आयकर अपीलीय अधिकरण
मुंबई पीठ "आई ",मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य एवं
सुश्री पद्मावती. एस, लेखाकार सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " I", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER&
MS. PADMAVATHY.S, ACCOUNTANT MEMBER

आअसं. 516/मुं/2022 (नि. व. 2018-19)
ITA NO.516/MUM/2022 (A.Y.2018-19)

Buro Happold Limited,
C/o. Sudit K. Parekh & Co. LLP,
Urmix Axis, 06th Floor,
Famous Studio Lane, Dr.E.Moses Road,
Mahalaxmi, Mumbai 400 011.
PAN: AABCB-9239-Q ..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income tax
International Taxation -1(3)(2),Mumbai
1810, 18th Floor, Air India Building,
Nariman Point, Mumbai 400 021. ..... प्रतिवादी/Respondent

अपीलार्थी द्वारा /Appellant by	:	Shri Vijay Mehta
प्रतिवादी द्वारा /Respondent by	:	Shri Anil Sant
सुनवाई की तिथि/ Date of hearing	:	10/08/2023
घोषणा की तिथि/ Date of pronouncement	:	27/09/2023

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the assessment order dated 20/01/2022 passed u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 [in short 'the Act], for the assessment year 2018-19.

2. The assessee in appeal has assailed the assessment order on following grounds:

1. Ground No.1 – Taxability of amount received for Consulting and Engineering services as Fees for technical services (FTS)

1.1 On the facts and in the circumstances of the case and in law, the learned DRP ('Dispute Resolution Panel') and DCIT have erred in considering income from consulting and engineering services amounting to INR 21,25,145/- as Fees for technical services ('FTS'} as per Article 13 of India-UK Double Taxation Avoidance Agreement ('DTAA').

2. Ground No. II -Taxability of amount received as common cost recharge as Royalty and Fees technical services (FTS)

2.1 On the facts and in the circumstances of the case and in law, the learned DRP ('Dispute Resolution Panel'} and DCIT have erred in considering common cost recharge amounting to INR 4,72,39,386/- as Royalty and Fees for technical services ('FTS') as per Article 13 of India-UK Double Taxation Avoidance Agreement ('DTAA').

3. Ground_ No. Ill – Disagreeing _ to the beneficial tax rate on interest income as per India-UK DTAA as claimed during assessment proceedings.

3.1 On the facts and in the circumstances of the case and in law, the learned DRP ('Dispute Resolution Panel') and DCIT has erred in not considering the claim of taxing the interest on income tax refunds as per India-UK DTAA at 15% as against 41.2% under the Income Tax Act (the Act)

4. Ground No.IV- Erroneous levy of consequential interest under section 234B & section 234C

4.1 On facts and circumstances of the case, the learned DCIT has erred in levying consequential interest under Section 234B and section 234C of the Act, amounting to INR 24,25,902/- and INR 4,299/-respectively.

3. Shri Vijay Mehta appearing on behalf of the assessee submitted at the outset that the issues raised in ground No.1 & 2 of appeal are recurring in nature. The assessee has provided Consulting Engineering Services to Buro Happold Engineering India Pvt. Ltd. (in short 'Buro India'). The assessee received Rs.21,25,145/- from Buro India as fee in lieu of rendering of said services. The Dispute Resolution Panel (DRP) held that the amount received by the assessee for providing of the aforesaid services is in the nature of Fee For Technical Services (FTS) within the meaning of Article 13(2)(aii) of the India – UK (DTAA). Hence, the said receipts were taxed in the hands of the assessee

as FTS. Similarly, amount received towards Common Cost Recharge amounting to Rs.4,72,39,386/- was held to be taxable as Royalty and FTS as per India – UK Double Taxation Avoidance Agreement (DTAA). It was brought to the notice of DRP that the issue is squarely covered by the decision of Tribunal in assessee's own case for the assessment year 2012-13(at pages 33 and 34 of DRP directions). The DRP ignoring the order of Tribunal in assessee's own case for assessment year 2012-13, reproduced DRP directions for Assessment Year 2015-16 dated 04/09/2018 and decided the issue against the assessee . He further pointed that the assessee filed an appeal against the assessment order for assessment year 2015-16 before the Tribunal in ITA No.834/Mum/2019. The Tribunal vide order dated 30/12/2020 restored the issue back to the file of Assessing Officer.

3.1 The ld. Authorized Representative of the assessee submitted that the issue raised in ground No.1 & 2 of appeal are identical to the issues in assessment year 2015-16. He further submitted that similar addition was made in assessment year 2012-13. The Tribunal vide order dated 15/02/2019 decided appeal of assessee for Assessment Year 2012-13 in favour of assessee, against which no further appeal was filed by the Department. The ld. Authorized Representative of the assessee placed on record Tribunal order in ITA No.1690/Mum/2022 for A.Y. 2019-20 dated 19/12/2022 and ITA No.1006/Mum/2023 for A.Y. 2020-21 dated 13/07/2023, wherein similar additions were deleted by the Co-ordinate Bench following Tribunal order for A.Y. 2012-13.

3.2 In respect of ground No.3, the ld. Authorized Representative of the assessee submitted that admittedly the claim was not made in the return of

income or revised return of income. The claim was made first time before the DRP. The assessee's claim was rejected by the DRP following the ratio laid down in the case of Goetze (India) Ltd. vs. CIT, 284 ITR 323 (SC). The ld. Authorized Representative of the assessee prayed for restoring the issue back to the file of Assessing Officer to follow the decision of Hon'ble Jurisdictional High Court in the case of Director of Income Tax vs. Credit Agricole Indosuez Ltd., 69 taxmann.com 285.

4. Shri Anil Sant representing the Department vehemently supported the impugned assessment order and prayed for dismissing appeal of the assessee. However, the ld. Departmental Representative fairly stated that the issues raised in ground No.1 & 2 of appeal have been considered by the Tribunal in assessee's own case in the preceding Assessment Years. With regard to ground No.3 of appeal, the ld. Departmental Representative submitted that the assessee made claim for the first time before the DRP. No such claim was made in the return of income, therefore, it was rightly rejected by the DRP. He strongly opposed admission of additional ground of appeal.

5. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee is a tax resident of United Kingdom. The assessee is engaged in the business of providing structural and MEP(Mechanical, Electrical and Public Health) engineering and consultation services for various projects in India. During the period relevant to assessment year under appeal, the assessee received :

(i)	Consulting Engineering Services Fee	- Rs.21,25,145/-
(ii)	Management Fee and Common Cost Recharge	- Rs.4,72,39,386/-

The assessee filed its return of income inter-alia disclosing fee received for Consulting Engineering Services. Thereafter, the assessee filed revised return of income without offering to tax payments received on account of Consulting Engineering Services. The Assessing Officer and the DRP held the receipts on account of Consulting Engineering Services as FTS as per Article 13(2)(a)(ii) of India-UK DTAA and Common Cost Recharge as Royalty u/s. 9(1)(vi) of the Act as well as FTS under Article 13 of DTAA. We find that similar additions were made in respect of Consulting Engineering Services and Common Cost Recharge holding them to be FTS in A.Y 2012-13. The assessee carried the issue in appeal before the Tribunal in ITA No.1296/Mum/2017. The Co-ordinate Bench threadbare examined the issue and concluded as under:

> 20. ..... *In any case of the matter, the Department has failed to establish on record that through development and supply of technical designs / drawings / plans the assessee has made available technical knowledge, experience, skill, knowhow or processes to the service recipient so as to bring the amount received within the meaning of fees for technical services under Article–13(4)(c) of the India–UK Tax Treaty. Therefore, in our considered opinion, the amount received by the assessee has to be treated as business profit and in the absence of a PE in India, it cannot be brought to tax in India.*
>
> *21. Since, we have held the amount received towards consulting engineering services to be not in the nature of fees for technical services, the reasoning of the departmental authorities with regard to cost recharge would also fail, since, they have treated it as ancillary and incidental to consulting engineering services. The, contention of the learned Departmental Representative that the cost recharge fails various tests, such as, need test, benefit test etc. is unacceptable, it is contrary to the finding of the Departmental Authorities. Once, the Departmental Authorities have treated the amount received towards cost recharge to be in the nature fees for technical services, it implies rendering of service by the assessee. Therefore, applying the very same reason on the basis of which we have held the amount received towards consulting engineering services to be not in the nature of fees for technical services as discussed above, we hold that the amount received towards cost recharge cannot be brought to tax in India in the absence of PE. Therefore, the additions made by the Assessing Officer are hereby deleted. The assessee succeeds in both the grounds."* *[Emphasised by us]*

The Revenue has not been able to distinguish the facts in the impugned assessment year. Rather, we observe from the directions of the DRP that while confirming the additions, the DRP in the impugned assessment year has placed reliance on its own findings for Assessment Year 2015-16. As pointed earlier the finding of the DRP and the Assessing Officer for A.Y. 2012-13 have been reversed by the Tribunal in the appeal by the assessee. In A.Y. 2015-16 the Tribunal restored the issue to Assessing Officer in line with the order of Tribunal for A.Y. 2014-15. In A.Y 2014-15 the Co-ordinate Bench in principle held that the assessee is entitled to relief in accordance with findings given in Tribunal order for A.Y. 2012-13. However, restored the issue to the Assessing Officer with a direction to assessee to demonstrate that the facts are identical to A.Y. 2012-13. The Tribunal following the decision rendered in Assessment Year 2012-13 deleted similar additions in A.Y. 2019-20 and 2020-21 (supra). Respectfully following the decision of Co-ordinate Bench in assessee's own case for the preceding and succeeding Assessment Years ground No.1 & 2 of the appeal are allowed for parity of reasons.

6. In ground No.3 of appeal, the assessee has assailed the findings of the DRP in not considering the claim made for the first time before the DRP. The assessee received income of Rs.2,79,046/- towards interest on Income Tax refund which was offered to tax at 40% + 3% cess in return of income. The assessee made a claim before the DRP that since it is a tax resident of UK and is eligible for benefit of India – UK DTAA, therefore, as per Article -12 of the Tax Treaty, the tax rate on interest income should be charged at 15% as against 40% +3% cess offered by the assessee. By way of additional ground, the assessee has claimed refund of excess tax paid on the interest. In this regard the assessee has also placed reliance on the decision of Hon'ble Jurisdictional

High Court in the case of Director of Income Tax vs. Credit Agricole Indosuez Ltd.(supra). We find that the ground raised by the assessee before DRP is legal in nature and no fresh evidence is required to be adduced for its adjudication. We deem it appropriate to restore ground No.3 of appeal to Assessing Officer for adjudication, after affording reasonable opportunity of hearing /making submissions to the assessee, in accordance with law. Thus, ground No.3 is allowed for statistical purpose, in the terms aforesaid.

7. In ground No.4 of appeal, the assessee has assailed charging of interest u/s. 234B and 234C of the Act. Levy of interest under the aforesaid sections is consequential and mandatory. Therefore, ground No.4 of appeal is dismissed.

8. In the result, appeal of the assessee is partly allowed.

Order pronounced in the open court on Wednesday the 27th day of September, 2023.

Sd/-	Sd/-
(PADMAVATHY. S)	(VIKAS AWASTHY)
लेखाकार सदस्य/ACCOUNTANT MEMBER	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 27/09/2023
Vm, Sr. PS(O/S)

<u>प्रतिलिपि अग्रेषित</u>Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt.Registrar)/Sr. Private Secretary ITAT, Mumbai