IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI

BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI KUL BHARAT, JUDICIAL MEMBER

ITA Nos 7706/DEL/2019 [A.Y. 2010-11]
&
ITA Nos 7707/DEL/2019 [A.Y. 2011-12]

EY Global Services Ltd., 6, More London Place, London SEI 2DA, U.K. PAN- AACCE3488K	Vs	ACIT, Circle-1(2)(2), International Taxation, New Delhi.
APPELLANT		**RESPONDENT**
Assessee represented by	Shri Rajan Vora, CA	
Department represented by	Shri Vijay B. Vasanta, CIT(DR)	
Date of hearing	10.06.2024	
Date of pronouncement	13.06.2024	

O R D E R

PER KUL BHARAT, JM:

These two appeals, preferred by the assessee, are directed against separate orders of the learned CIT(Appeals)-42, New Delhi, dated 24.07.2019, pertaining to assessment years 2010-11 and 2011-12. Since identical grounds have been raised, both these appeals were heard together and are being disposed of by a consolidated order.

2. In ITA No. 7706/Del/2019 (A.Y. 2010-11), the assessee has raised following grounds of appeal:

"Based on the facts and circumstances of the case, the Appellant respectfully submits:

1. General Grounds:

1.1. That the Commissioner of Income Tax (Appeals)-42, New Delhi (hereinafter referred to as "Ld. CIT(A)" has erred in facts and in law in upholding the assessment order and assessing the income at INR 11,26,56,700 as against return income of NIL.

1.2. That on fact and in circumstance of the case and in law, the Ld. CIT(A) has erred in rejecting the application filed u/s 158A of the Act to avoid repetitive appeal on the issue which is pending before the Hon'ble Delhi High Court.

2. Grounds on taxability of Software License:

2.1. That on facts and in law, the Ld. CIT (A) has erred in not accepting the contentions of the Appellant that reimbursement of actual costs relating to Software License and maintenance charges amounting to INR 7,28,25,439 are not in the nature of Royalty under the Act as well as Double Taxation Avoidance Agreement between India and UK (hereinafter referred to as "treaty") by following the ruling of Hon'ble AAR in appellant's own case and ignoring the rulings of various Hon'ble High courts on similar issue including jurisdictional Hon'ble Delhi High Court and also ruling by Hon'ble Supreme Court in case of A. P. Moller Maersk AS (2017) 392 ITR 186 holding that reimbursement of communication network charges is not taxable.

2.2. That the Ld. CIT(A) has also erred in facts and in law in holding that no appeal is maintainable on above ground as the matter has already been decided by AAR in appellant's own case, and while doing so has ignored the rulings of Hon'ble High courts on similar issue including jurisdictional Hon'ble Delhi High Court.

3. Grounds on taxability of Global technology charges and GWAN connectivity charges:

3.1. That the Ld CIT(A) has failed to consider and appreciate that the reimbursement of actual costs relating to Global technology charges and GWAN connectivity charges amounting to INR 3,65,90,140 and INR 32,41,122 are not and cannot be considered as software and thus, is not in the nature of "royalty" either under the Act or under the treaty, and are thus not taxable in India in the absence of a PE of the Appellant Company in India. Further, the Ld. CIT(A) has completely ignored the ruling by Hon'ble Supreme Court in case of A.P. Moller Maersk AS (2017) 392 ITR 186 holding that reimbursement of communication network charges is not taxable.

3.2. That the Ld. CIT(A) has also failed to appreciate that the Hon'ble AAR while pronouncing its order has held only software charges as Royalty, and thus has erred in taxing Global technology charges and GWAN connectivity charges as Royalty.

3.3. That the Ld. CIT(A) has erred in facts and in law in holding that no appeal is maintainable on above ground as the matter is pending under rectification application filed bfore Hon'ble AAR in appellant's own case."

3. Facts giving rise to the present appeal are that in this case the assessee filed its return of income declaring total income at Nil on 30.3.2012 and claimed a refund of Rs. 1,18,95,304/- . The case of the assessee was picked up for scrutiny and the assessment u/s 144C(3a)/143(3) of the Income-tax Act, 1961, hereinafter referred to as the "Act" was framed vide order dated 30.11.2018.

4. During the course of the assessment proceedings, the Assessing Officer noticed that in response to the notice u/s 143(2) of the Act the assessee informed him that it had moved an application before the Authority of Advance Rulings ('AAR') on 9.2.2011 (AAR 1043 of 2011). Thereafter, the Assessing Officer considering the finding of the AAR, proceeded to frame the assessment in respect

of Global Technology Charges and CWAN Connectivity Charges. The Assessing Officer noticed that out of gross receipt of Rs. 11,26,56,701/-, a sum of Rs. 3,65,90,140/- had been declared as interest on` Global Technology Charges and a sum of Rs. 32,41,122/- as interest of CWAN Connectivity Charges. The Assessing Officer computed the income of the assessee as under:

Particulars	*Amount (in Rs.)*
Returned Income	*Nil*
Add: Royalty income as held by the Hon'ble AAR (taxable @ 10% - as per the provisions of IT Act, being more beneficial than 15% rate under DTAA)	*11,26,56,701*
Total Income	*11,26,56,701*
Total Income (rounded off u/s 288A)	*11,26,56,700*

5. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who also sustained the addition by observing as under:

> "*5.4 It may be relevant to add that the assessee has submitted miscellaneous application before AAR on 22.08.2016 to seek clarification that the taxability of payments as royalty should be applicable only to Software License and Maintenance charges and the payments with regard to Global Technology Charge and GWAN Connectivity Charge chart should be outside the purview of the same as they are merely hardware costs or connectivity charges. It is reiterated that this office has no authority to decide on a matter which is under consideration of higher authority. Hence the ground of appeal is* ***'dismissed'*** *being non-maintainable.*
>
> *5.5 The appellant has contended to apply the provisions of section 158A of the act which deals with a situation where an assessee claims that any question of law arising in his case for an assessment year which is pending before the Assessing Officer or any appellate authority is identical with a question of law arising in his case for another assessment year which is*

pending before the High Court on a reference under section 256 or before the Supreme Court on a reference under section 257 or in appeal under section 261. I find that the provisions of section 158A are not applicable in this case because of the fact that the appellant has filed writ before Hon'ble High court against the order of authority for advance ruling. The provisions of section 158A are applicable only where the reference before Hon'ble High Court is under section 256 of the act. Moreover, as discussed above, I find that the act of filing appeal before CIT(A) itself is redundant because the matter has already been decided by Authority for advance ruling which is a higher appellate forum. The act of the appellant to file writ petition before Hon'ble High Court is sufficient to keep the matter alive;"

6. On further appeal, the Tribunal vide its common order dated 26.05.2022 had decided the issue in favour of the Revenue. However, this order was recalled vide order dated 7.2.2023 considering the judgment of the Hon'ble Delhi High Court in assessee's own case. The Tribunal in M.A. nos. 188 & 189/Del/2022, in para 4 has held as under:

"4. Accordingly, upon careful consideration, we find ourselves in agreement that the AAR ruling relied upon by the ITAT, stood already reversed by Hon'ble Delhi High Court. Hence, it is a mistake apparent from the record which has crept in the order of the Tribunal. Therefore, the same is recalled for fresh adjudication. Registry is directed to fix the case on 27.02.2023 for hearing. Notice of hearing was announced to both parties in the open court."

7. Hence, the present appeals are before us for adjudication.

8. At the outset learned counsel for the assessee contended that the issue has now been decided by the Hon'ble Delhi High Court in favour of the assessee and the co-ordinate Bench of the Tribunal in the case pertaining to A.Y. 2012-13 to 2015-16 rendered in ITA nos. 7017 to 7020/Del/2019 vide common order dated

01.06.2022 has remitted the issue to the file of AO to follow the Hon'ble High Court order and give effect accordingly.

9. On the other hand, learned DR supported the orders of the authorities below.

10. We have heard rival submissions and gone through the material available on record. It is stated by the learned counsel for the assessee that the impugned decision of the learned CIT(A) was on the basis of the ruling of AAR, but the Hon'ble High Court has set aside the order of AAR and ruled in favour of the assessee. He further submitted that following the judgment of Hon'ble High Court, the Coordinate Bench for A.Y. 2012-13 to 2015-16 rendered in ITA nos. 7017 to 7020/Del/2019 vide common order dated 01.06.2022 has remitted the issue to the file of AO to follow the Hon'ble High Court order and give effect accordingly, by observing as under:

> *"11. Accordingly, upon careful consideration, we find that undoubtedly Hon'ble Delhi High Court has reversed the order of AAR but the Hon'ble High Court order was not in existence when the authorities below passed the order. Hence it would be appropriate to remit the cases to the AO to follow the Hon'ble High Court order and give effect accordingly.*
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> *12. Our aforesaid order applies mutatis mutandis to AYs 2013-14, 2014-15 and 2015-16 also.*
>
> *13. In the result, all the appeals filed by the assessee stand allowed for statistical purposes."*

11. It is seen that the aforesaid order of the Tribunal has been affirmed by the Hon'ble Jurisdictional High Court of Delhi vide their order dated 09.01.2023 by dismissing Revenue's appeals in ITA nos. 444/2022 & 447/2022, inter alia, observing as under:

> "*Admittedly the present appeals have been filed against the impugned order vide which the ITAT has set aside the orders of the CIT(A) confirming assessment orders passed in pursuance to the decision of AAR dated 10th August, 2016. Therefore, the issue involved in the present cases is no longer res integra, since this Court has already set aside the AAR order dated 10th August, 2016 by holding in favour of the assessee. Consequently, the ITAT rightly remanded the cases to the Assessing Officer to pass the orders following the judgment of this court in EY Global Services Limited (supra).*"

12. Further, vide submissions dated 03.01.2024 the assessee has brought to our notice that the Tribunal in the case of assessee itself ruled in favour of the assessee in ITA nos. 1254 to 1256/Del/2023 pertaining to assessment years 2017-18 to 2019-20. The relevant contents of the order of the Tribunal are reproduced as under:

> *"4. On careful perusal of the order of the Ld.CIT (Appeals), we observe that the issues have been decided by Ld. CIT(A) in favour of the assessee following the decision of the Hon'ble Delhi High Court in assessee's own case and also the decision of the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Pvt. Ltd. Vs. CIT (supra) and, therefore, we see no infirmity in the order passed by the Ld.CIT(A) in holding that receipts towards software license and maintenance charges, global technology charges and GWAN connectivity charges are not royalty under the IT Act and also under India UK DTAA. Thus, we sustain the order of the Ld.CIT(A) and reject the grounds raised by the Revenue."*

13. Admittedly, there is no change into facts and circumstances in these two years as well. Therefore, the issue in question is now no more res-integra. We, therefore, in the light of binding precedents hereby direct the Assessing Officer to delete the impugned additions.

14. Facts of the case in both the assessment years under consideration being identical, our aforesaid order applies mutatis mutandis to A.Y. 2011-12 also.

15. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in open court on 13th June, 2024.

Sd/-	**Sd/-**
(G.S. PANNU)	**(KUL BHARAT)**
VICE PRESIDENT	**JUDICIAL MEMBER**

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI