

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'D': NEW DELHI
BEFORE,
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.552/Del/2022
(ASSESSMENT YEAR-2018-19)**

Huawei International Co. Limited 9/F Tower 6, The Gateway, No. 9, Canton Road, Tsimshatsui, Hongkong PAN: AAECH6677H	Vs.	ACIT International Taxation 2(1) (1) New Delhi
(Appellant)		(Respondent)

**ITA No. 1815/Del/2022
(ASSESSMENT YEAR-2019-20)**

Huawei International Co. Limited 9/F Tower 6, The Gateway, No. 9, Canton Road, Tsimshatsui, Hongkong PAN: AAECH6677H	Vs.	ACIT International Taxation 2(1) (1) New Delhi
(Appellant)		(Respondent)

Appellant by	Sh. Deepak Chopra, Ankul Goyal & S. Adwiteya Grover, Advs
Respondent by	Shri Vizay B. Vasanta, CIT DR

Date of Hearing	01.05.2024
Date of Pronouncement	19.06.2024

ORDER**PER YOGESH KUMAR U.S. JM.:-**

Both the appeals are filed by the assessee against the order of Assistant Commissioner of Income Tax, Circle International Tax, 2(1)(1) Hong Kong, dated 28.02.2022 & 07.07.2022 for Assessment Years 2018-19 & 2019-20 respectively. In both the Assessment Years, the similar issues are involved therefore, both the Appeals are heard together and dispose in this common order.

2. The Grounds taken by the assessee is as under:

ITA No.552/Del/2022 (A.Y 2018-19)

“1. That on the facts and in the circumstances of the case and in law, the Learned Assessing Officer (AO) erred in passing the impugned assessment order dated February 28, 2022 under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (Act') pursuant to the directions of the Hon'ble Dispute Resolution Panel-1 (hereinafter referred to as the Hon'ble DRP") in assessing the income of the Appellant at INR 3,27,11,930.

2 That on the facts and in the circumstances of the case and in law, the Learned AO erred in passing the impugned assessment order and not appreciating the correct factual position and legal principles brought on record by the Appellant. Further, the Learned AO/the Hon'ble DRP erred in making/not rejecting the allegations, incorrect observations, assertions and inferences on the basis of mere conjectures and surmises, which are both factually incorrect as well as legally untenable and therefore, the impugned assessment order is bad in law and void ab-initio

3. That on the facts and circumstances of the case and in law, the Learned AO has erred in alleging that the charges received by the

Assessee are in the nature of Fees for Technical Services ('FTS') under the provisions of section 9(1)(vii) of the Act.

4. *That on the facts and circumstances of the case and in law, the Learned AO has erred in not following the judicial precedents wherein it has been unambiguously and unequivocally held that connectivity charges payments are not taxable as 'FTS' in the hands of the foreign company under the provisions of the Act.*

5. *That on the facts and circumstances of the case and in law, the Learned AO has erred in proposing an addition of INR 3,27,11,391 by alleging that the Assessee is rendering plethora of services in complete ignorance of the fact that the Assessee has rendered services only in the nature of connectivity charges.*

6. *Without prejudice to the above, the Leaned AO erred in computing tax on assessed at the rate of 40% instead of 10% as per section 115A of the Act.*

7. *That on the facts and circumstances of the case and in law, the Learned AO erred in levying interest under section 234A, 234B and 234C of the Act.*

8. *That on the facts and circumstances of the case and in law, the Learned AO erred in initiating penalty proceedings under section 270A of the Act.*

The grounds of appeal herein above are independent and without prejudice to each other.

The Appellant craves leave to alter, amend and/or withdraw the Ground(s) of Appeal herein or add any further grounds as may be considered necessary and to submit such statements, documents and papers as may be considered necessary either before or during the appeal hearing.”

ITA No.1815/Del/2022 (A.Y 2019-20)

“1. That on the facts and in the circumstances of the case and in law, the Learned Assessing Officer (AO) erred in passing the impugned assessment order dated July 7, 2022 under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (Act') pursuant to the directions of the Hon'ble Dispute Resolution Panel-1 (hereinafter referred to as the Hon'ble DRP") in assessing the income of the Appellant at INR 3,85,08,696/-.

2 That on the facts and in the circumstances of the case and in law, the Learned AO erred in passing the impugned assessment order and not

appreciating the correct factual position and legal principles brought on record by the Appellant. Further, the Learned AO/the Hon'ble DRP erred in making/not rejecting the allegations, incorrect observations, assertions and inferences on the basis of mere conjectures and surmises, which are both factually incorrect as well as legally untenable and therefore, the impugned assessment order is bad in law and void ab-initio

3. *That on the facts and circumstances of the case and in law, the Learned AO has erred in alleging that the charges received by the Assessee are in the nature of Fees for Technical Services ('FTS') under the provisions of section 9(1)(vii) of the Act.*

4. *That on the facts and circumstances of the case and in law, the Learned AO has erred in not following the judicial precedents wherein it has been unambiguously and unequivocally held that connectivity charges payments are not taxable as 'FTS' in the hands of the foreign company under the provisions of the Act.*

5. *That on the facts and circumstances of the case and in law, the Learned AO has erred in proposing an addition of INR 3,85,08,696/- by alleging that the Assessee is rendering plethora of services in complete ignorance of the fact that the Assessee has rendered services only in the nature of connectivity charges.*

6. *Without prejudice to the above, the Leaned AO erred in not granting credit of Taxes deducted at Source amounting to INR 42,05,150/-.*

7. *That on the facts and circumstances of the case and in law, the Learned AO erred in levying interest under section 234B of the Act.*

8. *That on the facts and circumstances of the case and in law, the Learned AO erred in initiating penalty proceedings under section 270A of the Act.*

The grounds of appeal herein above are independent and without prejudice to each other.

The Appellant craves leave to alter, amend and/or withdraw the Ground(s) of Appeal herein or add any further grounds as may be considered necessary and to submit such statements, documents and papers as may be considered necessary either before or during the appeal hearing."

3. Brief facts of the case for the Assessment Year 2018-19 are taken into consideration. The assessee/Huawei International Co.

Ltd. (HICL) is a company incorporated under the laws of Hong Kong and engaged in the business of distribution of telecommunication products. The assessee filed Income Tax return for A.Y 2018-19 on 08-03-2019 declaring Nil income and claiming refund of Rs 35,37,310/-. The case was selected for scrutiny and e-notice u/s 143(2) of the Income Tax Act (hereafter 'the Act') dated 22-09-2019 was issued and served upon the assessee. Subsequently, notices u/s 142(1) of the Act along with detailed questionnaires were issued on 18/11/2020 and 07/04/2021. In compliance to the Notices, assessee filed various details. During the year under consideration, the assessee received reimbursement of connectivity charges from Huawei Telecommunications (India) Company Pvt. Ltd ('Huawei India') for provision of connectivity services for international communication. As India and Hong Kong did not have any double taxation avoidance agreement during the concerned assessment year, the assessee was show caused as to why the total consideration received by it, amounting to Rs. 3,27,11,391/- during the concerned previous year, should not be held as Fee for Technical Services (FTS) under section 9(i)(vii) of the Income Tax Act, 1961 and added to its assessed income.

4. The assessee contended that the services are only in the nature of connectivity charges and are not in the nature of fees for technical services under the Provision of Section 9(i)(vii) of the Act. After considering the submission of the assessee, the Department of Revenue found no merit in the same and held that the international services rendered by the assessee will fall within the ambit of 'Consultancy' or 'Managerial Services' and will qualify as fee for technical services u/s 9(1) (vii) of the Act, accordingly, an addition of Rs. 3,27,11,391/-. The similar Assessment also made in the AY 2019-20 by making an addition of Rs. 3,85,08,696/- vide Assessment Order dated 07/07/2022. Aggrieved by the assessment orders passed u/s 143(3) read with Section 144C(13) the Act, dated 28/02/2022 and 07/07/2022 for AY 2018-19 and 2019-20 respectively, the assessee preferred the captioned appeals on the grounds mentioned.

5. The Ld. Counsel for the assessee submitted that the Ld. A.O. erred in holding that the charges received by the assessee are in the nature of Fees for Technical Services (FTS) under the provisions of Section 9(1)(vii) of the Act, contrary to the judicial

precedents wherein it has been unambiguously and unequivocally held that connectivity charges payment are not taxable as FTS in the hands of the foreign company under the provisions of the Act.

6. Per contra, the Ld. Departmental Representative submitted that the assessee provides plethora of services to its AE right from negotiating agreement with third parties, entering into purchase agreement, to issuing inspection service qualifying the products and services and the agreement also binds the assessee to perform 'any and all other service and activities' for its AE , therefore, the services provided by the assessee are not only technical in nature but also managerial and consultancy services. Thus, the international services rendered by the assessee will fall within the ambit of 'technical' ' consultancy' or 'managerial' services and will qualify as fees for technical services u/s 9 (1)(vii) of the Act. The Departmental Representative, thus sought for dismissal of the Appeal filed by the assessee.

7. We have heard both the parties and perused the material available on record. During the year under consideration, the assessee received reimbursement of connectivity charges from

Huawei Tele Communications (India) Company Pvt. ltd. (Huawei India) for provision of connectivity services for international communication. Admittedly, India and Hong Kong did not have any double taxation avoidance of the Agreement during the concerned Assessment Years. The assessee was show caused why the consideration received by it during the concerned previous year should not be held as fee for technical Services (FTS) u/s 9(i)(vii) of the act. It is the contention of the assessee before the A.O. that the services provided do not constitute managerial services, the services provided do not constitute consultancy services and there is no human intervention involved in provision of connectivity services and thus, the services rendered do not constitute technical services.

8. We have gone through the Reimbursement of the connectivity charges placed at Page No. 89 of the Paper Book, Invoices produced at Page Nos. 90, 91, 92 and the statement showing computation of income at Page No. 93 and also gone through the agreement at Page No. 82 of the paper book containing the Responsibilities as per the purchasing service agreement between the assessee and the Huawei Telecommunications (India) Company Pvt. Ltd. ('Huawei

India') and the clauses mentioned at para 2 (a) to (e) namely, (a). Negotiate with independent manufacturers, suppliers and vendors (the "Independent Vendors") with respect to prices, terms and deliveries for the Products and Services, (b). Enter into purchasing contracts with independent manufacturers and vendors with respect to Products and Services, (c). Inspect the Products and Services destined for shipment and delivery to the Company for quality control purposes and issue inspection certificates certifying that the Products and Services conform to purchase contracts or order, (d). When requested, arrange for international transportation and/or appropriate insurance coverage, relating to shipment and delivery of the Products and Services to the Company and (e). Perform any and all other services and activities (including negotiations relating thereto and payment therefore) agreed to in writing by and between the company and the Service Provider are considered as the steps involved in processing the product purchased as per the purchasing service agreement and cannot be treated as other technical services which can be regarded at FTS u/s 9(1)(vii) of the Income Tax Act, 1961. The contention of the Department that, the Revenue has been treated considering the

clauses 2.2(a) to (e) of the Agreement that the Assessee provides plethora of services to its AE right from negotiating agreements with third parties entering into purchase agreement, to issuing inspection certificates certifying the products and services. The Revenue treated these services as not only technical in nature but also managerial and consultancy services against the fact that assessee has only paid for connectivity services and the services are merely ancillary to enabling the provision of inter-connect services and part of the processing the product. Hence, in our considered opinion, the amounts cannot be treated as technical or managerial or consultancy services. The Reliance is being placed on the judgment of the Hon'ble Apex Court in the case of CIT Vs. Bharti Airtel Ltd. 159 taxman 315. The assessee has earned 1% markup on the reimbursement of connectivity charges. This is the amount earned by the assessee in the entire transaction. The AO may invoke relevant provisions of the Income Tax Act and the DTAA for taxing of the said income earned.

9. In the result, Appeal filed by the Assessee in ITA Nos. 552/Del/2022 and 1815/Del/2022 are partly allowed for statistical purpose.

Order pronounced in the open Court on 19th June, 2024.

Sd/-

(DR. B.R.R. KUMAR)
ACCOUNTANT MEMBER

Dated: 19/06/2024

R.N Sr.ps

Sd/-

(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI

