IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'I' NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE-PRESIDENT
AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No.1032/Del/2019
Assessment Year: 2014-15

American Express (India) Pvt. Ltd., 7th Floor, MGF Metropolitan Saket, Office Block District Centre, Saket, New Delhi	**Vs.**	JCIT, Special Range-1, New Delhi
PAN :AAACA8163F		
(Appellant)		**(Respondent)**

With

ITA No.1225/Del/2019
Assessment Year: 2014-15

ACIT, Special Range-1, New Delhi	**Vs.**	American Express (India) Pvt. Ltd., Metropolitan Saket, 7th Floor, Office Block District Centre, Saket, New Delhi
		PAN :AAACA8163F
(Appellant)		**(Respondent)**

Assessee by	S/sh. Nageshwar Rao & Parth
Department by	Sh. Rajesh Kumar, CIT (DR) & Sh. Manu Chaurasia, Sr. DR

Date of hearing	09.11.2023
Date of pronouncement	07.12.2023

ORDER

Captioned cross appeals arise out of order dated 30.11.2018 of learned Commissioner of Income Tax (Appeals)-44, New Delhi, pertaining to assessment year 2014-15.

ITA No.1032/Del/2019 (Assessee's Appeal)

2. Ground no. 1 is general in nature, hence, does not require adjudication. Whereas, ground no. 3 is premature at this stage, hence, is dismissed. The only surviving issue raised in ground no. 2 relates to disallowance of relocation expenses under section 40(a)(i) of the Income-tax Act, 1961 (in short 'the Act').

3. Briefly the facts are, the assessee incurred certain expenses by way of reimbursement of relocation expenditure to American Express Travel Related Services Company Inc., USA (AETRSCO). Such relocation expenditure was in respect of assessee's own employees as well as employees of AETRSCO seconded to the assessee. Though, the assessee deducted tax on salary expenses, however, tax was not deducted on certain other relocation expenses, such as, travelling, accommodation etc. In course of assessment proceeding, the Assessing Officer was of the view that the assessee was also required to deduct tax on other relocation expenses as well, as, such payment made is in the nature of Fees

for Technical Service (FTS) under section 9(1)(vii) as well as under Article 12(4) of India – USA Double Taxation Avoidance Agreement (DTAA). He further observed that in assessment year 2011-12, the Dispute Resolution Panel (DRP) has directed for disallowance of such expenses due to non-deduction of tax at source. Accordingly, the Assessing Officer disallowed the reimbursement of relocation of expenses amounting to Rs. 4,21,13,153/-. The assessee contested the disallowance before learned first appellate authority.

4. While deciding the issue, learned first appellate authority found that identical issue was decided by the first appellate authority in assessee's own case in assessment year 2013-14, wherein, it was held that the assessee was required to deduct tax at source on the reimbursement of expenses of seconded employees, as, such payment was in the nature of FTS. However, insofar as, reimbursement of relocation expenses in respect of assessee's own employees, who travelled abroad for training/business purposes, he held that such payment does not constitute FTS either under the Act or Treaty, hence, no tax was required to be deducted at source under section 195 of the Act. Accordingly, he directed the Assessing Officer to allow deduction

in respect of payment made of relocation expenses of its own employees.

5. Before us, learned counsel appearing for the assessee submitted that while deciding assessee's appeal in past assessment years, the Tribunal has restored the issue to the Assessing Officer. In this context, he drew our attention to the order passed by the Coordinate Bench in assessee's case in assessment years 2012-13 and 2013-14.

6. Learned Departmental Representative agreed with the aforesaid submission of the assessee.

7. Having considered rival submissions, we find, while deciding identical issue relating to requirement of deduction of tax at source on relocation expenses incurred for seconded employees, the Tribunal in ITA No. 2714/Del/2018 and Ors., dated 16.09.2021 has restored the issue back to the first appellate authority with the following observations:

> *"22. We have heard the rival contentions and perused the material available on record and gone the orders of the authorities below. Ld.CIT(A) confirmed the view of the Assessing Officer by relying on the decision of the Hon'ble Delhi High Court in the case of Centrica Offshore Pvt. Ltd. vs CIT (supra) dated 25.04.2014. It is contended by the Ld. Counsel for the assessee that as per India US DTAA, the make available clause is not satisfied in the present case. Therefore, the reimbursement cannot be characterized as FTS. We find that this aspect has not been examined by Ld. CIT(A), therefore, the finding of Ld.CIT(A) is set aside and this issue is restored to Ld.CIT(A) to*

> *decide it afresh after having considered the submissions of the assessee regarding make available clause in terms of India US DTAA. Thus, Ground No.3 raised in the assessee's appeal is partly allowed for statistical purposes."*

8. Facts being identical, consistent with the view taken by the Coordinate Bench, we restore the issue to the first appellate authority for *de novo* adjudication, after providing due and reasonable opportunity of being heard to the assessee. Grounds are allowed for statistical purposes.

9. In the result, appeal is allowed for statistical purposes.

ITA No.1225/Del/2019 (Revenue's Appeal)

10. In ground no. 1, the Revenue has challenged the deletion of addition made on account of Transfer Pricing adjustment of Rs. 15,85,698/- made towards interest on receivables.

11. Briefly the facts are, in course of proceedings under section 92CA of the Act the Transfer Pricing Officer (TPO) noticed that the assessee has entered into certain international transactions with its overseas Associated Enterprises (AE). However, payments were not received from the AE within the stipulated time of 30 days from the date of invoices. He, therefore, called upon the assessee to explain, why interest should not be charged for delay in receiving the payment, wherever it has exceeded the credit period

of 30 days. Though, the assessee objected to the proposed adjustment, however, the TPO remained unconvinced and ultimately proceeded to compute interest on the delayed receivables by imputing interest rate of 12.84%. As a result, he proposed adjustment of Rs.46,77,576/-, which was added by the Assessing Officer while framing the assessment. The assessee contested the aforesaid addition before learned first appellate authority. After considering the submissions of the assessee and keeping in view the ratio laid down by the Hon'ble Delhi High Court in case of PCIT Vs. Kusum Healthcare Pvt. Ltd., 398 ITR 66 (Delhi), learned first appellate authority held that since the interest element pertaining to receivables gets subsumed in the working capital adjustment margin, no separate adjustment is required to be made. Accordingly, he deleted the addition.

12. Before us, learned Departmental Representative submitted that the interest on account of delayed receivables may get subsumed in the working capital adjustment, while considering the opening and closing balance of receivables. However, the interest on delayed receivables in respect of invoices raised and realized during the relevant financial year would not get subsumed in the working capital adjustment as they are not part

of the opening and closing balance. Thus, he submitted, the adjustment on account of interest on delayed receivables has to be made in respect of such amounts. In support of such contention, learned Departmental Representative relied upon the following decisions:

1) Bechtel India Pvt. Ltd. Vs. ACIT 4(2), 85 Taxmann.com 121 (Delhi Tribunal 2017)
2) Albany Molecular Research Hyderabad Research Centre (P.) Ltd. Vs. DCIT [2021] 126 taxmann.com 289 (Hyderabad – Trib.)
3) Teradata India Pvt. Ltd. Vs. DCIT, 1248 & 2337/Del/2022, dated 13.10.2023.

13. Learned counsel for the assessee submitted, the issue is squarely covered in favour of the assessee by various decisions of the Tribunal in past assessment years. In this context, he drew our attention to the appellate orders of the Tribunal for assessment years 2010-11, 2011-12, 2012-13 and 2013-14. Thus, he submitted, the issue is squarely covered by the decisions of the Tribunal.

14. Without prejudice, he submitted, even if, the submissions of learned Departmental Representative, to the effect that the

interest of receivables for invoices raised and realized during the year will not get subsumed in the working capital adjustment, is accepted, then also there will be no difference or impact as the working capital adjustment margin of comparables after the order of the first appellate authority is 7.65% as compared to assessee's margin of 18.9%.

15. We have considered rival submissions and perused the materials on record. It is a fact that in past assessment years, starting from assessment years 2010-11 to 2013-14, identical issue has been consistently decided in favour of the assessee by the Tribunal. In fact, learned DRP in assessee's own case in assessment year 2009-10 has also expressed similar view. Therefore, the consistent view expressed by the Tribunal in assessee's own case must prevail in absence of any discernible factual difference. Even, otherwise also, we find merit in the submission of learned counsel for the assessee that the impact of interest on delayed receivables in respect of invoices raised and realized during the year would have no effect, as assessee's margin at 18.9% is much higher to the comparables after working capital adjustment.

16. In view of the aforesaid, we do not find any reasonable ground to interfere with the decision of learned first appellate authority. Grounds are dismissed.

17. In ground no. 2, the Revenue has challenged deletion of addition of Rs.1,42,76,359/-.

18. At the outset, we must observe that the grounds raised by the Revenue are confusing and strictly speaking, do not arise out of the order of the first appellate authority. In fact, the issue raised is the subject matter of the appeal by the assessee, as it relates to disallowance made under section 40(a)(i) of the Act in respect of seconded employees.

19. Be that as it may, we assume that the Revenue is aggrieved with the relief granted by the first appellate authority in respect of reimbursement of relocation expenses of its own employees who travelled abroad for business/training. As far as this issue is concerned, having considered rival submissions and perused the materials on record, we find that in the past assessment years, it has been consistently decided in favour of the assessee by the first appellate authority and the Tribunal. In fact, in assessment year 2011-12, while implementing the decision of the Tribunal in assessment order dated 18.05.2022, the Assessing Officer has

allowed 95% of the total relocation expenses as deduction. That being the factual position on record, we find no infirmity in the decision of the first appellate authority. Grounds are dismissed.

20. In the result, appeal is dismissed.

21. To sum up, assessee's appeal is allowed for statistical purposes and Revenue's appeal is dismissed.

Order pronounced in the open court on 7th December, 2023

Sd/-	***Sd/-***
(PRADIP KUMAR KEDIA)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**VICE-PRESIDENT**

Dated: 7th December, 2023.
RK/-
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi