

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D', NEW DELHI**

Before Dr. B. R. R. Kumar, Accountant Member

Ms. Astha Chandra, Judicial Member

ITA No. 2382/Del/2023 : Asstt. Year : 2020-21

Radisson Hotels International Incorporated, 1601, Utica Avenue South, Suite 700, St. Louis Park, MN-55416, United States of America	Vs	ACIT, Circle-3(1)(1), International Taxation, New Delhi-110002
(APPELLANT)		(RESPONDENT)
PAN No. AAECR7546M		

Assessee by : Ms. Deepika Pasricha

Revenue by : Sh. Om Parkash, Sr. DR

Date of Hearing: 12.04.2024

Date of Pronouncement: 03.05.2024

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order dated 27.06.2023 passed by the AO u/s 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

"1. That the order of Ld. Assessing Officer (AO) u/s 143(3) r.w.s. 144C(13) of the Income-tax Act, 1961 ('the Act') is bad in law and on the facts of the assessee.

2. That the Ld. DRP and consequently the Ld. AO erred in law, on facts and in the circumstances of the assessee's case in making additions of Rs. 19,20,71,285/- to the total income of the assessee vide order u/s 143(3) r.w.s. 144C(13) and determining therein an aggregate demand of Rs. 7,84,78,200/-, on wholly illegal and erroneous grounds.

Covered matter

3. Without prejudice, the Ld. DRP and the Ld. AO have erred in law and on the facts and circumstances of the case in not following the decision of the Hon'ble ITAT [ITA No. 9265/Del/2019] and the Hon'ble Delhi High Court [ITA 441/2022, Neutral Citation Number: 2022/DHC/004791] in assessee's own case for the AY 2016-17, following the decision in the case of Sheraton International Inc. [(2009) 313 ITR 267 (Delhi)] against which the SLP is dismissed by Hon'ble Supreme Court.

Fee for Technical Services (FTS)

4. That the Ld. DRP and consequently the Ld. AO grossly erred in law and in facts in holding that all the receipts other than Royalty as stated below are all in the nature of 'fees for technical services' as per section 9(1)(vii) of the Act.

S. No.	Particulars
1.	Marketing Contribution/Fees
2.	Radisson Rewards (FKA Club Carlson)
3.	3 rd Party Reservations
4.	IT/ Technology Fee
5.	Reservation Charges
6.	Others (Fee look to Book, Miscellaneous including Info Security Program Support, and Learning Link, etc.)

Fee for Included Services (FIS)

5. That the Ld. DRP and consequently the Ld. AO grossly erred in law and in facts in holding that the receipts other than royalty are in the nature of 'fees for included services' as per Article 12(4)(a) of the Double Tax Avoidance Agreement between India and USA ('India - USA DTAA').

6. That the Ld. DRP and consequently the Ld. AO erred in law and on the facts in taxing the receipts other than royalty as 'fees for included services' under the India-USA DTAA by-

6.1. not appreciating that the services are not in the nature of technical or consultancy services;

6.2. *not appreciating the predominant purpose of the centralized marketing service arrangement correctly; and*

6.3. *not appreciating the fact that Receipts other than Royalty are more than the amount of the Royalty earned. Re-classification of receipts.*

7. *That the Ld. DRP and consequently the Ld. AO has erred on facts and in law in treating the receipts other than royalty as 'Fees for Technical Services/ Fees for Included Services', while these are in the nature of business receipts which are not taxable in India, in absence of Permanent Establishment ('PE') of the assessee in India.*

Mistakes apparent from records

8. *That, without prejudice, the Id. AO erred in law and on facts in determining an aggregate demand of Rs. 7,84,78,200/- in so far as erroneously computing the tax in the computation sheet forming part of impugned assessment order, being mistake apparent from record, in so far as:*

8.1. *Taxing the royalty income already offered to tax by the assessee, at the rate of 40% instead of the applicable rate of 10% (as mentioned in Clause 17 of the Final Assessment Order 143(3) r.w.s 144C(13) dated 27.06.2023) and levying the surcharge and cess accordingly.*

8.2. *Levying interest u/s 234A of the Act, without appreciating that the return for AY 2020- 21 was furnished within due date.*

8.3. *Levying interest u/s section 234B of the Act in the case of the assessee being a non-resident, where the entire income was liable to TDS.*

8.4. *Making a totaling error in the aggregate amount of interest computed.*

9. *That the Interest under section 244A of the Act as maybe applicable to the facts of the assessee, is prayed to be granted.*

10. *That without prejudice to any other ground, the Ld. AO has erred in law and on the facts of the assessee in initiating penalty proceedings u/s 270A for alleged under-*

reporting of income in consequence of misreporting on wholly illegal and untenable grounds.

Miscellaneous

11. That, the amount of Interest on Income tax refund was determined at Rs. 14,20,512/- on which TDS amount of Rs. 5,90,932/- was withheld in the Intimation order under section 143(1) dated 28.03.2021 for AY 2020-21. The interest and TDS thereof did not reflect in Form 26AS of the assessee, accordingly the assessee could not claim such TDS credit. It is prayed, such credit be allowed to the assessee."

3. At the outset, both the parties fairly submitted that this issues involved in this appeal stands covered by the order of Co-ordinate Bench of ITAT in ITA No. 9265/Del/2019 for A.Y. 2016-17 in ITA No. 2222/Del/2022 for A.Y. 2018-19 and in ITA No. 2223/Del/2022 for A.Y. 2019-20 and by the judgment of Hon'ble Delhi High Court in assessee's own case in ITA 441/2022 vide order dated 10.11.2022.

4. For the sake ready reference, the entire order of the Hon'ble Court is as under:

"1. Present Income Tax Appeal has been filed challenging the order dated 29th April, 2022 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 9265/Del./2019 for Assessment Year 2016-17.

2. Learned Counsel for the Appellant states that the ITAT has erred in holding that the entire payments received by the Assessee from its Indian Customers on account of Centralized Services viz. sales and marketing, loyalty programs, reservation service, technological service, operational services and training programs/human resources do not constitute 'Fee for Technical Services' as defined under Section 9(1)(vii) of the Income Tax

Act, 1961 (the "Act') or 'Fee for included services' as defined under Articles 12(4) (a) of the Indo-US DTAA.

3. He submits that the ITAT has allowed the appeals of the Assessee following the judgement of this Court in Director of Income Tax v Sheraton International Inc (2009) 178 taxman 84 (Del). He, however, states that the said decision of this Court has not been accepted by the Revenue and an appeal has been preferred against the same, which is pending adjudication before the Supreme Court being CA No. 3094/2010.

4. Admittedly, this Court in Sheraton International Inc. (supra) has decided the issue involved in the present appeal in favour of the Assessee. The counsel for the Revenue has not brought anything on record to distinguish the facts of present case from the facts of Sheraton International Inc. (supra) case.

5. Also, this Court vide judgment dated 4th November, 2022 in ITA Nos. 434/2022 and 435/2022 dismissed the appeals of the Revenue arising out of the same common impugned order.

6. Though the judgment of this Court in Sheraton International Inc. (supra) has been challenged and is pending adjudication before the Supreme Court, yet there is no stay of the said judgment till date. Consequently, in view of the judgments passed by the Supreme Court in Kunhayammed and Others vs. State of Kerala and Another, (2000) 6 SCC 359 and Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1, the present appeal is covered by the judgment passed by the learned predecessor Division Bench in Sheraton International Inc. (supra).

7. Accordingly, no substantial question of law arises for consideration in the present appeal and the same is dismissed. However, it is clarified that the orders passed in the present appeal shall abide by the final decision of the Supreme Court in the aforesaid Civil Appeal."

5. Since, all the issues stands covered by the earlier orders of the Tribunal and the Hon'ble High Court and in the absence of any change in the factual matrix and legal proposition, the appeal of the assessee is hereby allowed.

6. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 03/05/2024.

Sd/-

(Astha Chandra)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 03/05/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

ASSISTANT REGISTRAR