IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

BEFORE SHRI B. R. BASKARAN, AM AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 1256/Mum/2021
(Assessment Year: 2016-17)

Linklaters LLP C/o. Deloitte Haskins & Sells LLP Tower-3, 27-32 Floor, India Bulls Finance Centre, Elphinstone Mill Compound, Senapati Bapat Marg, Elphinstone (W), Mumbai-400 013	Vs.	Asst. CIT (IT)-3(1)(2) Mumbai
PAN/GIR No. AABCL 5182 G		
(**Appellant**)	:	(**Respondent**)

ITA No. 1257/Mum/2021
(Assessment Year: 2016-17)

Linklaters Singapore PTE Ltd. C/o. Deloitte Haskins & Sells LLP Tower-3, 27-32 Floor, India Bulls Finance Centre, Elphinstone Mill Compound, Senapati Bapat Marg, Elphinstone (W), Mumbai-400 013	Vs.	Asst. CIT (IT)-3(1)(2) Mumbai
PAN/GIR No. AABCL 5295 L		
(**Appellant**)	:	(**Respondent**)

Assessee by	:	Shri Niraj Sheth
Revenue by	:	Ms. Surabhi Sharma

Date of Hearing	:	16.02.2023
Date of Pronouncement	:	22.02.2023

O R D E R

Per Kavitha Rajagopal, J M:

These appeals are filed by the assessee, challenging the order of the learned Assessing Officer (A.O. for short) passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2016-17.

2. As the facts are identical, we hereby proceed to pass a consolidated order by taking ITA No. 1256/Mum/2021 as a lead case. The assessee has challenged the assessment order dated 29.04.2021 on various grounds.

ITA No. 1256/Mum/2021

3. The brief facts are that the assessee is a limited liability partnership incorporated under the laws of United Kingdom, engaged in providing legal services. The assessee is registered with the Registrar of Companies for England and Wales under the Limited Partnership Act, 2000 of the UK. The assessee provides legal services to its clients on projects undertaken which are related to matters like mergers, acquisitions, restructuring, financing and tax, etc. The services rendered by the assessee are for drafting of documents and legal due diligence based on non Indian laws. The assessee company filed its return of income dated 22.09.2016, declaring total income at Rs. Nil. The assessee's case was selected for scrutiny, wherein the A.O. passed the draft assessment order dated 28.12.2019 u/s. 144C of the Act for which the assessee had filed its objection for the proposed addition/disallowances with the Dispute Resolution Panel (DRP for short). Subsequent to this, the A.O. passed the final assessment order u/s.143(3) r.w.s. 144C(13) of the Act dated 29.04.2021 after the DRP made the proposed adjustment duly after disposing of the objections raised by the assessee. The A.O. determined the total income at Rs.2,17,92,596/- after making the impugned additions/disallowances.

4. The assessee is in appeal before us, challenging the impugned assessment order on various grounds.

5. During the appellate proceedings, the ld. Sr. Counsel Shri Niraj Sheth appeared for the assessee and submitted that out of about 47 grounds raised by the assessee in the present appeal, ground nos. 12, 20, 27, 28 and 38 are the only grounds that requires to be adjudicated and that the remaining grounds will be dealt with along with the observation of the above mentioned grounds.

6. The ld. Authorised Representative (ld. AR for short) for the assessee proceeded to argue on the above grounds. The issues that are to be adjudicated in the present appeal are as below:

i. Whether the assessee was entitled to the benefit of India – UK double taxation avoidance agreement (DTAA for short)
ii. Whether the income of the assessee is in the nature of 'fees for technical services' as defined under Article 14(4)(c) of the DTAA
iii. Whether the assessee had a permanent establishment in India, which is determined from the fact that whether the assessee has furnished services in India exceeding 90 days.
iv. In the absence of permanent establishment in India, whether the assessee's income was taxable in India as per Article 7(1) of DTAA.
v. Whether the assessee was liable to be taxed in India as per Article 15 of India-UK DTAA, which was only applicable to individuals and not in the case of the assessee.

7. The above mentioned issues are to be adjudicated in this present appeal. The first issue pertains to denying benefit of India - UK DTAA to the assessee by the A.O. The assessee contends that as per Article 4(1)(a) of the India - UK tax treaty, the assessee was liable to the taxed in the UK by reason of incorporation, domicile or place of management or on other conditions. The assessee claims to have been incorporated in UK and the taxes are paid by its partners and not by the firm *per se*. The assessee further contends that being a resident of UK, the assessee was entitled to the benefit of India-UK tax treaty. The assessee further submits that the assessee computes profits as per the provisions of UK tax law and allocated such profits amongst its members which are

subject to tax in UK. The assessee relied on the decision of the Hon'ble Apex Court in the case of *Union of India vs. Azadi Bacho Andolan* [2003] 263 ITR 706 (SC), wherein it was held that the Hon'ble Apex Court has distinguished 'liable to taxation' and 'pays tax' and has also relied mainly on the OECD Model Tax Convention on Income and On Capital. The assessee relied on the said decision which had guidelines about double tax convention and contended that the assessee was not liable to be taxed in India. The assessee also relied on the decision of the co-ordinate bench in the case of *Green Emirate Shipping & Travels* [2005] 100 ITD 203 which held that the assessee need not be paying taxes in home country to get the benefit of Tax Treaty.

8. The ld. AR for the assessee contended that the assessee was entitled to the benefits under the DTAA between India and UK and placed reliance on the decision of the assessee's case for A.Y. 2011-12 on similar issue.

9. The learned Departmental Representative (ld. DR for short) for the Revenue controverted the same and relied on the assessment order, wherein it was held that the Tribunal's decision in assessee's case was appealed before the Hon'ble Jurisdictional High Court and should not be placed reliance for the reason that it has not attained finality.

10. We have heard the rival submissions and perused the materials on record on this issue. It is observed that the assessee's case for A.Y. 2011-12, the co-ordinate bench has held that the assessee is entitled to the benefits of India - UK DTAA by following the previous year's decision of the Tribunal in the case of *Linklaters LLP vs. DCIT (International Taxation)-3(1)(2), Mumbai* [2017] 79 taxmann.com 12 (Mumbai-Trib.). The relevant extract of the said decision is cited hereunder for ease of reference:

9. We have gone through the orders passed by the AO as well as DRP and also the submissions made before us and also the orders passed by the Tribunal in case of M/s. Linklaters for earlier years. With the assistance of both the parties, it was noted that this issue has cropped up in various earlier years in case of M/s. Linklaters i.e. A.Ys 1995-96, 1997- 98, 1998-99, 1999-2000 and 2001-02 wherein, the Tribunal has decided this issue in favour of Linklaters by holding that it is eligible for the benefits of India -UK DTAA. Our attention has been drawn upon the orders passed by the Tribunal for all these years. In A.Y.1995-96, the Tribunal vide its order reported in 132 TTJ 20 made elaborate discussion at paras 21 to 28 before arriving at the conclusion at paragraph 79 as under:-

> *"In view of the above discussions, as also bearing in mind the entirety of the case, we hold that the assessee was indeed eligible to the benefits of India-UK tax treaty, as long as entire profits and the partnership firm are taxed in UK - whether in the hands of the partnership firm though the taxable income is determined in relation to the personal characteristics of the partners, or in the hands of the partners directly. To that extent, I.T.A. No.1690/Mum/2015 objection taken by the learned Departmental Representative, on the question of admissibility of India-UK tax treaty benefits, is held as maintainable but rejected on merits".*

10. Similarly, in other years, the Tribunal has followed its earlier order and held that M/s. Linklaters is eligible for the benefits of India-UK DTAA so long as entire profits of the partnership firm are taxed in UK, whether in the taxable income is determined in relation to personal characteristics of the partners or in the hands of the firm directly. In the year before us, there is no dispute on facts that ultimately tax has been paid either by the said firm or by its partners in UK. No distinction has been pointed out by the Ld. CIT-DR on facts or law. Under these circumstances, respectfully following the orders of the Tribunal in Linklaters's case for earlier years, we hold that the assessee is entitled to claim benefits of India UK- DTAA. Therefore, Grounds 8 to 8.4 are allowed.

11. From the above observation, it is evident that this issue being a recurring one, has been dealt with by the Tribunal since A.Ys. 1995 - 1996 in various years and has held that the assessee is entitled to the benefit of India-UK tax treaty. The AO has rejected the assessee's contention for the reason that the provisions of Article 4(1) read with Article 1(1) which states that unless the assessee can be said to be a resident of UK, the assessee cannot claim treaty benefits and unless the assessee is liable to tax in UK, the assessee cannot fulfill the requirement of being the resident in UK. The AO also stated that the assessee is not taxable unit with regard to the income of the LLP and the term 'liable to tax' cannot include a person who is not taxable in the home country. The AO further denied the assessee's claim by stating that since the assessee was not taxed, the assessee will not be covered under the expression 'liable to tax', thereby not treating the assessee as a resident of UK and denied the benefits of the said treaty.

12. The A.O. has held that as per UK laws, LLP is not a taxable entity and since the assessee is not liable to tax and only its partners are assessed to tax, the assessee cannot be given the benefit of the Tax Treaty. We are not in agreement with the view taken by the A.O. No doubt that the firm consists of Partners and the income of the firm are taxed in the hands of the partners, the assessee is also said to be incorporated and registered under the laws of UK. Other than the fact that the assessee has not paid tax, we have observed from the orders of the DRP and the A.O. that there is no detailed analysis as to why the said benefit is to be denied to the assessee. There has been no discussion neither in the DRP's order nor in the assessment order explaining why the income of the assessee is to be taxed in India. In the absence of such analysis, we are inclined to follow the decision of the Tribunal in assessee's case for earlier years which has held that the assessee was entitled to India - UK tax treaty benefits. In holding so, we allow ground nos. 12 to 14 raised by the assessee.

13. The second issue to be adjudicated is whether the invoice amounting to Rs.2,29,39,575/- raised by the assessee is in the nature of 'fees for technical services' as defined under Article 13(4)(c) of India UK DTAA. The assessee contends that the A.O. has given a factually inaccurate finding that the co-ordinate bench in assessee's case has held the impugned amount to be taxable in India as per the DTAA. The AO observed that the assessee has received the following receipts during the impugned year, which are summarized as under:

Income in respect of services rendered in India	*Rs.34,10,488/-*
Income in respect of services rendered in India	*Rs.1,92,93,952/-*
As per 26AS and as per submission dated 05.12.2019)	
	Rs.2,35,135/-

Towards Disbursement	
Total	*Rs.2,29,39,575/-*

14. The AO had taxed the above income as 'fee for technical services' by holding that the services rendered fall under the category of 'fees for technical services' as per the I T Act and as per the India - UK DTAA. Having denied the benefit of India - UK DTAA, the AO held that the impugned receipt was taxable in India. The AO relied on the decision of the Hon'ble Apex Court in the case of *Continental Construction vs. CIT* [1992] 195 ITR 81 (SC), wherein it was held that the expression 'technical service' has a very broad connotation and it also includes 'Professional Services' and also relied on the decision of the Hon'ble Apex Court in the case of *CBDT vs. Oberoi Hotels (India) Private Limited* [1998] 231 ITR 148 (SC) which held that 'technical services' include 'professional services'. The A.O. also relied on various other decisions and held that the services rendered by the assessee to be technical in nature and the fees for included services are within the meaning of Article 13 of the India-UK DTAA and taxed the whole income in India as per the Explanation 1 to section 9 of the IT Act which is suffice to say that if the services are utilized in India then the same amount to taxability in India. The AO also held that since the services are provided by professionals which requires expertise, the same are to be termed as 'technical and consultancy services', which services are made use by the recipient in different areas such as management, finance, risk management analysis and transaction services, etc. The assessee contended that the said services requires no technology and are provided by highly skilled professional not related to any specific industry. The assessee further submitted that the said services pertain to specific laws of the country performed by specific legal professionals. The assessee further contended that the said services rendered cannot be utilized by assessee's

clients in future for their businesses in the area of management, financial and risk management analysis. The assessee reiterated that these are not 'make available' technical services. The contention of the assessee was not considered by the lower authorities, thereby making an addition of the impugned amount.

15. The ld. AR for the assessee contended that these are not 'make available' technologies, which are utilized by the assessee's clients for future purposes. The ld. AR also stated that stated that the impugned services are provided to non-Indian parties in connection with the activities outside India and, therefore, cannot be deemed to arise in India. The ld. AR for the assessee relied on the decision of the Tribunal in assessee's case, wherein the same was held not to be 'fee for technical services' and are not taxable under Article 13. The ld. AR also relied on the decision of the tribunal in assessee's case for A.Ys. 2011-12 and 2015-16.

16. The ld.DR, on the other hand, controverted the same and stated that the said decision of the tribunal in assessee's case for previous years was challenged before the Hon'ble Jurisdictional High Court, thereby relied on the orders of the lower authorities.

17. Having heard the rival submissions and perused the materials on record. It is observed that the Tribunal in A.Y. 2013-14 and 2015-16 have dealt with this issue and has held that section 9 of the Act does not apply in the case of the assessee relating to 'fees for technical services' and that the assessee was entitled to the benefit of DTAA. The Tribunal also held that the Revenue has failed to prove otherwise that the same pertain to 'fees for technical services'. The Tribunal also held that the provisions of India-UK DTAA would override the provisions of the Act, thereby holding the

remuneration received by the assessee for providing legal services as not amounting to 'fees for technical services', where the provisions of section 9(1)(vii) of the Act is not applicable. The tribunal has also held that the revenue has failed to prove that the same would fall under the category of 'fee for technical services' as envisaged in Article 13 of the India-UK DTAA and thereby holding that the same cannot be brought to tax as 'FTS' as per section 90(2) of the Act.

18. From the above observation, we are inclined to follow the said decisions, as the Revenue even during the impugned year has failed to controvert the contention of the assessee. Therefore, ground no. 20 along with the related grounds on this issue raised by the assessee are allowed.

19. The next issue pertains to whether the assessee has a permanent establishment in India. It is observed that the assessee has contended that it does not have a permanent establishment in India as defined in Article 5 of the India-UK DTAA and that the income earned by the assessee is in the nature of 'business income' and, hence, the same is taxable as per Article 7 of India-UK tax treaty. The assessee further submitted that the personnel of the assessee who have rendered services was present in India for less than 90 days during the impugned year, thereby holding that there cannot be a permanent establishment of the assessee in India. The assessee also contended that only if the employee or personnel of the assessee has rendered services in India for a period aggregating to 90 days or more in the financial year, the same would constitute a 'permanent establishment'. The ld. AR for the assessee placed reliance on the decision of the Tribunal in AY 2011-12, 2012-13 and 2015-16 which has held that since the period

of stay in India by the personnel or employee of the assessee attributes to less than 90 days within 12 months period, it was held that the assessee do not have a permanent establishment in India during the year under consideration.

20. The ld. DR, on the other hand, controverted the same by stating that in all these years, the tribunal has remanded back this issue to the A.O. for verifying the fact as to whether the assessee's employees had stayed in India for less than 90 days or not to establish the fact that the assessee had a permanent establishment in India. The ld. DR prayed that the same may be remanded back to the A.O. for the impugned year also for the factual verification.

21. Having heard the rival submissions and perused the material available on record. It is observed that in the earlier years, the co-ordinate bench has remanded this issue back to the A.O. for verifying the number of days of stay in India by the employees of the assessee who had rendered services in order to ascertain whether the assessee had a permanent establishment in India during the impugned year. The ld. AR has placed reliance on the submissions dated 13.12.2019 made by the assessee before the A.O. stating that the personnel/employee of the assessee had stayed in India for rendering services for a total cumulative number of days amounting to 17 days. This fact has not been controverted by the Revenue. The AO has also not denied the said fact in the assessment order.

22. From the above observation, we are of the considered view that the assessee do not have a permanent establishment in India during the impugned year. As the period of stay of the employees of the assessee for rendering the services in India was only for 17

days and only when it amounts to 90 days or more, the assessee is said to have a permanent establishment in India as mandated by law. We hereby allow ground nos. 27 and 28 along with the related grounds raised by the assessee on this issue.

23. The last issue in this appeal pertains to whether the assessee was liable to be taxed in India under Article 15 India-UK DTAA. The assessee contended that Article 15 is applicable only in the case of individuals where professional services or other independent activities either in their own capacity or in the capacity of the member of a partnership firm are rendered. The assessee further contended that the said DTAA between India-UK is different from that of India-USA where it specifically includes a firm of individuals. The assessee also stated that Article 15(1) of India France DTAA has also been made to a firm of individuals. The assessee has distinguished this with Article 15 of the India UK DTAA where only the individual in his own capacity or an individual as a member of the partnership firm is covered under the said Act. The assessee further stated that only Article 7 of the DTAA would be applicable in assessee's case which reads as under:

> "(1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is directly or indirectly attributable to that permanent establishment."

24. From the above observation, the assessee has distinguished Article 15 as compared with that of the Article 7 of the DTAA where the assessee contends that only Article 7 was applicable in assessee's case and not Article 15. This contention of the assessee was not accepted by the lower authorities. The learned AR for the assessee relied on the decision of the tribunal in assessee's case for A.Y. 2012-13, wherein it was

held that Article 15 applies to determine taxable income in the hands of individuals and not the other persons and the assessee being a partnership firm will not come under the purview of Article 15. The relevant extract of Article 15 of India – UK DTAA is reproduced below for ease of reference:

> *(1) Income derived by an individual, whether in his own capacity or as a member of a partnership, who is a resident of a Contracting State in respect of professional services or other independent activities of a similar character may be taxed in that State. Such income may also be taxed in the other State and if :*
>
> *(a) he is present in that other State for a period or periods aggregating 90 days in the relevant fiscal year, or*
>
> *(b) he, or the partnership, has a fixed base regularly available to him, or it, in that other State for the purpose of performing his activities;*
>
> *(2) For the purpose of paragraph (1) of this Article an individual who is a member of a partnership shall be regarded as being present in the other State during days on which, although he is not present, another individual member of the partnership is so present and performs professional services or other independent activities of a similar character in that State.*
>
> *(3) The term "professional services" includes independent scientific, literary artistic, educational or teaching activities as well as the independent activities of physiciarns, surgeons, lawyers, engineers, architects, dentists and accountants."*

25. The ld. DR, on the other hand, stated that the decision of the tribunal has not reached finality, as the same have been appealed before the Hon'ble Jurisdictional High Court.

26. Having heard the rival submissions and perused the materials on record. This issue has been squarely covered by the decision of the tribunal in assessee's case for A.Ys. 2011-12, 2012-13 and 2015-16, wherein it was decided in favour of the assessee. The relevant extract of the decision in the assessee's case in ITA No. 1540/Mum/2016 vide order dated 29.08.2018 for A.Y. 2011-12 is cited hereunder:

> *35. We have gone through the orders passed by the lower authorities and also Article 15 of India-UK DTAA. It is noted by us that Article 15 of DTAA deals with taxability of independent personal services. This Article starts with the words "Income derived by an individual.....in respect of professional services or other independent activities of similar character....."It is*

noted by us that Article 15 shall be applicable for determining taxable income in the hands of individual and not other persons. The assessee is certainly not an Individual. Thus this Article cannot be made applicable on the assessee being not an individual. Similar issue had come up before the Tribunal in the aforesaid case of M/s Linklaters (for AY 1995-96) wherein the Tribunal held at para 106 of the order that Article 15 shall be applicable only when services are rendered by an individual. Thus, respectfully following the order of the Tribunal it is held that impugned amount of fee received by the assessee would not be liable to be taxed under Article 15 of India-UK DTAA. Thus, Grounds 10 to 10.5 are allowed in favour of the assessee.

27. From the above observations, we are of the view that as this issue has already been dealt with by the Tribunal extensively in the previous years, the same is also applicable for the impugned year as there is no change in facts for this year. The Tribunal has reiterated that Article 15 of India-UK DTAA is dealt with only for taxability of independent personnel services or independent activity of similar character and not for the assessee which is a partnership firm. On this context, ground nos. 38 and its related grounds raised by the assessee on this issue are allowed.

28. In the result, the appeal filed by the assessee is allowed.

ITA No. 1257/Mum/2021

29. This appeal has been filed by the assessee which is a group entity of Linklaters LLP, challenging the assessment order dated 29.04.2021, passed u/s.14(3) r.w.s. 144C of the Act, pertaining to the A.Y. 2016-17, in pursuance to the direction of the DRP.

30. The brief facts are that the assessee filed its return of income on 26.09.2016, declaring the total income at Rs. Nil. The assessee's case was selected for scrutiny and the assessment order dated 29.04.2021 was passed by the A.O. determining the total income at Rs.13,11,534/- on account of amount envisaged by the assessee as for technical service as per the provisions of the IT Act and DTAA between India and Singapore.

31. The assessee is in appeal before us, challenging the said assessment order on the grounds of:

i. Fee for technical services under the India-Singapore DTAA
ii. Non existing of permanent establishment in India
iii. Applicability of Article 15 of the India Singapore DTAA to assessee's case along with the other consequential grounds.

32. As the facts of the case in ITA No. 1256/Mum/2021 is the same, except for the fact that this appeal pertains to the tax treaty between India-Singapore DTAA. Ground nos. 1 to 3 being general in nature requires no adjudication.

33. Ground nos. 4 to 18 pertains to the consideration of the receipt invoiced by the assessee as 'fess for technical services' as per Article 12(4)(b) of India-Singapore DTAA.

34. Both the learned representatives stated that the facts of this issue are identical to that of ground no. 20 in ITA No. 1256/Mum/2021 (decided above from paras 13 to para 18). This ground has been decided in favour of the assessee holding that the same does not amount to 'fees for technical services' and the same is not taxable under Article 12 of India-Singapore tax treaty. We hereby hold that the view taken in ITA No. 1256/Mum/2021 for this issue applies *mutatis mutandis* for this issue also. In view of the above, ground nos. 4 to 18 raised by the assessee is allowed and the impugned addition made by the A.O. is hereby deleted.

35. The issue pertaining to existing of permanent establishment in India raised in ground nos. 19 to 22 has already been decided in ground nos. 27 & 28 of ITA No. 1256/Mum/20121 (in para nos. 19 to 22 above), wherein it was held that the employee or

personnel of the assessee who has rendered service in India has not stayed beyond 90 days and as per the statement of the assessee submitted before the A.O., the cumulative total number of days, the furnishing of the services was for 10 days only.

36. From the above facts, we are inclined to hold that the assessee does not have a permanent establishment in India and the decision in ITA No.1256/Mum/20121, ground nos. 27 & 28 applies *mutatis mutandis* to this appeal also. Hence, ground nos. 19 to 22 raised by the assessee is allowed.

37. The next ground pertains to the applicability of Article 15 of India-Singapore DTAA. The assessee contended that Article 15 of India-Singapore DTAA was applicable to employment income and that the assessee has engaged in practicing of the law for which it has not received salaries, wages or remuneration in respect of any employment contract, the assessee contended that on this ground, the assessee was not entitled to be taxed under Article 15 of the tax treaty. This contention was not explained by the A.O. for the reason that the assessee has been employed by the Indian clients for rendering certain service and has been remunerated accordingly. The A.O. held that the assessee company was covered under Article 15. The A.O. further stated that the assessee has been employed by the Indian entities for carrying out a pre work for certain remuneration. On this finding, the A.O. held that the assessee's case would come under the purview of Article 15 of India Singapore DTAA.

38. The ld. AR contended the said fact and stated that the assessee has not received anything by way of salary, wages or other similar remuneration and that the assessee being a firm would not be covered under Article 15 of DTAA.

39. The ld. DR relied on the order of the A.O.

40. Having heard the rival submissions and perused the material on record. The assessee company being a resident of Singapore, the provision of India-Singapore treaty was applicable. Article 15 of the said tax treaty relates to the taxability of salaries, wages or similar remuneration in respect of an employment. The assessee being a firm is said to have not received any salary, wages, or remuneration pertaining to any employment contract. The assessee's contention that it shall be taxed under Article 14 of India-Singapore tax treaty has not been controverted by the Revenue in its findings. Neither the A.O. nor the DRP has substantiated with sufficient explanation as to why Article 15 of the tax treaty was applicable in assessee's case. The ld. A.O. has failed to prove that the assessee has received by way of salary, wages, or similar remuneration for the services rendered by it in India. It is relevant to refer to Article 15 of India – Singapore DTAA hereunder for ease of reference:

ARTICLE 15

DEPENDENT PERSONAL SERVICES

1. Subject to the provisions of Articles 16, 18, 19, 20 and 21, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State

2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State, if:

(a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in the relevant fiscal year; and
(b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other State ; and
(c) the remuneration is not borne by a permanent establishment or a fixed base which the employer has in the other State.

3. In the case of a recipient who satisfies all the conditions under sub-paragraphs (a), (b) and (c) of paragraph 2. if his remuneration is deductible as an expense against fees for technical services (dealt with under Article 12) derived by his employer and the employer has no

permanent establishment in the other Contracting State, the remuneration may, notwithstanding the provisions of paragraph 2, be taxed in that State. In such case, the tax so charged shall not exceed 15 per cent of the gross amount of the remuneration.

4. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that State.

41. The above said article pertains to dependent personnel services and whether the same would apply to a partnership firm like the assessee has not been elaborated by the A.O. From the above observation, we are of the considered opinion that the Article 15 of India-Singapore tax treaty will not be applicable in assessee's case. We hereby allow ground no. 25 and its related grounds raised by the assessee.

42. Ground no. 23 pertains to the reimbursement of expenses amounting to Rs.88,987/- which was treated as 'income' by the A.O. The assessee has challenged the reimbursement of expenses as part of gross receipts. It is observed that the said issue has been dealt with in assessee's group entity case in *Linklaters LLP vs. Dy. CIT(IT)* (in ITA No. 1540/Mum/2016 vide order dated 29.08.2018), wherein it has been held as under:

27. Having considered rival submissions we find that while deciding identical issue in assessee's own case for assessment year 2011-12 supra, the Tribunal has held as under:-

"40. We have gone through the orders passed by the lower authorities and orders passed in earlier years by the Tribunal in case of Linklaters. The perusal of chart containing details of the expenses clearly shows thatall these items are in the nature of expenses. These are apparently not items of revenue. These are mostly expenses of routine nature incurred by the assessee in the normal course of business. It is also noted that thisissue has already been decided by the Tribunal in case of Linklaters in theaforesaid judgments. It is noted that Tribunal in AY. 1995-96 held as under:-

"131. We have noted that while Assessing Officer notedassessee's claim that the reimbursements of expenses are in respect of actual expenditure incurred by the assessee, on behalf of clients, and have no element of mark up or income, he treated 50 per cent of such reimbursements of expenditure asincome on the ground that "the assessee has not been able to produce all such bills/invoices and considering the facts these bills do not, in any case, have any supporting evidences" and thus brought to tax an amount of Rs. 2,12,23,219, the CIT(A) upheld the action of the Assessing Officer to the extent of 15 per cent of the total amount of reimbursement.

The CIT(A) also held that the reimbursements of expenses received by the assessee constitute income of the assessee. It is also important to bear in mind the fact that the CIT(A) confirmed thedisallowance of 15 per cent of reimbursement of expenses on the ground that (a) the appellant was not able to produce all supporting evidences in respect of expenditure incurred; and(b) it may be difficult to bifurcate the expenses between disbursements related to services rendered in India and services Linklaters LLP rendered outside India. While the Assessing Officer is not in appeal against the disallowance so restricted by the CIT(A), the assessee is not satisfied by the part relief given by the CIT(A) and is in second appeal before us."

132. Learned counsel has taken us through meticulous documentation in respect of reimbursements of expenses, and also produced before us samples of supporting evidences in respect of each claim of reimbursement of expenses. He has also extensively referred to the prevailing regulation in the United Kingdom which ensure strict control over possible inflation of such reimbursement claims, as also to the internal control mechanism in respect of these claims. He submits that all requisitions of the authorities below, in respect of supporting evidences for such claims, have been duly complied with, and the CIT(A) has confirmed the partial disallowance only on surmises and conjectures. He urges us to delete the disallowance confirmed by the CIT (A) and hold that the reimbursements of expenses received by the assessee, particularly on the facts of the case, cannot be treated as income in the hands of the assessee. Learned Departmental Representative, on the other hand, relies upon the orders of the authorities below and submits that the onus is on the assessee to produce all the evidences of expenditure and that this onus is clearly not discharged by the assesses.

133. Having heard the rival submissions and having perused the material on record, we are inclined to uphold the grievance of the assessee. The reimbursements received by the assessee are in respect of specific and actual expenses incurred by the assessee and do not involve any mark up, there is reasonable control mechanism in place to ensure that these claims are not inflated, and the assessee has furnished sufficient evidence to demonstrate the incurring of expenses. 'There is thus no good reason to make any addition to income in respect of these reimbursements of expenses. The action of the CIT(A), as learned counsel rightly contends, is on pure surmises and conjectures. In view of the above discussions, we direct the Assessing Officer to delete the disallowance of expenses as sustained by, the CIT(A) and hold that no part of reimbursements of expenses received by the assessee on the facts of this case, be treated as income of the assessee. The assessee gets the relief accordingly."

41. It is noted from the perusal of orders passed by the lower authorities that AO did not bring anything on record to show that whether anyelement of mark-up was involved in the expenses, which have been reimbursed to the assessee. However, that is even not the case of the Revenue. Under these circumstances, it cannot just be presumed that income element was involved in the Linklaters LLP reimbursement of expenses. Therefore, respectfully following the orders of the Tribunal of earlier years, these grounds are allowed and decided in favour of the assessee. The AO is directed to delete the disallowance made in this regard. As a result, these grounds are allowed."

28. Facts being identical, respectfully following the aforesaid decision of the Co-ordinate Bench, we delete the disallowance made by the Assessing Officer. Ground raised is allowed.

43. As this issue has already been dealt with by the Tribunal, by respectfully following the above said decision, we hereby allow this ground of appeal raised by the assessee.

44. In the result, the appeal filed by the assessee in ITA No. 1257/Mum/2021 is allowed.

Order pronounced in the open court on 22.02.2023

Sd/-	Sd/-
(B. R. Baskaran) Accountant Member	(Kavitha Rajagopal) Judicial Member

Mumbai; Dated : 22.02.2023
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai