

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

ITA No. 645/DEL/2020 [A.Y 2015-16]
ITA No. 646/DEL/2020 [A.Y 2016-17]

Inter Continental Hotels Group
[Asia Pacific] PTE Ltd
230, Victoria Street, #13-00
Bugis Junction Towers
Singapore

Vs.

The .Dy. C.I.T.
Intt. Taxation
Circle -2(1)(1)
New Delhi

PAN: AABCI 6407 M

(Applicant)

(Respondent)

Assessee By : Shri S.K. Aggarwal, CA
Shri Piyush Gupta, CA
Shri Himanshu Aggarwal, CA

Department By : Shri Vizay B. Vasanta, CIT- DR

Date of Hearing : 19.06.2023
Date of Pronouncement : 23.06.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

The above captioned two separate appeals by the assessee are directed against two separate orders of the CIT(A) - 43, New Delhi dated 05.11.2019 pertaining to A.Ys 2015-16 and 2016-17.

2. Since common grievances are involved in both the appeals, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The first common grievance in the captioned appeals is that the ld. CIT(A) erred in treating the amount received by the assessee from Inter Continental Hotels Group [Asia Pacific] India Pvt Ltd [IHGAP] towards provision of Management Support Services to be in the nature of Fees for Technical Services [FTS] under Article 12 of the India - Singapore DTAA.

4. At the very outset, the ld. counsel for the assessee stated that the impugned quarrel has been decided by this Tribunal in favour of the assessee and against the Revenue in earlier assessment years. The

ld. counsel for the assessee supplied copies of the orders of the co-ordinate benches.

5. Though the ld. DR strongly supported the findings of the lower authorities, but could not bring any distinguishing decision in favour of the Revenue.

6. We have carefully considered the orders of the authorities below and have the benefit of the decision of the co-ordinate benches. We find force in the contention of the ld. counsel for the assessee. The impugned quarrel has been considered and decided by this Tribunal in assessee's own case in earlier A.Ys in favour of the assessee and against the Revenue.

7. A BRIEF BACKGROUND OF THE ASSESSEE

IHGAP is a private company incorporated in Singapore and is a part of the InterContinental Hotels Group. It is a tax resident of Singapore as per the provisions of Article 4 of India-Singapore Double Taxation Avoidance Agreement ('DTAA' or 'tax treaty'). The primary business of the assessee is to franchise/ license hotels operating under different hotel brands of IHG in the Asia Pacific region.

8. The assessee being the regional headquarters for the Asia Pacific region of the IHG Group, is the economic and beneficial owner of various hotel brands including 'InterContinental', 'Holiday Inn' and 'Crowne Plaza'. The assessee was in receipt of royalty fees from various hotels within Asia Pacific region, including India, from licensing of the various hotel brands.

9. Further, in A.Ys. 2015-16 and 2016-17, an amount of Rs. 11,93,91,259/- and Rs. 11,52,73,999/- accrued to the assessee from a group company in India, namely InterContinental Hotels Group (India) Private Limited ('IHG India'), on account of Management Support Costs. IHG India is engaged primarily in the business of providing Management and Operations services to various Hotels in India. Based on the nature of services enumerated under the service agreement entered with IHG India, the Appellant is providing services in the nature of operational support, accounting and legal support, and information technology support related services, etc. The said amounts were claimed as exempt in the return of income filed in respective years, as the same was not in the nature of FTS under DTAA. The Assessing Officer, however, added the management services cost to the income of the assessee in the assessment orders passed u/s 143(3)

of the Act dated 13 February 2019 (for AY 2015-16) and order dated 25 February 2019 (for AY 2016-17), treating the same as FTS. The Assessing Officer alleged that the services provided by IHG AP to IHG India, resulted into satisfaction of 'make-available' condition, provided under Article 12(4)(b) of the DTAA.

10. The ld. CIT(A), vide his order dated 05 November 2019 for A.Ys. 2015-16 and 2016-17 upheld the additions of MSC, as FTS under Article 12(4)(a) of DTAA, treating the receipts against MSC as ancillary and subsidiary to License fee received from Indian Hotels, as against the addition made by the Assessing Officer under Article 12(4)(b) of DTAA.

11. The assessee being aggrieved by the additions on account of management support costs upheld by the ld. CIT(A) in A.Ys 2015-16 and 2016-17, the assessee has preferred an appeal before this Tribunal.

12. Aggrieved by this, the assessee is before us.

13. We find that this Tribunal in ITA No. 4524/DEL/2017 for A.Y 2012-13 vide order dated 24.09.2021 with respect to taxability of management support cost under Article 12(4)(b) of the Treaty has held as under:

“30. ...We find that the operational support such as Providing advice, information and competitive expertise to local general CMH Hotel management on the operation of Hotels in accordance with brand standards, maintaining the qualification available with regard to the international hotel business and its management techniques and coordinating the managerial plan and actions, advising local general CMH Hotel management on trends and changes in the hotel business in general and provide advice on the production of operating and capital budgets at the level of CMH hotels, which are consistent with the strategic plan can at best be the managerial consultancy service but not the services made available so that the recipient can use or replicate such service received from the assessee....

32. Similarly, the services rendered in connection with training & recruitment and manpower specification, we find that there is neither technology transfer, knowledge transfer nor transfer of any skill or know-how.

33. Hence, we hold that the provisions of the Article 12(4) could not be applied to the services rendered by the assessee in the strict sense of the provisions of DTAA. Hence, we hold that the decision of CIT(A) cannot be supported.”

14. The co-ordinate bench categorically held that the services provided by the assessee do not make available any technical knowledge, skill, know-how to the recipient Inter Continental Hotels Group India Pvt Ltd.

15. Further, in A.Ys 2013-14 and 2014-15, in ITA Nos. 4608/DEL/2019 and 2986/DEL/2019, with respect to taxability of Management Support cost, under Article 12(4)(b) of the DTAA, the co-ordinate bench has held as under:

“9. Facts being identical, respectfully following the decision of the co-ordinate Bench in assessee’s own case, as referred above, we hold that the amount received by the assessee cannot be regarded as FTS under Article 12(4)(b) of the Act. Accordingly, addition made is deleted.

16. Having given a thoughtful consideration to the submissions of the parties in the context of the aforesaid finding of learned Commissioner (Appeals), we find, the license granted by the assessee to various hotels in India for user of brand name from earlier times and the assessee had been offering such income as royalty. Whereas, the assessee had entered into Management Support Services agreement at a later point of time. These facts show that the agreements for user of brand name and for Management Support Services are independent of each other, hence, not connected or dependent upon each other. It is also relevant to observe, while the license agreements for user of brand name are with various third party hotels in India, the agreement for provision of Management Support Services is with the Indian subsidiary. Therefore, it cannot be said that the amount received from provision of Management Support Services is ancillary and subsidiary to the license agreement. It is further relevant to observe, in the year under consideration, the assessee had received more income from provision of Management Support Services than royalty. In that sense also, Management Support Services cannot be considered to be ancillary and subsidiary to the license agreement.

17. After threadbare analysis of Management Support Services Agreement and the fee received under various heads in pursuance to such agreement, the Co-ordinate Bench in assessee's own case in assessment year 2012-13(supra) has given a categorical finding that it does not come under Article 12(4) of India-Singapore DTAA. The decision of the Co-ordinate Bench as aforesaid, will also apply mutatis-mutandis to this appeal."

16. As no distinguishing facts have been brought on record, respectfully following the decision of the co-ordinate benches [supra], we direct the Assessing Officer to delete the impugned addition in both the appeals.

17. Second common grievance in both the appeals relates to the short credit of TDS.

18. We are of the considered view that the assessee is entitled for credit of TDS as per provisions of section 199 of the Act r.w.r 37BA(2) of the Rules. We, therefore, direct the Assessing Officer to grant credit of TDS as per relevant provisions of the law and rules.

19. In the result, the appeals of the assessee in ITA Nos. 645 & 646/DEL/2020 are allowed.

The order is pronounced in the open court on 23.06.2023.

Sd/-

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 23rd JUNE, 2023.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	