

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI '1' BENCH, MUMBAI.

Before Shri B.R. Baskaran (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 7109/Mum/2017 (A.Y. 2013-14)

Atos International C/o. Atos India Pvt. Ltd. Plant No. 5, Godrej & Boyce Mfg. Co. Ltd., Pirojshanagar LBS Marg, Vikhroli West Mumbai-400 097. PAN : AAMCA0951F (Appellant)	Vs.	DCIT (International Taxation) Range 1(1)(2) Room No. 117 Scindia House Ballard Estate Mumbai-400 038. (Respondent)
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Assessee by	Shri Dhanesh Bafna & Shri Yogesh Malpani
Department by	Ms. Surabhi Sharma
Date of Hearing	18.05.2023
Date of Pronouncement	18.05.2023

ORDER

Per B.R.Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 25.09.2017 passed by the Assessing Officer under section 143(3) read with section 144C(13) of the I.T. Act in pursuance of directions given by learned Dispute Resolution Panel (DRP). The issue urged by the assessee relates to assessment of payment received by the assessee towards providing support services to the associated enterprises as royalty/FTS under section 9(1)(vi)/(vii) of the Act and also under Article 13 of the DTAA entered between India and France.

2. The Learned AR submitted that the assessee has provided support services to its Associated Enterprises (AE) and has received payments towards the same. The Assessing Officer has treated the same as royalty and fees for technical services under section 9(1)(vi) and 9(1)(vii) of the I.T. Act

1961 and also under Article 13 of the Double Taxation Avoidance between India and France. The Learned AR submitted that the Assessing Officer has taken decision on the basis of the agreement entered in the year 2010. However, the above said agreement was terminated and new agreement was entered in the year 2012. He submitted that the new agreement was not brought to the notice of the tax authorities and the same is being filed as additional evidence under Rule 29 of the Appellate Tribunal Rules, 1963. The Learned AR further submitted that the assessee would also like to furnish evidences in support of the services rendered by the assessee to various entities to substantiate its claim that the payment received by it would not qualify as royalty or FTS. Accordingly, he prayed that the additional evidence filed by the assessee be admitted and the matter may be restored to the file of the Assessing Officer for examining the issue afresh by duly considering the agreement rendered in 2012 and also other evidences that may be furnished before him.

3. The Learned DR, however, objected to admission of the additional evidence after lapse of so many years. She however submitted that if the additional evidences are admitted, then the same requires examination at the end of AO.

4. Having heard the rival submissions, we are of the view that the additional evidence (which is the agreement entered in 2012) furnished by the assessee needs to be admitted, since the impugned payments have been received by the assessee from its AEs as per the agreement entered in 2012. In our view, consideration of the agreement entered in 2012 would help the AO to determine the correct nature of payment received by the assessee. Further, as per the submission of Ld A.R, the assessee also likes to furnish certain additional evidences before the Assessing Officer in order to support its contention that the payments received by the assessee would not qualify

as royalty or fees for technical services. Accordingly, we are of the view that this issue requires fresh examination at the end of AO.

5. Accordingly, we set aside the order passed by the Assessing Officer on this issue and restore the same to his file for examining it afresh by duly considering the additional evidences filed before us and also any other evidences that may be filed before him. After affording adequate opportunity of being heard, the Assessing Officer may take appropriate decision in accordance with law.

6. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Pronounced in the open court on 18.5.2023.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(B.R. BASKARAN)
Accountant Member

Mumbai; Dated : 18/05/2023

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(Judicial)
4. PCIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

PS