

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "D" : DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A No. 765/Del/2023
निर्धारणवर्ष/Assessment Year: 2020-21

Inteva Products Netherlands BV Siriusdreef 17, 2132, WT Hoofddorp, Netherlands.	<u>बनाम</u> Vs.	ACIT, Circle : 2 (1)(1) International Taxation, New Delhi.
PAN No. AADC15208G		
अपीलार्थी /Appellant		प्रत्यर्थी/Respondent

निर्धारितकीओरसे /Assessee by :	Shri Rishabh Malhotra, A. R.;
राजस्वकीओरसे / Department by :	Shri Sanjay Kumar, Sr. D. R.;

सुनवाईकीतारीख/ Date of hearing :	22/08/2023
उद्घोषणाकीतारीख/Pronouncement on :	31/10/2023

आदेश / ORDER

PER C. N. PRASAD, J. M. :

1. This appeal is filed by the assessee against the assessment order dated 25.01.2023 passed by the Assessing Officer under

section 143(3) read with section 144C(13) of the Income Tax Act, 1961 (the Act) pursuant to the directions of the DRP under section 144C of the Act dated 22.08.2022.

2. At the outset, the ld. Counsel for the assessee submits that the issue in appeal i.e. whether the receipt of fees for General Management and Business Support Services falls under fee for Technical Services as per Article 12 of India-Netherlands DTAA Agreement has been decided in favour of the assessee by the Tribunal in assessee's own case for the assessment years 2014-15 to 2019-20 by orders dated 31.01.2023, 23.02.2023 and 5.04.2023. Referring to the order dated 31.01.2023 in ITA. No. 7545/Del/2017 for assessment year 2014-15 and order dated 5.04.2023 in ITA. No. 1861/Del/2022 for assessment year 2019-20 ld. Counsel submits that the Tribunal held that the payment received by the assessee towards fees for General Management and Business Support Services cannot be treated as FTS under Article 12(5) of India-Netherlands DTAA. The ld. Counsel submits that the same may be followed for the year under consideration i.e. assessment year 2020-21.

3. The ld. DR fairly submits that the issue has been decided in favour of the assessee by the Tribunal in earlier assessment years.

4. Heard rival submissions perused the orders of the authorities below and the decisions of the Tribunal in assessee's own case. On reading of the order of the Tribunal in ITA. No. 7545/Del/2017 dated 31.01.2023 the issue of as to whether the fee

received towards General Management and Business Support Services falls under FTS as per Article 12 of India-Netherlands DTAA came up for adjudication and the Tribunal held that the payment received by the assessee cannot be treated as FTS under Article 12(5) of India-Netherlands DTAA, holding as under:-

“2. At the outset, learned counsel appearing for the assessee submitted that ground nos. 2, 3 and 4, being either consequential or pre-mature at this stage, do not require adjudication. Thus, in view of the aforesaid submissions of the assessee, the only surviving issue arising for consideration is whether the amount received by the assessee for providing business support services is in the nature of fees for technical services (FTS) under Article 12(5) of the India-Netherlands Double Taxation Avoidance Agreement (DTAA), hence, taxable in India.

3. Briefly the facts are that the assessee is a non-resident corporate entity incorporated in Netherland and tax-resident of Netherland. For the assessment year under dispute, the assessee filed its return of income on 31.03.2016 declaring income of Rs.47,05,135.

4. In course of assessment proceeding, the Assessing Officer noticed that in the year under consideration, assessee had provided business support services to its Indian group entity and received payment of Rs.1,49,02,771. However, the amount received was not offered as income on the plea that it is in the nature of business profit and in absence of a Permanent Establishment (PE) in India, it is not chargeable to tax.

5. After considering the submissions of the assessee, the Assessing Officer was not convinced. He observed that the payment received by the assessee will qualify as FTS, both under Section 9(1)(vii) of the Act as well as under Indian-Netherlands DTAA as they are in the active of management and consultancy services. Accordingly, he brought to tax the amount at the hands of the assessee. Against the draft assessment order, assessee raised objections before DRP. However, learned DRP rejected the objection.

6. Before us, learned counsel appearing for the assessee submitted that the services rendered are in the nature of managerial services and not technical or consultancy services.

7. Drawing our attention to Article-12(5) of Indian-Netherlands DTAA, learned counsel submitted, the definition of FTS does not include managerial services. Therefore, he submitted, it cannot be treated as FTS under the DTAA.

8. Without prejudice, he submitted, even assuming that services rendered are in the nature of consultancy services, however, the make available condition has not been satisfied.

9. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned DRP.

10. We have considered rival submission and perused the material available on record.

11. As could be seen from the draft assessment order, the Assessing Officer has very clearly and categorically mentioned that assessee's employees never visited India for rendering any kind of services. Whatever services rendered, were through mail/correspondences/reports etc. From the facts available on record, it is noticed, the services rendered by the assessee are as under:

- i) Engineering Services (Application Engineering and Technical Support/CAD/CAM Design);
- ii) Financial Administration Services, including Treasury;
- iii) HR Services, including benefits and related services;
- iv) Environmental Health and Safety;
- v) IT Services;
- vi) Management Services;
- vii) Marketing Services;
- viii) Legal Services;
- ix) Tax Services;
- x) Supply Chain Management Services, including purchasing logistics and procurement; &
- xi) Quality Management Services.

12. From the nature of services rendered, it is very much evident that they are mostly in the nature of managerial services. Reading of Article-12 (5) of India-Netherlands DTAA reveals that it does not include managerial services within FTS. Therefore, the payment received by the assessee cannot be treated as FTS under India-Netherlands DTAA. Even, assuming for the sake of argument that payment received for certain kind of services is in the nature of FTS, however, the make available condition needs to be satisfied. Neither the Assessing Officer nor learned DRP have established on record that by rendering the services, the assessee has made available technical knowledge, know-how, skill etc. to the recipient of services, which would have enabled the recipient of such services to utilize it independently without the aid and assistance of the assessee. Thus, in our view, the make available condition is not satisfied. Therefore, the payment received cannot be treated as FTS under Article-12(5) of India Netherlands DTAA. Hence, we are inclined to delete the addition made by the Assessing Officer.”

5. Following this order the Tribunal decided the issue in favour of the assessee for the subsequent assessment years and the latest being assessment year 2019-20 by order dated 5.04.2023.

6. Before us the Revenue did not bring any change in material facts for the year under consideration. Therefore, since the facts are identical, respectfully following the decisions of the co-ordinate bench referred to above, we allow ground No. 1 of grounds of appeal of the assessee.

7. The other grounds of appeal raised by the assessee are only consequential and no need for adjudication.

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

Order pronounced in the open court on : 31/10/2023.

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 31/10/2023.

MEHTA

Copy forwarded to :-

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

Date of dictation	18.10.2023
Date on which the typed draft is placed before the dictating member	19.10.2023
Date on which the typed draft is placed before the other member	31.10.2023
Date on which the approved draft comes to the Sr. PS/ PS	31.10.2023
Date on which the fair order is placed before the dictating member for pronouncement	31.10.2023
Date on which the fair order comes back to the Sr. PS/ PS	31.10.2023
Date on which the final order is uploaded on the website	31.10.2023
Date on which the file goes to the Bench Clerk	31.10.2023
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	