11.2018 declaring income of Rs.76,39,17,441.

5. In course of assessment proceedings, the assessing officer noticed that an amount of Rs.5,68,73,38,333 received by the assessee from India towards sale of logistic services was not offered to tax on the plea that such services were rendered from outside India, hence, not taxable. The assessing officer, however, did not agree with the submissions of the assessee. Relying upon the decision taken by him in assessee's own case in preceding assessment years, the assessing officer held that the amount received by the assessee is in the nature of FTS/FIS under Section 9(1)(vii) of the Act and Article 12(5) of the tax treaty, respectively, hence, the amount is taxable in India. Accordingly, he framed a draft assessment order by adding back the amount to the income of the assessee. Against the draft assessment order, the assessee raised objections before learned Dispute Resolution Panel (DRP). However, relying upon their decision in assessee's own case in assessment year 2017-18, learned DRP upheld the addition. Accordingly, the assessing officer confirmed the addition in the final assessment order.

6. Before us, it is a common point between the parties that the issue has been consistently decided in favour of the assessee in assessee's own case by the Tribunal in assessment years 2010-11 to 2015-16 and 2017-18.

7. On perusal of material placed before us, we find, this is a recurring issue between the assessee and the revenue starting from assessment year 2010-11. While deciding the issue in assessment year 2010-11, the Tribunal, in ITA No.1740/Del/2015 dated 30.09.2020 has held that the amount received by the assessee from freight/logistic support services cannot be treated as FTS/FIS either under the Act or under treaty provisions. Accordingly, the addition was deleted. Identical view was expressed by the Tribunal while deciding the appeals for subsequent assessment years, as noted above. In fact, though, the departmental authorities were conscious of the fact that the Tribunal has decided the issue in favour of the assessee in earlier assessment years, however, for the purpose of keeping the issue alive, a contrary decision has been taken. There being no change either in the factual or legal position relating to the disputed issue in the impugned assessment year, respectfully following the consistent view

of the Tribunal in assessee's own case in the preceding assessment years, as mentioned above, we delete the addition made by the assessing officer. This ground is allowed.

8. In ground no. 8, the assessee has challenged the addition of an amount of Rs.6,22,40,433 representing reimbursement of global account management charges by treating it as FTS/FIS. While framing the draft assessment order, the assessing officer observed that the assessee is maintaining a team of employees to manage a set of global customers of the group having operation in many countries. He observed that global account managers have been appointed based on the customers' location and global accounts managers manage global customer sales and act as a marketing interface. He observed, global accounts managers instruct and coach the local account teams under them and support the account team throughout the whole project. He observed, nature of services provided by the global account managers result in transfer of technical know-how and skill, hence, the assessee has made available skill, technical know-how, for which, it has received payment. Accordingly, he held that the amount received by the assessee is in the nature of FTS/FIS both under the Act as well as

DTAA. While doing so, the assessing officer relied upon the assessment order passed for earlier assessment years. Following their decision in assessment year 2017-18, learned DRP upheld the addition.

9. Before us, learned counsels appearing for the respective parties have agreed that the issue stands covered in favour of the assessee by a number of decisions of the Tribunal in preceding assessment years.

10. Having considered rival submissions, we find that this is a recurring issue between the parties continuing right from the assessment year 2010-11. On going through the relevant orders of the Tribunal in assessment years 2010-11 to 2015-16 and 2017-18, it is observed that the issue has been consistently decided in favour of the assessee in all these years, while holding that the amount received towards reimbursement of global account management charges is not in the nature of FTS/FIS. Facts being identical, respectfully following the decision of the co-ordinate benches, we delete the addition made by the assessing officer. Ground raised is allowed.

11. In ground no.9, assessee has challenged the addition of Rs.1,46,54,597 representing reimbursement of lease line charges as

royalty under Section 9(1)(vi) and Article 12 of India-USA DTAA. As could be seen from the facts on record, referring to the amended provision of section 9(1)(vi) of the Act, the assessing officer held that the payment received by the assessee towards lease line charges comes within the term 'process', hence, is in the nature of royalty under Section 9(1)(vi) of the Act. Further, relying upon some judicial precedents, the assessing officer held that the amount is also taxable as royalty under India-USA DTAA. Accordingly, he added it to the income of the assessee. The addition made was upheld by learned DRP by following their directions in assessment year 2017-18.

12. Before us, learned counsels appearing for the respective parties have agreed that the issue has been decided by the Tribunal in favour of the assessee in assessment years 2011-12 to 2015-16 and 2017-18.

13. Having considered rival submissions, it is observed that while deciding identical issue in assessee's own case in assessment years 2012-13 to 2015-16, the Tribunal in ITA No.1904/Del/2017 and Ors. Dated 05.01.2022 has held that lease line charges are not in the nature of royalty. The same view was reiterated by the Tribunal while deciding the issue in assessment year 2017-18. It is further relevant to

observe, while considering the allowability of payment made towards lease line charges at the hands of assessee's payer, the assessing officer had held that the payment made is in the nature of royalty, hence, the assessee was required to deduct tax at source. Since, the assessee has not done so, the assessing officer made disallowance under section 40(a)(i) of the Act. However, while deciding the issue in case of the payer, the Hon'ble High Court held that the payment made, being not in the nature of royalty, no disallowance under section 40(a)(i) of the Act can be made. Thus, in view of the decision of the Tribunal in assessee's own case and the decision of the Hon'ble High Court in case of the payer, the addition made cannot be sustained. Accordingly, we delete it. This ground is allowed.

14. Ground nos. 10 and 11 being consequential, do not require adjudication.

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

Order pronounced in the open court on October, 2022.

(G.S. PANNU)	**(SAKTIJIT DEY)**
PRESIDENT	**JUDICIAL MEMBER**

Dated: October, 2022.
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi