

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

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT  
AND  
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

ITA Nos.957 & 958/Del/2023  
Assessment Years: 2018-19 & 2019-20

**With**

S.A. No.167/Del/2023  
[Arising out of ITA No.957/Del/2023]  
Assessment Year: 2018-19

**With**

S.A. No.168/Del/2023  
[Arising out of ITA No.958/Del/2023]  
Assessment Year: 2019-20

Avaya International Sales Ltd., C/o- Mr. Rohit Verma, Ernst & Young LLP, 4 <sup>th</sup> Floor, Golf View Corporate Tower-B, Sector-42, Golf Course Road, Gurgaon	<b>Vs.</b>	ACIT, Circle 1(1)(1), New Delhi
<b>PAN :AAKCA7138A</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by	Sh. Shashwat Bajpai, Advocate
Department by	Sh. Vizay B. Vasanta, CIT(DR)

Date of hearing	17.05.2023
Date of pronouncement	29.05.2023

**ORDER**

**PER SAKTIJIT DEY, JM:**

Captioned appeals and stay applications relate to the same assessee. The appeals arise out of two separate orders of learned

Commissioner of Income Tax (Appeals)-42, Delhi, pertaining to assessment years 2018-19 and 2019-20.

2. At the outset, learned counsel appearing for the assessee, on instructions, sought to withdraw the stay applications.

3. Learned Departmental Representative did not express any objection to assessee's request.

4. Considering the above, we permit the assessee to withdraw the stay applications. Accordingly, stay applications are dismissed as withdrawn.

5. Insofar as the appeals are concerned, the only common issue arising for consideration is, whether the payments received by the assessee towards support/maintenance services are taxable in India as Fees for Technical Services (FTS), either under section 9(1)(vi) of the Income-tax Act, 1961 or under Article 12 of India – Ireland Double Taxation Avoidance Agreement (DTAA).

6. Before us, learned counsel appearing for the assessee submitted that the assessee is a non-resident corporate entity incorporated under the laws of Ireland and a tax resident of Ireland. Therefore, the assessee is entitled for the benefits under India – Ireland DTAA. He submitted, the dispute in the present appeals is relating to taxability of service revenue received of

Rs.121,51,92,143/-, which has been characterized as FTS by the Assessing Officer. He submitted, while considering identical issue in assessee's own case in assessment year 2016-17, the Tribunal has restored the issue back to the Assessing Officer with certain directions for *de novo* adjudication. He submitted, since, the facts are identical in these years also, the issue has to be restored back to the Assessing Officer.

7. Learned Departmental Representative fairly agreed with the aforesaid submissions of the assessee and submitted that in consonance with the decision taken by the Tribunal in assessment year 2016-17, the issue has to be restored back to the Assessing Officer.

8. We have considered rival submissions and perused the materials on record. It is evident, both the Assessing Officer and learned Commissioner (Appeals) while coming to their respective conclusion that the service revenue received by the assessee is in the nature of FTS, have relied upon the decision taken by them in assessee's own case in earlier assessment year i.e. assessment year 2016-17. It is observed, while deciding the cross appeals for assessment year 2016-17 in ITA Nos. 526 & 714/Del/2020, the

Tribunal in order dated 07.03.2023 has restored the issue back to the Assessing Officer with the following directions:

*“13. The bench is of considered opinion that although reference has been made by the Tax Authorities below to have taken into consideration aspect of questioning technical services on the basis of human intervention however, there seems to have been lack of examination of the issue taking into account the relevant evidence and opinion of expert. Conclusion are more on basis of general perception of the nature of service. Thus, the bench is of considered opinion that this issue requires restoration to the files of the Id AO to decide the issue afresh after taking into consideration the judgment of the Hon'ble Supreme Court in CIT Vs. Bharti Cellular (supra). In the light of the aforesaid the grounds in appeal of the assessee are allowed for statistical purposes.”*

9. Facts being identical, respectfully following the decision of the Coordinate Bench in assessee's own case, as referred to above, we restore the issue to the Assessing Officer for *de novo* adjudication with similar directions as given in assessment year 2016-17. Grounds are allowed for statistical purposes.

10. In the result, the appeals are allowed for statistical purposes.

11. To sum up, stay applications are dismissed and the appeals are allowed for statistical purposes.

***Order pronounced in the open court on 29<sup>th</sup> May, 2023***

***Sd/-***  
**(G.S. PANNU)**  
**PRESIDENT**

***Sd/-***  
**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

Dated: 29<sup>th</sup> May, 2023.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi