

आयकर अपीलीय अधिकरण
मुंबई पीठ "आई "
श्री प्रमोद कुमार, उपाध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " I", MUMBAI
BEFORE SHRI PRAMOD KUMAR, VICE-PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 5970/मुं/2019(नि.व.2015-16)
ITA NO.5970/MUM/2019(A.Y. 2015-16)
आअसं. 1252/मुं/2021(नि.व.2016-17)
ITA NO.1252/MUM/2021(A.Y. 2016-17)

Capgemini SE
(Formerly known as Capgemini SA),
C/o. Capgemini Technology Services India
Pvt. Ltd. Block -3, C-Wing, 4th Floor,
Capgemini Knowledge Park, Yosemite,
Thane- Belapur Road, Airoli,
Navi Mumbai – 400 708
PAN: AADCC-5353-J

..... अपीलार्थी /Appellant

बनाम Vs.

Dy. Commissioner of Income Tax-(Int-Tax),
Circle -2(1)(1), Room No.1713, 17th Floor,
Air India Building, Nariman Point,
Mumbai – 400 021.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : S/Shri M.M.Golvala and Raunak Vardhan

प्रतिवादी द्वारा/Respondent by : Shri Soumendu Kumar

सुनवाई की तिथि/ Date of hearing : 11/08/2022

घोषणा की तिथि/ Date of pronouncement : 07/11/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the assessee are directed against the assessment order passed u/s. 144 C(13) r.w.s. 143(3) of the Income Tax Act, 1961 [in short 'the Act'] for the assessment year 2015-16 (order dated 16/07/2019) and for assessment

year 2016-17 (order dated 21/04/2021), respectively. Since, identical issue has been raised by the assessee in both the appeals, these appeals are taken up together for adjudication.

2. Shri M.M.Golvala appearing on behalf of the assessee submitted that the common and solitary issue in both appeals is with respect to guarantee commission received by the assessee. The Id. Authorized Representative of the assessee submitted that the assessee is a non-resident entity. The assessee has two subsidiaries in India. The assessee gave a blanket guarantee to BNP Paribas, France, where under some of its worldwide subsidiaries are entitled to avail various facilities from a local PNB Paribas Branch. For furnishing the said guarantee, the assessee company charged commission at arms length @ 0.5% per annum from its Indian AEs. The Transfer Pricing Officer vide order dated 29/06/2018 for AY. 2015-16 accepted that the guarantee commission charged by the assessee is at arm's length. The guarantee commission Rs.40,97,600/- received by the assessee from its Indian AE is not taxable in India as the said guarantee commission does not accrue in India nor it can be deemed to accrue or arise in India. The Assessing Officer and the DRP held that the guarantee commission charged by the assessee from its Indian AE is taxable under Article -23 of the India-France Double Taxation Avoidance Agreement (DTAA) The Id. Authorized Representative of the assessee pointed that taxability of guarantee commission is a recurring issue . In AY 2009-10 similar addition was made. The assessee carried the issue in appeal before the Tribunal in ITA No.7198/Mum/2012. The Tribunal vide order dated 28/3/2016 granted relief to the assessee holding that Article 23.3 has no applicability as income does not arise in India. Thereafter, in A.Y. 2012-13 in ITA No.888/Mum/2016 decided on 13/07/2016 and in A.Y. 2013-14 in ITA No.6323/Mum/2016 decided on 09/01/2017 the Tribunal following its earlier decision deleted the addition.

3. The Id. Authorized Representative of the assessee submitted that the facts in the assessment year 2016-17 are identical, except for the amount of guarantee commission. In assessment year 2016-17 the assessee received Rs.41,56,945/- as guarantee commission from its Indian A.E @ 0.5%. Therefore, the submissions made for assessment year 2015-16 would equally apply to the assessment year 2016-17.

4. Per contra, Shri Soumendu Kumar representing the Department vehemently defended the assessment orders for the assessment year 2015-16 and 2016-17, respectively. However, Id.Departmental Representative fairly agreed that similar issue was adjudicated by the Tribunal in assessee's own case in preceding assessment years.

5. Both sides heard, orders of authorities below examined. The solitary issue in both the appeals is against the findings of the AO in taxing guarantee commission charged by the assessee from its Indian AE. We find that the issue is perennial. The Tribunal analysed the issue for the first time in assessee's case in assessment year 2009-10 in ITA No.7198/Mum/2012 (supra). The Tribunal deleted the addition by holding as under:

"5. We have considered rival contentions and found that the AO taxed the guarantee commission on the plea that guarantee has been provided for the purpose of raising finance by an India company. As per the AO finance was raised in India. The AO further observed that finance requirement is met by a Indian branch of the bank, the benefits of guarantee are shared by the Indian entity with the assessee by making a compensatory payment. Accordingly the AO held that fees for guarantee arise in India. From the record we found that guarantee commission received by France company did not accrue in India nor it can be deemed to be accrued in India, therefore, not taxable in India under Income Tax Act. Furthermore, as per Article 23.3, income can be taxed in India, only if it arises in India. In the instant case, the income clearly arises in France because the guarantee has been given by the assessee, a French company to BNP Paribas, a French Bank, in France and, therefore, Article 23.3 has no applicability as income does not arise in India."

In the subsequent Assessment years i.e. A.Y. 2012-13 and 2013-14 the Co-ordinate Bench of Tribunal on similar set of facts following the aforesaid decision deleted the addition in respect of guarantee commission.

6. No contrary material has been brought to the notice of Bench by the Department.

7. Respectfully following the decision of Co-ordinate Bench in assessee's own case in identical set of facts the addition made on account of guarantee commission in both the impugned assessment years is directed to be deleted.

8. In the result, appeal of the assessee for AY 2015-16 and 2016-17 are allowed.

Order pronounced in the open court on Monday the 07th day of November, 2022.

Sd/-

(PRAMOD KUMAR)

उपाध्यक्ष/VICE PRESIDENT

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 07/11/2022

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषित **Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि,आय.अपी.अधि.,मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)/