

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. 2360/मुं/ 2022 (नि.व. 2018-19)
ITA NO. 2360/MUM/2022(A.Y.2018-19)

Sabre Asia Pacific Pte. Ltd.
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Paya Lebar Quarter, Paya Lebar Road,
Singapore 408533
C/o. Deloitte Haskins & Sells LLP,
One International Center, Tower 3,
30th Floor, Senapati Bapat Marg,
Elphinstone (W), Mumbai 400 013.
PAN: AABCA-6590-M

..... अपीलार्थी /Appellant

बनाम Vs.

Asstt . Commissioner of Income Tax(Int. Tax),
Circle -4(2)(1) Room No.1708,
17th Floor, Air India Building,
Nariman Point,Mumbai – 400 021.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Nitesh Joshi

प्रतिवादी द्वारा/Respondent by : Shri Soumendu Kumar Dash

सुनवाई की तिथि/ Date of hearing : 19/01/2023

घोषणा की तिथि/ Date of pronouncement : 31/01/2023

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the assessment order dated 20/07/2022 passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 [in short 'the Act'] for the assessment year 2018-19.

2. The assessee in appeal has assailed the assessment order on following counts:
- (i) The Assessing Officer has held that the assessee has business connection in India and a Permanent Establishment (PE) in India in terms of India Singapore, Double Taxation Avoidance Agreement (DTAA).
 - (ii) Income attribution to PE in India.
 - (iii) Reimbursement of expenses by PE held to be business income of the assessee.
 - (iv) Short grant of TDS credit to the assessee by Assessing Officer
 - (v) Short grant of interest u/s. 244A of the Act
 - (vi) Initiating penalty u/s. 270A of the Act

3. Shri Nitesh Joshi appearing on behalf of the assessee submits that the assessee company is based in Singapore and hence, is a tax resident of Singapore. The assessee is engaged in the business of promotion, development, operation, marketing and maintenance of Computerised Reservation System(CRS). The primary business of the assessee is to facilitate airline reservation for and on behalf of participating airlines. The participating airlines provide necessary information which is displayed to the travel agents. The travel agents arrange booking of airline tickets on behalf of their customers using CRS. The assessee receives its fee from airlines whose tickets are booked through CRS. The assessee sub-licences the right to market CRS to a marketing company in each of the Asia Pacific countries known as National Marketing Company (NMC). In India the assessee has NMC - Sabre Travel Network (India) Pvt. Ltd. The airlines pay the assessee booking fee for each booking made by the agents. The NMC is paid commission /marketing service fee by the assessee for each booking made through NMC subscribers. Sabre Travel Network India Pvt. Ltd. is a wholly owned Indian subsidiary of the

assessee. The assessee has entered into marketing agreement dated 31/10/2016 with the said company.

4. During the period relevant to the assessment year under appeal, the assessee has paid Rs.100,6,2,95,387/- as ,marketing fee to its AE i.e. Sabre Travel Network India Pvt. Ltd.. The Assessing Officer held Indian subsidiary of the assessee as assessee's PE in India in terms of Article-5 of India –Singapore DTAA. Further the Assessing Officer attributed 10% of the gross receipts from operation in India to the PE.

4.1 During the period relevant to the assessment year under appeal the assessee had claimed reimbursement of expenses amounting to Rs.5,00,007/- incurred by it on behalf of Sabre Travel Network India Pvt. Ltd.. These expenses include courier charges, marketing and consultancy fees, e-learning charges, maintenance of e-learning website, etc. The Assessing Officer made addition of 10% reimbursements holding that the assessee has failed to show that there is no profit element in such payments. Once it is established that the assessee has PE in India all profits attributable to the same would be taxable in India irrespective of the classification of the same by the assessee. Consequently, the Assessing Officer taxed 10% of the reimbursement as the income of the assessee.

4.2 The Ld.Counsel for the assessee submits at the outset that the primary issue raised in the appeal have already been considered and decided by the Tribunal in assessee's own case for the preceding assessment years i.e. from assessment year 2005-06 onwards.

4.3 In respect of ground No.2 of appeal assailing the findings of Assessing Officer in holding that the assessee has PE in India, the Ld.Counsel for assessee pointed that this issue has been decided against the assessee by the

Tribunal in appeal for assessment year 2017-18 i.e. ITA No.154/Mum/2021 decided on 24/01/2022.

4.4 In respect of ground no.3, the Ld.Counsel for the assessee submits that once the Tribunal has held that the assessee has a PE in India 15% of the commission income received by the assessee was attributed to the PE. The Ld.Counsel for the assessee submitted that this issue is also covered by the Tribunal order for assessment year 2017-18 (supra).

4.5. In respect of ground No.4, the Ld.Counsel for assessee submits that it is a settled principle that reimbursement of expenses cannot be regarded as income and hence, not liable to tax. However, this issue was decided against the assessee by the Tribunal for the first time in assessment year 2005-06 and thereafter the Tribunal has consistently following the same view. The Ld.Counsel for the assessee submits that in appeal for assessment year 2017-18 (supra), the Tribunal has held 10% of reimbursement as income of the assessee.

4.6 In respect of ground No.5, the Ld.Counsel for the assessee submits that TDS as per Form -26AS is Rs.9,27,61,127/-. Thereafter, Form 26AS statement was revised and additional TDS of Rs.2,25,645/- remained to be claimed. The assessee had received refund of tax for the preceding assessment years and assessee had also received interest refund. The Assessing Officer deducted the tax at source on said interest income. The total TDS credit available to the assessee is Rs.10,16,74,847/-. As against the said amount the Assessing Officer has granted TDS of Rs.9,25,35,482/-. Thus, the balance TDS of Rs.91,39,365/- is yet to be granted. The Ld.Counsel for the assessee referred to reconciliation

statement of TDS as per ITR, Form 26AS and credit granted by the Assessing Officer at page 140 of the paper book.

4.6 In ground No.6 of appeal, the assessee has claimed short grant of interest u/s.244A of the Act. The Ld.Counsel for the assessee submits that the Assessing Officer has computed interest upto date of draft assessment order i.e. September, 2021. The final assessment order was passed in July, 2022, the assessee had filed rectification application u/s. 154 of the Act on 06/01/2023 along with annexure. Directions may be given to the Assessing Officer for deciding the assessee's said rectification application. The Ld.Counsel for the assessee pointed that while filing rectification petition the assessee had filed working of rectification order as annexure -4 to the said application. In the said working the assessee had inadvertently mentioned interest u/s. 244 of the Act is due from 01/04/2019 to 31/12/2022 i.e. 45 months. In fact the interest u/s. 244A of the Act is due from 01/04/2018 to 31/12/2022 i.e. for 57 months.

5. Per contra, Shri Soumendu Kumar Dash representing the Department vehemently supported the findings of Assessing Officer and the DRP,

6. We have heard the submissions made by rival sides and have examined the orders of authorities below. In so far as the facts of the case are concerned, they are not in dispute. It is also an accepted fact that the issue raised in ground No.2, 3 and 4 of appeal have been decided by the Tribunal in assessee's own case for the preceding assessment years. Both sides are unanimous in stating the facts in the impugned assessment year are similar to the fact in assessment year 2017-18.

7. In ground No.2 of appeal, the assessee has assailed findings of Assessing Officer in holding that the assessee has PE in India. The Ld.Counsel

for the assessee has fairly conceded that in assessment year 2017-18 this issue has been decided against the assessee. We find that in assessee's own case for assessment year 2017-18 in ITA No.154/Mum/2021 decided on 24/01/2022 the Co-ordinate Bench following the order of Tribunal in assessee's own case for assessment year 1999 -2000 in ITA NO.3903/Mum/2006 decided on 28/08/2010 concluded as under:

"12 In the orders of the subsequent years, the coordinate benches followed the above extracted order for assessment year 1999-2000. There is no change in the facts and circumstances of the case, as agreed by both the parties. Therefore, we, respectfully following the decisions of the co-ordinate benches in assessee's own case for assessment years 1999-2000 and the orders of the subsequent assessment years, we also hold that there is no infirmity in the order of the learned assessing officer in holding that assessee has permanent establishment in India and, therefore, income of the assessee is chargeable to tax in India. It further held that assessee has also a business connection in India in terms of the provisions of the Income-tax Act. Accordingly, ground 2 of the appeal is dismissed"

For parity of reasons ground No.2 of the appeal is dismissed.

8. In ground No.3 of appeal the assessee has assailed income attribution to PE. We find that in assessment year 2017-18 identical issue was considered by the Tribunal. Once it was held that assessee has PE in India, the consequent to it is attribution of income. The Co-ordinate Bench decided the issue as under:

"13 Ground 3 is with respect to the income attributable to the permanent establishment. This issue is first decided in assessment year 1999-2000. Subsequently, the co-ordinate benches followed the above decision. The co-ordinate bench held that the income attributable to the functions performed by the permanent establishment is 15% of the gross receipts. It further held that if the amount paid by the assessee to its agency PE is higher than the above amount, then no further income is attributable to the permanent establishment in India. In the present case, we find that the gross receipts attributable to India is Rs. 231,77,31,028/- and 15% thereof is the income which amounts to Rs. 34,76,59,654/- against which the subsidiary has offered the service for income of Rs. 78,32,46,525/- and, therefore, no further income is required to be attributed. No change in the facts and circumstance of the case has been pointed out before us. Therefore, respectfully following the decision of the co-ordinate benches in assessee's own case for earlier assessment years, we allow ground 3 of the appeal of the assessee. We also hold that

as in the present case, income attributed to the permanent establishment of assessee is much higher than the amount paid by the assessee to its dependent agency PE in India; no further income is chargeable to tax. Further with respect to the determination of the income attributable to PE in India, the assessee has not offered any sum in the return of income; but the revenue authorities have determined the 10% gross receipts from India of the total sum of Rs. 231,77,31,028/-. The co-ordinate bench in assessee's own case has decided the identical issue for earlier assessment years. The co-ordinate bench for assessment years 2005-06 to 2011-12, vide its consolidated order dated 16/02/2018 held that 15% of the gross receipts pertaining to India booking shall be the income attributable to the India operations of the assessee. Such is the view also followed for assessment years 1999-2000 to 2004-05. Further, the commission paid by assessee to its subsidiary company @25% of the gross receipts pertaining to India booking is higher than the income attributable being 15% of the gross receipts pertaining to India and, therefore, no further attribution is required. Therefore, respectfully following the decision of the co-ordinate bench in assessee's own case for earlier years, in absence of any difference in facts and circumstances of the case, we allow ground 3 of the appeal of the assessee."

The assessee has filed estimated working of profit and loss account. The same is reproduced herein below:

Estimated profit and loss account working			
Particulars	Amount(Rs.)	Particulars	Amount (Rs.)
<u>Amounts paid to STN Marketing services fees</u>	1,006,295,387	15% of the Gross Receipts – attributable to India (i.e.15% of Rs.1,49,74,51,973	224,617,796
		10% of reimbursement of expenses Treated as income (i.e. 10% of Rs.5,00,007)	50,001
		Loss	781,627,590

The Assessing Officer may consider the estimated computation given by the assessee while giving effect to ground No.3 of appeal. Thus, ground No.3 of appeal is allowed in the terms aforesaid.

9. In ground No.4 of appeal the assessee has assailed reimbursement of expenses held to be part of business income. Though the contention of the assessee is that reimbursement of expenditure cannot be regarded as income,

however, we find that the Co-ordinate Bench in assessment year 2017-18 has decided this issue holding as under:

“14 With respect to ground 4 where 10% of the reimbursement of expenditure held to be the income of the assessee amounting to Rs. 1,26,355/-. Brief facts of the case was that the assessee has shown reimbursement of expenditure of Rs. 12,63,651/-. The details of the reimbursement were furnished along with documentary evidences. The above sum was reimbursed by Indian entity to the assessee for various activities undertaken by the assessee on behalf of Indian subsidiary. The assessing officer held it to be the business income holding that 10% of such payment received by the assessee from subsidiary should be the income of the assessee. Accordingly Rs. 1,26,355/- were held to be liable to be taxed in India. The assessee preferred an objection before the learned DRP, which was rejected, and the order of the assessing officer was confirmed. Assessee submitted before us that identical issue arose in the case of the assessee, fist in assessment year 2004-05 and the co-ordinate bench held that 10% of the gross income of the reimbursement along with other income attributed to the PE is lower than the sum paid by the assessee to entertain subsidiary and therefore, no further income is required to be attributed. No change in the facts and circumstances of the case were shown before us. Therefore, respectfully following the decision of the co-ordinate bench in the case of the assessee itself for earlier assessment years, we confirm the action of the learned assessing officer by treating the 10% of the sum as income out of the reimbursement. However, in the present year, as the amount paid by the appellant to its dependent agency PE is higher, no separate addition is required. Accordingly, ground 4 of the appeal is allowed with above direction.”

In the light of above findings of the Co-ordinate Bench, ground No.4 of appeal is dismissed.^

10. In ground No.5 of appeal the assessee is seeking direction to grant full credit of TDS. The contention of assessee is that the Assessing Officer has allowed short credit of TDS. The assessee has filed reconciliation statement of TDS as per ITR, Form No.26AS and credit granted by the Assessing Officer at page 140 of the paper book. We deem it appropriate to restore this issue to the file of Assessing Officer to re-examine assessee's claim of TDS credit on the basis of documents on record. The ground No.5 of appeal is thus, allowed for statistical purpose.

11. In ground No.6 of appeal the assessee has claimed interest u/s. 244A of the Act to the extent the interest has been short granted to the assessee. The assessee has already filed application u/s. 154 of the Act before the Assessing Officer on this issue. The assessee has further pointed that a working has been furnished along with the application u/s. 154 of the Act. In the said working the date 01/04/2019 has been inadvertently mentioned. The interest is in fact due from 01/04/2018. Thus, instead of 45 months as mentioned in the application the interest u/s. 244A of the Act is due for 57 months. The Assessing Officer is directed to examine the claim of assessee while deciding the application. The ground No.6 of the appeal is thus, allowed for statistical purpose.

12. In ground No.7 of the appeal assessee has assailed initiation of penalty proceedings u/s. 270A of the Act. Challenge to penalty proceedings at this stage is premature, hence, ground No.7 of appeal is dismissed.

13. The ground No.1,8 and 9 of the appeal are general in nature, hence, require no adjudication.

14. **In the result, appeal by the assessee is partly allowed.**

Order pronounced in the open court on Tuesday the 31st day of January, 2023.

Sd/-

(AMARJIT SINGH)

लेखाकार सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 31/01/2023

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

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.

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BY ORDER,

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