

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 2759/Mum/2023
Assessment Year: 2016-17

Assistant Commissioner of Income Tax, (IT) - 3(2)(1), Mumbai	Vs	M/s. Mckinsey & Company Lme Limited C/o M/s. Ernst & Young LLP, CAs 14 th Floor, The Ruby Senapati Bapat Marg Dadar Mumbai - 400028 [PAN: AAKCM0197M]
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

C.O. No. 14/Mum/2024
Assessment Year: 2016-17

M/s. Mckinsey & Company Lme Limited C/o M/s. Ernst & Young LLP, CAs 14 th Floor, The Ruby Senapati Bapat Marg Dadar Mumbai - 400028 [PAN: AAKCM0197M]	Vs	Assistant Commissioner of Income Tax, (IT) - 3(2)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Poras Kaka & Shri Divesh Chawal, A/Rs
Revenue by :	Shri Anil Sant, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 15/07/2024
घोषणा की तारीख /Date of Pronouncement: 15/07/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 2759/Mum/2023 & C.O. No. 14/Mum/2024, are
appeal by the revenue and cross-objection by the assessee preferred

against the order of the ld. CIT(A) -57, Mumbai, dt. 31/05/2023 pertaining to AY 2016-17.

2. The grievance of the revenue reads as under:-

“Ground of appeal No. 1

The services provided by the assessee to the Mckinsey group are not general in nature and not available in public domain they are providing specifically to the Mckinsey group and sector specific expert professional which are the used by the recipient in the different decision making from financial to legal issues and are in the nature of consultancy services and treated as fees for technical services under section 9(1)(vii) of the Income Tax Act, 1961. Therefore the Ld. CIT(A) erred in the nature of consultancy services to the borrowed services fees received by the assessee.

Ground of appeal No. 2

The assessee is providing strategic consultancy services and has earned income during the year by providing services in the nature, consultancy, technical, management and financial matter that are make available in the nature as India UK DTAA. As per the article 13 of the India-UK DTAA the fees received by the assessee on account of borrowed services are fee for consultancy services. Therefore the Ld. CIT(A) erred for providing services in the nature of make available as per India-UK DTAA clause.”

3. At the very outset, the ld. Counsel for the assessee drew out attention to the order of this Tribunal in ITA No. 2535/Mum/2023 for AY 2013-14 order dt. 21/06/2024 and pointed out that the impugned issue has been decided by the Tribunal in earlier years in favour of the assessee and against the revenue. The ld. D/R could not bring any distinguishing decision in favour of the revenue.

4. We have carefully perused the orders of the authorities below and have carefully considered the order of the Co-ordinate Bench in ITA No. 2535/Mum/2023 (*supra*). We find force in the contention of the ld. Counsel. The Co-ordinate Bench has considered the issue as under:-

“4. Briefly stated the facts of the case are that the assessee is a foreign company, incorporated in Singapore. The assessee has entered into international transactions with its Associated Enterprises (AEs), McKinsey & Co., Inc. (Indian Branch) during the financial year under consideration. Transfer Pricing Study report in Form 3CEB was filed. The assessee is part of McKinsey group of entities, the primary business of which is to render strategic consultancy services to their clients, which inter alia includes the analysis of performance, developments, strengths, and weaknesses of their clients, improving their profitability and productivity, and similar other parameters. All these services have been performed outside India and since they have been rendered in the ordinary course of business,

the receipts on account of the same amounting to ₹6,79,39,779 qualified to be a business receipt of the assessee. Since the assessee-company has no PE in India, the incidence of tax does not arise in India. During the course of scrutiny assessment proceedings, the assessee was asked to explain as to why the borrowed services income of ₹6,79,39,779 should not be treated as fees for technical services. In its reply, the assessee filed various documentary evidences to substantiate the services rendered to McKinsey India during the year along with reasons why non-taxation of the borrowed services. The detailed explanation by the assessee did not find any favour with the A.O. for the simple reason that the same was not accepted in assessment orders of earlier years, i.e., A.Ys 2012-2013, 2011-2012 and 2010-2011. Drawing support from the findings given by the A.O. in earlier assessment years, the AO treated the income of ₹6,79,39,779 as fees for technical services and added the same to the total income of the assessee.

5. The assessee carried the matter before the CIT(A). It was brought to the notice of the CIT(A) that the Tribunal in assessee's own case has taken up consistent view for various assessment years that the income from borrowed services is not taxable under the India-Singapore Treaty. The assessee submitted the orders of the Tribunal from AYs 1999-2000 to 2011-2012. It was also brought to the notice of the CIT(A) that against the order of the Tribunal for AYs 2006-2007, 2007-2008 and 2008-2009 to 2010-2011, the Revenue had preferred appeals before the Hon'ble High Court of Bombay, but subsequently the appeals were withdrawn due to low tax effect. It was further brought to the notice of the CIT(A) that in the case of group companies for AYs 2006-2007, 2011-2012 and 2012-2013, the Department withdrew the appeals as the issue was resolved under Mutual Agreement Procedure (MAP). Considering the facts of the case in totality and following the judicial disciplines, the CIT(A) followed the orders of the Tribunal and deleted the additions.

6. Before us, the DR could not bring out any factual error in the findings of the CIT(A), but strongly relied upon the assessment order. The Counsel reiterated what has been stated before the CIT(A) and drew our attention to the various decisions of the Tribunal in assessee's own case in earlier assessment years."

4.1. Thereafter, the Co-ordinate Bench following the order in ITA No. 1579/Mum/2014 for AY 2010-2011, dismissed the appeal of the revenue.

5. Since no new facts have been brought to our notice, respectfully following the decision of the Co-ordinate Bench (*supra*), we decline to interfere. Since the appeal of the revenue has been dismissed, the issues raised in the cross-objection of the assessee becomes academic in nature and needs no adjudication.

6. In the result, appeal of the revenue is dismissed and cross-objection filed by the assessee is dismissed.

Order pronounced in the Court on 15th July, 2024 at Mumbai.

Sd/-

**(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER**

Sd/-

**(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER**

Mumbai, Dated 15/07/2024

Sd/-

आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order forwarded to :

1. □ पीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (□ पील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai