

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

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

**ITA No.7545/Del/2017
Assessment Year: 2014-15**

Inteva Products Netherlands BV, Capellallaan 15, 2132JW Hoofddrop, The Netherlands	Vs.	ACIT, Circle-2(1)1), New Delhi.
PAN :AADCI5208G		
(Appellant)		(Respondent)

Assessee by	Shri Nikhil Tiwari, CA
Respondent by	Shri Gangadhar Panda, CIT- DR

Date of hearing	12.01.2023
Date of pronouncement	31.01.2023

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

Captioned appeal has been filed by the assessee challenging the final assessment order passed under Section 144C read with section 143(3) of the Income-Tax Act, 1961 pertaining to assessment year

2014-15, in pursuance to the directions of the Dispute Resolution Panel (DRP).

2. At the outset, learned counsel appearing for the assessee submitted that ground nos. 2, 3 and 4, being either consequential or pre-mature at this stage, do not require adjudication. Thus, in view of the aforesaid submissions of the assessee, the only surviving issue arising for consideration is whether the amount received by the assessee for providing business support services is in the nature of fees for technical services (FTS) under Article 12(5) of the India-Netherlands Double Taxation Avoidance Agreement (DTAA), hence, taxable in India.

3. Briefly the facts are that the assessee is a non-resident corporate entity incorporated in Netherland and tax-resident of Netherland. For the assessment year under dispute, the assessee filed its return of income on 31.03.2016 declaring income of Rs.47,05,135.

4. In course of assessment proceeding, the Assessing Officer noticed that in the year under consideration, assessee had provided business support services to its Indian group entity and received payment of Rs.1,49,02,771. However, the amount received was not

offered as income on the plea that it is in the nature of business profit and in absence of a Permanent Establishment (PE) in India, it is not chargeable to tax.

5. After considering the submissions of the assessee, the Assessing Officer was not convinced. He observed that the payment received by the assessee will qualify as FTS, both under Section 9(1)(vii) of the Act as well as under Indian-Netherlands DTAA as they are in the active of management and consultancy services. Accordingly, he brought to tax the amount at the hands of the assessee. Against the draft assessment order, assessee raised objections before DRP. However, learned DRP rejected the objection.

6. Before us, learned counsel appearing for the assessee submitted that the services rendered are in the nature of managerial services and not technical or consultancy services.

7. Drawing our attention to Article-12(5) of Indian-Netherlands DTAA, learned counsel submitted, the definition of FTS does not include managerial services. Therefore, he submitted, it cannot be treated as FTS under the DTAA.

8. Without prejudice, he submitted, even assuming that services rendered are in the nature of consultancy services, however, the make available condition has not been satisfied.

9. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned DRP.

10. We have considered rival submission and perused the material available on record.

11. As could be seen from the draft assessment order, the Assessing Officer has very clearly and categorically mentioned that assessee's employees never visited India for rendering any kind of services. Whatever services rendered, were through mail/correspondences/reports etc. From the facts available on record, it is noticed, the services rendered by the assessee are as under:

- i) Engineering Services (Application Engineering and Technical Support/CAD/CAM Design);
- ii) Financial Administration Services, including Treasury;
- iii) HR Services, including benefits and related services;
- iv) Environmental Health and Safety;
- v) IT Services;

- vi) Management Services;
- vii) Marketing Services;
- viii) Legal Services;
- ix) Tax Services;
- x) Supply Chain Management Services, including purchasing logistics and procurement; &
- xi) Quality Management Services.

12. From the nature of services rendered, it is very much evident that they are mostly in the nature of managerial services. Reading of Article-12 (5) of India-Netherlands DTAA reveals that it does not include managerial services within FTS. Therefore, the payment received by the assessee cannot be treated as FTS under India-Netherlands DTAA. Even, assuming for the sake of argument that payment received for certain kind of services is in the nature of FTS, however, the make available condition needs to be satisfied. Neither the Assessing Officer nor learned DRP have established on record that by rendering the services, the assessee has made available technical knowledge, know-how, skill etc. to the recipient of services, which would have enabled the recipient of such services to utilize it

independently without the aid and assistance of the assessee. Thus, in our view, the make available condition is not satisfied. Therefore, the payment received cannot be treated as FTS under Article-12(5) of India Netherlands DTAA. Hence, we are inclined to delete the addition made by the Assessing Officer.

13. In the result, the appeal is party allowed.

Order pronounced in the open court on 31st January 2023.

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

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

*Dated: 31st January, 2023.
Mohan Lal*

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi