

**IN THE INCOME TAX APPELLATE TRIBUNAL
“I” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 2286/Mum/2022
(A.Y.2018-19)**

Baker Hughes EMEA Unlimited Company (earlier known as GE Sesing EMEA Unlimited Company) Sensing House, Shannon Free Zone East, Shannon, County Clare, Ireland, C/o Unit No. 203, 2 nd Floor, Reliable Tech Park, B, Wing, Airoli, Navi Mumbai – 400 708	Vs.	Deputy Commissioner of Income Tax, Int. Tax Circle 1(2)(1) Room No. 1811, 18 th Floor, Air India Building, Nariman Point, Mumbai - 400021
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAFCG9249K		
Appellant	..	Respondent

Appellant by :	Dhanesh Bafna/ Riddhi Maru/ Gautam Juvekar/Parth Raghani
Respondent by :	A.K.Sharma

Date of Hearing	12.01.2023
Date of Pronouncement	27.03.2023

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the final order passed Assessing Officer, circle 1(2)(1) Mumbai- 3 dated 21.06.2022 for A.Y. 2018-19. Following the directions of the DRP-1, Mumbai, the assessee has raised the following grounds before us:

- “1. On the facts and circumstances of the case and in law, the final assessment order dated 15 July 2022 passed by the Learned Assessing

Officer (Ld. AO) under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (the Act), to the tune prejudicial to the Appellant is bad in law and therefore liable to be quashed

2. *On the facts and circumstances of the case and in law, the Ld. AO following the directions of Hon'ble Dispute Resolution Panel ('Hon'ble DRP) passed final assessment order on an incorrect understanding of the facts that the Appellant has rendered services as against offshore sale of goods. In doing so, the Ld. AO/Hon'ble DRP grossly erred in:*
 - 2.1 *not appreciating the fact that the Appellant has earned receipts from offshore sale of goods and no services were rendered in India and the same is evident from the copy of invoices and purchase orders filed by the Appellant.*
 - 2.2 *contending that the Appellant is providing technical assistance and support services by misinterpreting the standard terms and conditions of the invoices.*
 - 2.3 *contending the Appellant is rendering services on arbitrary and frivolous basis and based on his conjectures and surmises and without providing any reference to supporting evidence which demonstrates that the Appellant has rendered any services to Indian customers.*
3. *On the facts and circumstances of the case and in law, the Ld. AO/Hon'ble DRP grossly erred in treating the receipts of INR 13,27,84,057 towards offshore sale of goods as fees for technical services (FTS) under section 9(1)(vii) of the Act as well as under Article 12 of the India- Ireland Double Taxation Avoidance Agreement (DTAA) In doing so, the Ld. AO/Hon'ble DRP erred in:*
 - 3.1 *contending that the Appellant has provided consultancy/technical support services to its Indian customers.*
 - 3.2 *contending that the Appellant has made available technical knowledge experience, skills etc. in form support services, technical advice to the Indian customers.*
4. *On the facts and circumstances of the case and in law, the Ld. AO erred in levying interest of INR 7,96,704 and INR 69,04,768 under section 234A and 234B of the Act, respectively.*
5. *On the facts and circumstances of the case and in law, the Ld. AO erred in giving short credit of the taxes deducted at source (TDS) of INR 28,83,079. penalty*
6. *On the facts and circumstances of the case and in law, the Ld. AO erred in initiating under section 270A of the Act.*

The above grounds and sub-grounds are without prejudice to each other.

The Appellant craves leave to add, alter, amend, modify or withdraw all or any of the aforesaid grounds of appeal as may be considered necessary at any time before or at the time of hearing of the appeal.

The Appellant prays that appropriate relief be granted based on the said grounds of appeal and the facts and circumstances of the case.”

2. Fact in brief is that return of income declaring total income of Rs.nil was filed on 29.03.2019. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 22.09.2019. The assessee is a foreign company incorporated under the law of Ireland and is engaged in the business of manufacturing highly sophisticated complex, technology advanced and expensive equipment and are intended to be used in specific industrial application. During the course of draft assessment proceedings the A.O noticed that assessee claimed receipt of USD 20,65,071 as non-taxable stating that the same was earned from offshore sale of equipment/consumable/spare parts to Indian customers accrued outside India as per the provisions of Sec. 5 of the Act and accordingly such income is not taxable in India. The A.O asked the assessee to provide the details of the amount in INR and also explained by the said receipt should not be brought to tax under the head FTS within the provision of the Act and the India-Ireland DTAA. In response, the assessee submitted copy of invoices for sale of equipment and description of the equipment were mentioned on the invoices. The assessee explained that during the year under consideration it has supplied equipment/spare parts amounting to Rs.13,27,84,057/-. The assessee also submitted that it had not earned any revenue for providing any services and the invoices were for offshore sale. The assessee also submitted that it has not rendered any services so taxing it as FTS will not be correct in facts. The assessee also submitted that aforesaid revenue were earned from offshore sale of equipment to Indian customers accrued outside India as per the provisions of Sec. 5 of the Act and accordingly such income was not taxable in India. However, the A.O has not agreed with the submission of the assessee. The A.O was of the

view that the assessee was providing sophisticated equipment's to its client which can be put to use by it only as well as rendering supporting services. Therefore, after referring the terms and conditions guidelines as part of the invoice the assessing officer stated that the assessee was not only selling equipments to the buyer company in India but also providing technical assistance and support services and this was under the mandate of agreement signed between the buyer and seller. Therefore, the assessing officer treated the amount received by the assessee company "as fees for included services" as per Article 12 of India-Ireland DTAA also "Fees for Technical Services" as per Sec. 9(1)(vii) of the Act.

3. The assessee raised objection against the draft assessment order before the Id. Dispute Resolution Panel (DRP). However, the Id. DRP has dismissed the objection filed by the assessee. Accordingly, the assessing officer has passed final assessment order u/s 143(3) r.w.s 144C(13) of the Act on 15.07.2022 and assessed the income as per the draft assessment order.

4. During the course of appellate proceedings before us, the Id. Counsel contended that assessee is a Ireland based company engaged in the business of manufacturing and sale of sophisticated equipment at offshore. He further submitted that assessee company has earned the aforesaid revenue from offshore sale of equipment accrued outside India and same was not taxable as per Sec. 5 of the Act. The Id. Counsel has referred copies of invoices placed in the paper book in support of its contention that assessee company has not provided any services to earn the income from sale of equipment. The Id. Counsel also contended that there was no agreement signed between the buyer and the seller in support of providing any services.

On the other hand, the ld. D.R relied on the order of lower authorities.

5. Heard both the sides and perused the material on record. During the year under consideration the assessee had supplied equipment amounting to Rs.13,27,84,057/- as discussed supra in this order to Indian customer and claimed the same as offshore sale of goods and the revenue was accrued outside India as per the provision of Sec. 5 of the Act and same was not taxable in India. However, the A.O has taxed the receipt from offshore sale of goods of Rs.13,27,84,057/- by treating the same as fees for technical services under the Act as well as Article 12 of the India-Ireland Double Taxation Avoidance Agreement (DTAA). In this regard, the assessee submitted that it has not earned any revenue for providing any services and the invoices were for pure offshore sale. The assessee has submitted copy of invoices and purchase order to substantiate that it has earned revenue from offshore sale of equipment, consumable, spare parts and it has not earned any revenue for providing any services. We have perused the copies of invoices raised by the assessee placed at page no. 22 to 103 of the paper book. It is noticed that in the invoices the description of sale of equipment number of quantity, price of the item sold and detail of the buyer to whom shipment of goods were provided which demonstrate that assessee had received the amount on sale of equipment and nowhere it was mentioned that any amount was received from rendering of any services. In this regard, we find that A.O has not established that how the amount received by the assessee was related to rendering of any services by the assessee. The A.O/DRP have not controverted the facts established from the invoices on sale of equipments as discussed supra in this order. The A.O has also not brought on record any clinching evidences to substantiate that assessee has received the impugned amount for rendering of services.

In the light of the above facts and circumstances we consider that the order of the A.O and direction issued by the DRP are not justified. Therefore, we allow the ground no. 2 & 3 of the assessee.

6. Ground No. 1 & 5 are not pressed, therefore, the same stand dismissed.

7. Ground No. 4 is pertained to levying of interest u/s 234A & 234B of the Act is of consequential nature, therefore, the same stand dismissed.

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

Order pronounced in the open court on 27.03.2023

Sd/-

(Aby T Varkey)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 27.03.2023

Rohit: PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.