

आयकर अपीलीय अधिकरण
मुंबई पीठ "आई", मुंबई पीठ
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री अमरजीत सिंह, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
आअसं. 608/मुं/ 2022 (नि.व. 2017-18)
ITA NO. 608/MUM/2022(A.Y.2017-18)

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

..... अपीलार्थी /Appellant

बनाम Vs.

Asstt . 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 : Shri M.M.Golvala with
Shri Rounak Vardhan

प्रतिवादी द्वारा/Respondent by : Shri Soumendu Kumar Dash

सुनवाई की तिथि/ Date of hearing : 17/01/2023

घोषणा की तिथि/ Date of pronouncement : 25/01/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the assessment order dated 03/02/2022 passed u/s. 143 r.w.s. 144C(13) of the Income Tax Act, 1961 [in short 'the Act'] for the assessment year 2017-18.

2. Shri M.M.Golvala appearing on behalf of the assessee submits that the solitary issue raised in the appeal by the assessee is taxability of guarantee commission Rs.47,93,286/- received by the assessee / appellant during the period relevant to the assessment year under appeal. The Id. Authorized Representative for the assessee submits that the issue in appeal is identical to the one adjudicated by the Tribunal in assessee's own case for assessment years 2012-13, 2013-14, 2015-16 and 2016-17. The Dispute Resolution Panel (DRP) in para- 5 of the directions has recorded that the issue involved is pari-materia to the earlier years decided in assessment year 2015-16 and 2016-17. The DRP in the impugned assessment year, placed reliance on the findings of the DRP in assessment year 2015-16 and 2016-17 and rejected the objections raised by the assessee in respect of guarantee commission. In assessment year 2015-16 and 2016-17 the assessee carried the issue in appeal before the Tribunal in ITA No.5970/Mum/2019 and ITA No.1252/Mum/2021, respectively. The Tribunal vide order dated 07/11/2022 common for both said assessment years directed the Assessing Officer to delete the addition in respect of guarantee commission. The Id. Authorized Representative for the assessee submits that the Department has accepted Tribunal order for the preceding assessment years as no further appeal was filed by the Department. The Id. Authorized Representative for the assessee further contended that once the issue has been settled, the Assessing Officer and DRP should have followed the order of Tribunal to avoid multiplicity of litigation. In support of his submissions the Id. Authorized Representative for the assessee placed reliance on the decision rendered by Hon'ble Apex Court in the case Asstt. Collector Central Excise Chandan Nagar vs. Dunlop India Ltd., 154 ITR 172. He further placed reliance on the decision in the case of Radhasoami Satsang vs. CIT, 193

ITR 321 (SC) to contend that rule of consistency should be followed to curb multiplicity of litigation.

3. Per contra, Shri Soumendu Kumar Dash representing the Department vehemently defended the assessment order. The Id. Departmental Representative further placed reliance on the decision of Delhi Bench of the Tribunal in the case of Johnson Matthey Plc vs. DCIT reported as 191 TTJ 1. However, the Id. Departmental Representative fairly admitted that in so far as the issue of guarantee commission in assessee's appeal, the same has been considered by the Tribunal in the preceding years in assessee's own case.

4. We have heard the submissions made by rival sides. The assessee is a tax resident of France and is a part of Capgemini Group engaged in providing consultancy, technology outsourcing and legal and professional services. The assessee has entered into an agreement with BNP Paribas, France to provide credit facilities to its subsidiaries world wide from a local BNP Paribas branch without providing any underline security. On the strength of corporate guarantee given by the assessee to its Associated Enterprise (AE), Capgemini Technology Services India Ltd. availed credit facilities from Mumbai branch of BNP Paribas. The assessee charged guarantee commission @0.5% per annum on the amount of corporate guarantee availed by AE. The contention of the assessee is that since the guarantee is given by one non-resident (assessee) to another non-resident (BNP Paribas) outside India (in France) no income accrues or arise to the assessee in India within the meaning of section 5 r.w.s. 9 of the Act nor any income can be deemed to accrue or arise in India within the meaning of section 9 of the Act. We find that the issue of taxability of guarantee commission in the case of assessee was first raised in Assessment

Year 2009-10. The assessee carried the issue in appeal before the Tribunal in ITA No.7198/Mum/2012. The Co-ordinate Bench vide order dated 28/03/2016 deleted the addition by observing 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.”

It is relevant to point here that in Assessment Year 2009-10 the addition was made by Assessing Officer holding guarantee commission to be “other income” invoking Article-23 of Double Taxation Avoidance Agreement (DTAA) between India and France. In subsequent Assessment Years, i.e. Assessment Year 2012-13, 2013-14, 2015-16 and 2016-17 similar addition was made. The Tribunal following the decision rendered in assessee's own case in Assessment Year 2009-10 deleted the addition.

5. The Revenue has placed reliance on the decision rendered in the case of Johnson Matthey Plc vs. DCIT (supra). We find that in preceding Assessment Years the Tribunal in assessee's own case have been consistently deciding this issue in favour of the assessee deleting the addition in respect of guarantee commission. We do not find any plausible reason to take a divergent view in the impugned Assessment Year, specially when the facts and the agreement for providing guarantee commission is identical.

6. In the result, ground No.1 to 4 of the appeal are allowed.

7. In ground No.5 of appeal, the assessee has assailed levy of interest under section 234B of the Act. Charging of interest u/s. 234B of the Act is mandatory and consequential, hence, this ground of appeal is dismissed.

8. In the result, appeal by assessee is partly allowed.

Order pronounced in the open court on Wednesday the 25th day of January, 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 25/01/2023

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy 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.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

(Dy./Asstt. Registrar), ITAT, Mumbai

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