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

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT

AND

SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA Nos. 1868 & 3342/Del/2023
Assessment Years: 2020-21 & 2021-22

AAPC Singapore Pte. Ltd., 1 Wallich Street, #17-01 Guoco Tower, Singapore 078881	Vs	The ACIT, International Taxation, Circle-1(1)(1), , Delhi
(Assessee)		(Revenue)
PAN No. AAICA4319D		

Assessee by : Sh. S.K Aggarwal, CA
Revenue by : Sh. Vijay B Vasanta, CIT(DR)

Date of Hearing: 13.05.2024		**Date of Pronouncement: 02.07.2024**

ORDER

Per Brajesh Kumar Singh, AM:-

The present appeals have been filed by the assessee against the order of Assessing Officer dated 29.04.2023 & 28.09.2023 for the A.Ys. 2020-21 & 2021-22.

2. The assessee has raised the following grounds in ITA No.1868/Del/2023:

Ground No. 1: Addition proposed in respect of receipts for Loyalty Programme, Reservation Fee and Marketing Fee amounting to INR 33,11,70,181/-.

1.1. That on the facts and in the circumstances of the case and in law, the Ld. AO erred in making addition and the Ld.

DRP erred in confirming addition to the income of the Appellant in relation to receipts for Loyalty Programme, Reservation Fee and Marketing Fee amounting to INR 33,11,70,181, ignoring the detailed factual and legal submissions furnished by the Appellant.

1.2. On the facts and in circumstances of the case and in law, the Ld. AO erred in treating and the Ld. DRP erred in confirming receipts on account of Loyalty Programme, Reservation Fee and Marketing Fee as Royalty/Fee For Technical Services ('FTS') under the Act and under Article 12 of India-Singapore Double Taxation Avoidance Agreement ('DTAA').

1.3. On the facts and in circumstances of the case and in law, the Ld. AO erred in concluding and the Ld. DRP erred in confirming that the receipts for Loyalty Programme, Reservation Fee and Marketing Fee are taxable in India without appreciating that such fees are received by the Appellant towards expenses incurred for marketing and reservation related activities, which are quite routine activities in the context of hotel industry.

1.4. On the facts and in circumstances of the case and in law, the Ld. AO and the Ld. DRP have erred in not following the favourable decisions in similar facts relied on by the Appellant wherein it has been held that centralized services rendered like sales and marketing, loyalty programs, reservation service, technological services etc. are not in the nature of Royalty/FTS under the Act as well as under the DTAA.

2. That on the facts and in the circumstances of the case and in law, the Ld. AO erred in charging interest and the Ld. DRP erred in confirming interest under section 234A and 234B of the Act.

3. That on the facts and in the circumstances of the case and in law, the Ld. AO erred in initiating and the Ld. DRP erred in confirming penalty proceedings under section 270A of the Act."

3. Brief facts of the case:- The assessee, AAPC Singapore is a private limited company incorporated in Singapore and is a tax resident of Singapore within the meaning of Article 4 of the India-Singapore Double Taxation

Avoidance Agreement ('DTAA'/ 'Tax Treaty'). The assessee is a non-resident corporate entity incorporated in Singapore and is a tax resident of Singapore. The assessee is subsidiary of Accor Asia SA, Belgium and acts as a franchisor and/or owner of participating hotels in the Asia Specific Region including India and has the license to use the brand name Accor and Novotel in the region. The assessee entered into franchise agreement with AAPC India Hotel Management Pvt. Ltd. (AAPC India) and Economic Hotels India Pvt. Ltd. (EHIS) to sub-license the brand names to third party hotels in India. The assessee has also sub licensed certain other Accor Intellectual Property Rights (IPR) to another group entity in India, namely, Accor Advantage Plus Marketing India Ltd. (Accor Advantage India) on a non-exclusive basis for the purpose of selling membership of loyalty programme to customers in India. The core issue arising in the appeal relates to taxability of an amount of Rs.33,11,70,181/- as royalty income both under the provisions of the Act as well as under Indian-Singapore Double Taxation Avoidance Agreement (DTAA).

3.1. The assessee filed its return of income declaring income of Rs.33,95,25,010. In the said return of income, assessee offered the amounts received towards franchise, license fee etc. as royalty income. Further, certain fees received towards training imparting training in relation to central reservation, integral property management system, information technology related services etc. were offered to tax as FTS. However, the fee received towards reservation services, marketing services and loyalty programme

receipts were not offered to tax in India pleading that they are neither in the nature of royalty nor FTS.

4. The Assessing Officer, however, issued a show cause notice calling upon the assessee to explain why reservation fee and receipts from loyalty programme should not be treated as royalty. He further called upon the assessee to explain as to why the receipts from marketing fee should not be treated as FTS. In response to the show cause notice issued by the Assessing Officer, assessee furnished a detailed reply stating that the receipts from the stated services neither can be treated as royalty nor FTS under the treaty provisions. The Assessing Officer was, however not convinced with the submissions of the assessee. He observed that, though, assessee had entered into two separate agreements, one for use of brand name and the other for provision of certain services, however, the agreements are composite in nature as the services rendered by the assessee are ancillary and subsidiary to the application or enjoyment of right, property or information for which the assessee received license fee. He further observed that the amount received for services rendered in connection with use or right to use any trade mark falls within the scope of royalty. Thus, based on the aforesaid reasoning, the Assessing Officer brought to tax the amount in dispute as royalty income both under the provisions of Act as well as under the Treaty. Accordingly, he framed the draft assessment order. Against the said draft assessment order, assessee raised objections before learned DRP. However, learned DRP

endorsed the view expressed by the Assessing Officer. Accordingly, the draft assessment order was finalized.

5. Thus, it is seen that during the year, the AO made the following additions in the assessment order.

Sl. No.	Nature of receipts	Payer entity	Amount (INR) AY 2020-21
1	Loyalty Programme receipts	AAPC India	13,14,42,789
2	Reservation Fee	AAPC India	18,58,64,968
3	Marketing Fee	Accor Advantage India	1,38,62,424
Total			**33,11,70,181**

5.1. In making the above addition, the AO followed the findings given in the case of the assessee for AY 2015-16 in the final assessment order dated 24.01.2023 passed u/s 147 r.w.s. 143(3) of the Act. The DRP also followed its directions dated 22.12.2022 for AY 2015-16 for giving its directions for AY 2020-21. This is evident from the directions of the DRP, in para no.3.3 of its order for AY 2020-21, the relevant extract of which is reproduced as under:-

> *"On these issues the DRP very recently vide its order dated 22.12.2022 for the assessment year 2015-16 has confirmed the stance taken by the AO to treat the above receipts as royalty chargeable to tax as per applicable tax rates.....*
>
> *... Since, the legal and factual matrix remains same, the DRP doesn't see any reason to review the directions issues in the previous year. The* objections on these issues by the assessee are rejected"

6. During the course of hearing, the ld. AR submitted that both the AO as well as the DRP have followed their respective findings/directions on these

issues for AY 2015-16. The ld. AR further submitted that the co-ordinate Bench in the case of the assessee in ITA No.581/Del/2023, for AY 2015-16 vide an order dated 29.12.2023 has decided the appeal in favour of the assessee and deleted the additions on all the above three issues. It was also submitted that there has been no assessment in the case of the assessee for the assessment year 2016-17 to 2019-20.

7. The ld. DR relied upon the orders of the authorities below.

8. We have heard both the parties and perused the material available on record. On perusal of the facts, it is seen that both the AO and the DRP have relied upon their findings/directions for the assessment year 2015-16 for this year also while making the additions amounting to Rs.33,11,70,181/- for AY 2020-21. On similar facts, the co-ordinate Bench in assessee's own case in ITA No.581/Del/2023, vide order dated 29.12.2023 for AY 2015-16 held that the amount in dispute cannot be qualified as 'royalty' and directed the AO to delete the addition. Therefore, respectfully following the above decision of the Co-ordinate Bench, the addition of Rs.33,11,70,181/- is hereby deleted. Ground No.1 of the appeal is allowed.

9. Ground no.2 of the appeal is against the levy of interest u/s 234A and 234B of the Act. In view of our decision in ground no.1, the Assessing Officer is directed to recalculate the interest u/s 234A & 234B in accordance with law.

10. Ground no.3 of the appeal is against the initiation of penalty proceedings u/s 270A of the Act. In view of our decision in ground no.1, this issue has become academic, hence, is not adjudicated.

11. In the result, the appeal of the assessee is partly allowed for statistical purposes.

ITA No.3342/Del/2023

12. Grounds no.1 of the appeal, is not pressed by the assessee, hence, dismissed as not pressed.

13. Ground no.2 raised in ITA No.3342/Del/2023 is similar to ground no.1 raised in ITA No.1868/Del/2023 decided by us in earlier part of this order. Therefore, our above decision would apply mutatis-mutandis to this ground of the appeal.

14. Ground no.3 of the appeal is against the computing of gross tax liability at incorrect rates (inclusive of surcharge and education cess) without taking into consideration, the applicable tax rates as per India Singapore DTAA in the computation sheet accompanying the final assessment order u/s 143(3). The AO is directed to verify the above grievance of the assessee and apply the correct tax rate in accordance with law. Ground no.3 is allowed for statistical purposes.

15. Ground no.4, the assessee has raised the issue of short grant of TDS amounting to Rs.18,92,461/-. The AO is directed to verify the claim of the

assessee and grant credit for TDS in accordance with law. Ground no.4 is allowed for statistical purposes.

16. Ground no.5 of the appeal is against the levy of interest u/s 234A, 234B and 234C of the Act. In view of our decision in ground no.2, the Assessing Officer is directed to recalculate the interest u/s 234A, 234B and 234C in accordance with law.

17. Ground no.6 of the appeal is against the initiation of penalty proceedings u/s 270A of the Act. In view of our decision in ground no.1, this issue has become academic, hence, is not adjudicated.

18. In the result, this appeal of the assessee is partly allowed for statistical purposes.

19. Finally, ITA No.1868/Del/2023 is allowed and ITA No.3342/Del/2023 is partly allowed for statistical purposes.

Order Pronounced in the Open Court on 2nd July, 2024.

Sd/-	**Sd/-**
[SAKTIJIT DEY]	**[BRAJESH KUMAR SINGH]**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Dated: 02/07/2024

Shekhar *NV, Sr. PS*

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, DELHI