

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

**Before Dr. B. R. R. Kumar, Accountant Member**

**Sh. Yogesh Kumar US, Judicial Member**

**ITA No. 1861/Del/2022 : Asstt. Year: 2019-20**

Inteva Products Netherlands BV, Siriusdreef 17, 2132, WT Hoofddorp, Netherlands (APPELLANT)	Vs.	ACIT, Circle International Taxation- 2(1)(1), New Delhi-110002 (RESPONDENT)
<b>PAN No. AADCI5208G</b>		

**Assessee by : Sh. Rishabh Malhotra, AR  
Revenue by : Sh. Anshuman Pattnaik, CIT DR**

<b>Date of Hearing: 13.03.2023</b>	<b>Date of Pronouncement: 05.04.2023</b>
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**ORDER**

**Per Dr. B. R. R. Kumar, Accountant Member:**

The present appeal has been filed by the assessee against the order dated 31.05.2022 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. The solitary ground raised by the assessee is as under:

*"On the facts and circumstances of the case and in law, the Id. AO pursuant to the directions of the Hon'ble Dispute Resolution Panel (Hon'ble DRP) erred in treating the receipt of fees for business support services of INR 11,35,35,626 as Fees for Technical Services ('FTS') as per Article 12 of the tax treaty between India and Netherlands without appreciating that the services are managerial in nature and hence do not fall within the definition of FTS."*

3. The assessee company is a non-resident company incorporated on 6<sup>th</sup> July 2010 and registered in Netherlands. The

assessee is mainly engaged in provision of financial and management services. The issue of FTS stands adjudicated by the order of the Tribunal in assessee's own case for the A.Y. 2014-15 in ITA No. 7545/Del/2017 order dated 31.01.2023 and A.Ys. 2015-16, 2016-17, 2017-18 and 2018-19 in ITA No. 7963 & 7964/Del/2017, ITA No. 822/Del/2022 vide order dated 02.03.2023. The relevant part of the earlier order of the Tribunal is reproduced as under:

*"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."*

4. Since, the matter stands adjudicated by the order of the Tribunal, in the absence of any change in the material facts and legal proposition, the appeal of the assessee is hereby allowed.

5. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 05/04/2023.

Sd/-

**(Yogesh Kumar US)**  
**Judicial Member**

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**Dated: 05/04/2023**

\*Subodh Kumar, Sr. PS\*