

**IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI**

**SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1299/MUM/2023 ITA No. 1298/MUM/2023
(Assessment Year: 2013-14) (Assessment Year: 2014-15)**

**ITA No. 1297/MUM/2023 ITA No. 1296/MUM/2023
(Assessment Year: 2015-16) (Assessment Year: 2016-17)**

**&
ITA No. 1295/MUM/2023
(Assessment Year: 2017-18)**

**Assistant Commissioner of Income Tax
(IT)-4(2)(2), Mumbai**

Room No. 1604, 16th Floor,
Air India Building, Nariman Point ,
Mumbai - 400021

..... **Appellant**

M/s Star Cruise Management Ltd.,

C/o Economic Laws Practice,
Advocate & Solicitors,
9th Floor, Mafatlal Centre,
Vidhan Bhavan Marg, Mumbai -400021
[PAN: AAHCS0352F]

Vs

..... **Respondent**

Appearance

For the Appellant/Department : Shri Anil Sant
For the Respondent/Assessee : Shri Madhur Agarwal

Date

Conclusion of hearing : 04.07.2023
Pronouncement of order : 10.07.2023

ORDER

Per Bench:

1. This is a batch of five appeals preferred by the Revenue against the common order, dated 16/01/2023, passed by the Learned Commissioner of Income Tax (Appeals)-58, Mumbai, whereby appeals preferred by the Assessee for the Assessment Years 2013-

14 to 2017-18 were allowed/partly-allowed. Since identical grounds have been raised by the Revenue in identical set of facts, all the five appeals were heard together and are being disposed of by way of a common order.

ITA No. 1299/MUM/2023 (Assessment Year: 2013-14)

2. We would first take up appeal for the Assessment Year 2013-14 which has been preferred by the Revenue challenging the common order, dated 16/01/2023, passed by the CIT(A) for the Assessment Year 2013-14, whereby, inter alia, the Ld. CIT(A) had partly allowed the appeal of the Assessee against the Assessment Order, dated 25/04/2016, passed under Section 144 read with Section 144C(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the Assessment Year 2013-14.
3. The Revenue has raised the following grounds of appeals:
 1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in law in holding that the gross amount received by the Star Cruise Management Ltd (SCML) as principal from its agent in India is not chargeable to tax u/s 5(2)(a) of the Income Tax Act, 1961, especially in view of the fact that there is no DTAA between India and Isle of Man and hence the taxation needs to be ascertained vis-a-vis the provisions of the Act.*
 2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is correct in holding that no income accrues or arises to the assessee in India from the business of the sale of tickets through the selling agents in India when on the facts of the case, as per the Canvasser Agreement, Star Cruises (India) Travel Services Pvt. Ltd. is in receipt of the entire amount on behalf of the assessee and is only paid a retainer of 3% subject to remittance of the income of the assessee from India and the case of the assessee is, therefore, squarely covered by section 5(2)(a) of the IT Act, 1961?*
 3. *Whether on the facts and circumstance of the case and in law,*

the Ld CIT(A) erred in holding that there was no business connection of the assessee in India ignoring the judgement of Hon'ble Supreme Court in the case of Performing Rights Society Ltd [1977] 106 ITR 11 (SC)[10-08-1976] wherein it was clearly held that though the assessee received the income out of the agreement executed outside India, as is the case of the present assessee, the income undoubtedly accrued or arose in India and was received in India and therefore the question whether it should be 'deemed' to accrue or arise in India is irrelevant.

4. Whether on the facts and circumstance of the case and in law, the Ld CIT(A) erred in holding that there was no business connection of the assessee in India when it was clearly brought out in the assessment order that the assessee's Indian group company, Star Travel (India) Services Pvt Ltd ("SCITSPL"), habitually secures orders in India, mainly or wholly for the non-resident assessee and is controlled by, or subject to the same common control, as that non-resident assessee and hence all income accruing or arising, whether directly or indirectly, through or from any such business connection should be deemed to accrue and arise to the assessee in India u/s 9(1)(i) of the Act.

5. Whether on the facts and circumstance of the case and in law, the Ld CIT(A) erred in holding that Star Travel (India) Services Pvt Ltd ("SCITSPL") does not constitute an agency PE of the assessee within the meaning of Explanation 2 to section 9(1)(i) of the Act with regard to the business income received by it, especially in view of the fact that there is no DTAA between India and Isle of Man and hence the taxation needs to be ascertained vis-a-vis the provisions of the Act.

6. Whether on the facts and circumstance of the case and in law, the Ld CIT(A) erred in holding that if the consideration in the international transaction between the assessee and Star Travel (India) Travel Services Put Ltd ("SCITSPL") is at an arm's length price, nothing further out of the revenue is attributable to the assessee's Agency PE in India for offering to taxation in India, without considering the fact that no such analysis of functions and risks undertaken by the PE on behalf of the assessee has been undertaken in the year under consideration and therefore further profits needed to be attributed to the assessee's PE to correctly tax

the total income of the assessee arising in India.

7. Whether on the facts and circumstance of the case and in law, the Ld CIT(A) erred in holding that if the consideration in the international transaction between the assessee and Star Travel (India) Travel Services Pvt Ltd (SCITSPL") is at an arm's length price, nothing further out of the revenue is attributable to the assessee's Agency PE in India for offering to taxation in India, without considering the fact that as per the Canvasser Agreement, its agent is performing not only the work of arranging sale of tickets for cruises, but also a whole range of functions consisting of advertising & promoting the cruise packages/shore excursions, collecting the monies received on its behalf, remitting the same to the assessee, preparing the books of account etc for which it is being paid a fee of 3% which is not even benchmarked vis-à-vis the functions performed and risks assumed by the assessee."

4. The relevant facts in brief are that during the relevant previous year the Assessee [*i.e. Star Cruise Management Ltd. (SCML)*], a company registered in Isle of Man, was engaged in canvassing business of travel and tour related services.

The Assessee had entered into Canvasser Agent Agreement, dated 01/04/2005, with Star Cruises (India) Travel Services Pvt. Ltd., (hereinafter referred to as 'the Indian Company') for canvassing the cruise in India for an agreed remuneration. The summary of the aforesaid agreement as reproduced in Paragraph 4.2 of the Assessment Order reads as under:-

"Parties: Star Cruise Management Ltd. (SCML)

*Star Cruises (India) Travel Services Pvt. Ltd.
(SCITSPL)*

Nature: appointment of SCITSPL as the General Sales Agent India mainly for collection of monies in India besides providing certain sales and marketing services in connection with the operation of the Vessels

Fees: retainer fee equivalent to 3% of the Net Cruise fares Upon full receipt of the full monies remitted by SCITSPL, SCML shall pay the Retainer Fee to SCITSPL on a monthly basis or at any such time as may be mutually agreed upon by both parties from time to time.

Duration appointment of SCITSPL as Canvasser Agent as and from 1st March 2005 and shall continue until terminated by 30 days written notice."

4.3 The duties and obligations of Indian counter-part SCITSPL as per agreement are as under:

a) To act as Canvasser in India for Cruise Packages, shores excursions promoted by SCML in respect of vessels owned, chartered, managed and/or operated by Star Cruises Group of Companies from time to time:

b) To remit monies received from PSA's for cruise packages, shore excursions promoted by SCML in India;

c) To keep SCML advised on all relevant laws and regulations and operating criteria relating to the sale of tickets with particular reference to consumer and contract legislation;

d) To treat as confidential all books, documents and information received from SCML and to return the same upon demand; and

e) To keep and render to SCML fair and accurate accounts of any dealings of all monies received by SCITSPL in relation to sale, booking & confirmation for and on behalf of SCML and to pay over to SCML all moneys so received without any deductions except as may be agreed upon or authorized between SCML and SCITSPL."

5. For the Assessment Year 2013-14, the Assessee filed return of income declaring 'Nil' income. The case of the Assessee was selected for scrutiny. During the assessment proceedings, justifying 'nil' income offered to tax, the Assessee submitted that the Canvasser Agent Agreement, dated 01/04/2005, [for Short 'the

Agreement'] between the Assessee and the Indian company was on principal to principal basis. The tickets and final confirmation were being given by the Assessee to the customers and passengers directly. None of the ships of the Assessee either touched any Indian port or enter into Indian territorial waters. Indian customers had to take cruise from foreign ports. The Indian company collected the money and remitted the same to the Assessee in return for the agreed commission. The Assessee did not carry out any operations in India. Thus, the Assessee received the remittances of tickets sold by the Indian company outside India. On the basis of the aforesaid, the Assessee contended that no income was liable to tax in India. However, the Assessing Officer was not convinced. The Assessing Officer concluded that the Assessee had a business connection in India; and also received payments in India. Therefore, INR 10,56,50,826/-, being 7.5% of the receipts of INR 140,86,77,681/- from India, were liable to tax in India vide Assessment Order, dated 25/04/2016, passed under Section 143(3) read with Section 144C(3) of the Act.

6. On appeal, the Ld. CIT(A) relied upon the decisions of the Tribunal in the case of the Assessee for the Assessment Years 2001-02 to 2012-13, and deleted the addition made by the Assessing Officer vide order impugned by way of present appeal.
7. Being aggrieved by the above relief granted by the CIT(A), the Revenue is in appeal before us on the grounds reproduced in paragraph 3 above. All the grounds are directed against the deletion of income of INR 10,56,50,826/- and are, therefore, taken up together.

8. The Ld. Departmental Representative, after placing reliance upon the order passed by the Assessing Officer, fairly stated that the in appeals for the preceding assessment years appeal preferred by the Revenue on identical issue have been dismissed by the Tribunal.
9. The Ld. Authorised Representative for the Assessee appearing before us placed on record paper-book containing the following decisions of the Tribunal pertaining to Assessment Years 2001-2002 to 2012-13:

Assessment Year	ITA Nos.
2001-02	4973/Mum/2005
2002-03	6497/Mum/2006
2003-04	5713/Mum/2007
2004-05	2521/Mum/2008
2005-06	6112/Mum/2008
2006-07	3805/Mum/2010
2007-08	7759/Mum/2010
2008-09	7486/Mum/2011
2009-10	1809/Mum/2013
2010-11	2632/Mum/2007
2011-12	2633/Mum/2016
2012-13	6415/Mum/2016

10. We have considered the rival submissions and perused the orders passed by the Assessing Officer and the CIT(A) as well as the decisions of the Tribunal in the case of the Assessee and the Indian Company placed on record as part of the paper-book filed by the Assessee.
- 10.1. We find that for the Assessment Years 2005-06 and 2012-13 the Tribunal had, in identical facts and circumstances when the Agreement was in operation, concluded that the Indian Company

was acting in ordinary course of business rendering services to the Assessee on principal to principal basis; the Assessee did not have a business connection in India; no operations were carried out by the Assessee in India; and therefore, no income was liable to tax in India in terms of Section 5(2) and Section 9(1)(i) of the Act.

- 10.2. We note that the Assessee has also placed on record decisions of the Tribunal dismissing the appeal of the Revenue in the case of Indian Company for the Assessment Years 2000-01 to 2016-17 (placed at pages 49 to 111 of the paper-book) whereby the Tribunal has, in the case of the Indian Company making the remittances to the Assessee, confirmed the order passed by the CIT(A) holding that the tax was not deductible at source on the aforesaid remittances made by the Indian Company to the Assessee as the same were not chargeable to tax in India and therefore, provisions of Section 201(1) and 201(1A) of the Act were not attracted in the case of the Indian Company.
- 10.3. The fact that the CIT(A) has, while deleting the additions made by the Assessing Officer, relied upon the aforesaid decisions of the Co-ordinate Benches of the Tribunal has also not been disputed in appellate proceedings before us. No fresh facts or arguments have been placed before us to persuade us to take a view different from one taken the Co-ordinate Benches of the Tribunal.
- 10.4. In view of the above, respectfully following the above decisions by the Co-ordinate Benches of the Tribunal for the Assessment Year 2001-02 to 2011-12 we uphold the order passed by the CIT(A) and dismiss all the grounds [i.e. Ground No. 1 to 7] raised by the Revenue.

ITA No. 1298/MUM/2023 (Assessment Year: 2014-15)
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11. Both the sides had agreed that our findings /adjudication in respect of issues raised in appeals for the Assessment Year 2013-14 shall apply mutatis mutandis to the grounds/issues raised in the appeals pertaining to the Assessment Years 2014-15 to 2017-18 also. Accordingly, in view of the reasoning given in Paragraph 10 above, all the grounds raised in appeals for the Assessment Years 2014-15 to 2017-18 are also dismissed.
12. In result, all the five appeals preferred by the Revenue are dismissed.

Order pronounced on 10.07.2023

Sd/-

(S. Rifaur Rahman)
Accountant Member

Sd/-

(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 10.07.2023
Alindra, PS

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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