

IN THE INCOME TAX APPELLATE TRIBUNAL “T” BENCH, MUMBAI
BEFORE MS. KAVITHA RAJAGOPAL, JM AND MS. RENU JAUHRI, AM

ITA No. 1777/Mum/2024(Assessment Year: 2021-22)
ITA No. 1778/Mum/2024 (Assessment Year: 2016-17)
ITA No. 1779/Mum/2024 (Assessment Year: 2015-16)
ITA No. 1780/Mum/2024 (Assessment Year: 2013-14)
ITA No. 1781/Mum/2024 (Assessment Year: 2012-13)

Dy. CIT(IT)-3(1)(2) Room No.1628, 16th Floor, Air India Building, Nariman Point, Mumbai-400021	Vs.	Lloyds Register of Shipping Room No.1628,16th Floor, Air India Building, Nariman Point, Mumbai-400021
PAN/GIR No. AAACL 2209 B		
(Revenue)	:	(Assessee)

ITA No.1776 /Mum/2024 (Assessment Year: 2016-17)

Dy. CIT (IT) -3(1)(2) 16 th Floor, Air India Building, Nariman Point, Mumbai-400021	Vs.	Lloyd's Register Asia (India Brand Office) 17 th Floor, Unit No. 1702,1703,1704, Building Q2, Aurum Q Parc, Gen 4/1, TTC Thane Belapur Road, Ghansoli, Navi Mumbai – 400 710
PAN/GIR No. AAACL 9741 J		
(Assessee)	:	(Revenue)

and

ITA No.1455/Mum/2024
(Assessment Year: 2016-17)

Lloyd's Register Asia (India Brand Office) 17 th Floor, Unit No. 1702,1703,1704, Building Q2, Aurum Q Parc, Gen 4/1, TTC Thane Belapur Road, Ghansoli, Navi Mumbai – 400 710	Vs.	Dy. CIT (IT) -3(1)(2) 16 th Floor, Air India Building, Nariman Point, Mumbai-400021
PAN/GIR No. AAACL 9741 J		
(Assessee)	:	(Revenue)
Assessee by	:	Shri Nitesh Joshi
Revenue by	:	Shri Anil Sant-Addl.CIT DR
Date of Hearing	:	08.07.2024
Date of Pronouncement	:	30.08.2024

and

ITA No.878 & 879/Mum/2024
(Assessment Year: 2011-12 & 2012-13)ITA No.880 & 881/Mum/2024
(Assessment Year: 2014-15 & 2013-14)

Lloyd's Register Asia (India Brand Office) 17 th Floor, Unit No. 1702,1703,1704, Building Q2, Aurum Q Parc, Gen 4/1, TTC Thane Belapur Road, Ghansoli, Navi Mumbai – 400 710	Vs.	Dy. CIT (IT) -3(1)(2) 16 th Floor, Air India Building, Nariman Point, Mumbai-400021
PAN/GIR No. AAACL 9741 J		
(Assessee)	:	(Revenue)
Assessee by	:	Ms. Vaibhavi Gandhi
Revenue by	:	Shri Anil Sant-Addl.CIT DR
Date of Hearing	:	13.06.2024
Date of Pronouncement	:	30.08.2024

ORDER**Per Bench :****ITA Nos. 1777 to 1781/Mum/2024**

These appeals are filed by the Revenue challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), relevant to different Assessment Years ('A.Y.' for short).

2. As the facts are identical in all these appeals, we hereby take ITA No. 1781/Mum/2024 pertaining to A.Y. 2012-13 as a lead case.

ITA No. 1781/Mum/2024 (A.Y. 2012-13)

3. The grounds raised by the Revenue in ITA No. 1781/Mum/2024 (A.Y. 2012-13) reads as under:

1. *Whether on the facts and in the circumstances of the case in law, the Id. CIT(A) has erred in holding that the assessee's services cannot be regarded as ancillary and subsidiary to enjoyment of property under Licence Agreement despite Management Service provided by Lloyds Register are ancillary and subsidiary to enjoyment of intellectual property right as per License agreement despite Art. 13(4)(a) of India – UK DTAA is applicable on payment.*
2. *Whether on the facts and in the circumstances of the case in law, the Id. CIT(A) was justified in holding that the assessee services are managerial in nature and not technical services and the assessee is not liable to deduct TDS on the same.*
3. *The appellant prays that the order of the Id. CIT(A) on the above ground(s) be set aside and that of Assessing Officer be restored.*
4. The solitary issue involved in these appeals is that the order of the Id. CIT(A) in holding that the managerial services rendered by the assessee to its subsidiaries is not ancillary and subsidiary to the enjoyment of intellectual property as per the license agreement and the same would not fall under the nature of 'technical services'.
5. The brief facts are that M/s. Lloyd's Register, U.K. (hereinafter referred to as 'LR') is a parent company having various subsidiaries all over the world and has filed return of income as Indian office in the name and style M/s. Lloyd's Register – India Office (hereinafter referred to as 'LR-IO'). The said company has two subsidiaries in UK having their branch office in India namely i) M/s. Lloyd's Register Asia, U.K. (hereinafter referred to as 'LRA'). and (ii) M/s. Lloyd's Register Quality Assurance Ltd., U.K. (hereinafter referred to as 'LRQA'). The assessee's case was selected for scrutiny where the learned Assessing Officer (Id. A.O. for short) observed that the assessee company has discontinued its Indian operation as Branch office w.e.f. 01.04.2004. Further, the Id. A.O. observed that 'LR' has entered into a license agreement and management service agreement dated 16.07.2003 with its subsidiaries including LRA and LRQA, who are the licensee for which the assessee has declared receipt of license fee as taxable and management charges from LRA-IBO and LRQA-IBO as 'exempt'. The

details of management charges received by LRA-IBO and LRQA-IBO is furnished herein under:

1.	LRA-IBO	Rs.2,96,58,908/-
2.	LRQA-IBO	Rs.42,88,942/-
	Total	Rs.3,39,47,850/-

6. The Id. A.O. observed that the assessee has claimed the said charges as 'exempt' and further that in A.Ys. 2005-06 to 2011-12 the same has been held as 'technical service' which is chargeable to tax under Article 13(4)(a) of the India-UK DTAA. The Id. A.O. further held that the management services provided by LR are ancillary and subsidiary to the enjoyment of the intellectual property right as per the license agreement and the management service agreement is nothing but same as that of license agreement, which is for promoting safety on land, at sea and in air. The Id. A.O. stated that the management service agreement is interconnected with the license agreement where the same cannot be enjoyed independently without the existence of the license agreement. The Id. A.O. also held that in such case the make available clause (c) of para 4 of Article 13 is not applicable in the present case where the management services are ancillary and subsidiary to the main object of enjoyment of IPR as per the license agreement. The Id. A.O. extensively relied on the assessment order for the earlier years holding that LRA-IBO and LRQA-IBO are having permanent establishment in India and the payment made on account of managerial charges are claimed as 'expenditure' pertaining to the PEs in India along with the other findings for those assessment years. The Id. A.O. conclusively held that the payment received by the assessee from LRA-IBO and LRQA-IBO is to be treated as 'fee for technical services' which are to be taxed at 15% of the gross amount as that of the license fee offered by the assessee at 15% as per Article 13(2)(ii) of the India-

UK DTAA. The Id. A.O. passed the assessment order dated 29.04.2016 pursuant to the draft assessment order dated 29.03.2016 u/s.143(3) r.w.s. 144C(3) of the Act, determining the total income at Rs.18,31,93,071/- after making an addition on the 'management charges' as fee for 'technical services' amounting to Rs.3,39,47,850/-.

7. Aggrieved the assessee was in appeal before the Id. CIT(A) who vide a consolidated order dated 30.01.2024 had allowed the appeal filed by the assessee, by relying on the decision of the Tribunal in the case of *Lloyd's Register Asia – India Branch Office* for A.Y. 2010-11 to 2015-16 wherein the issue of disallowance u/s. 40(a)(ia) of the Act on management fees, the Tribunal had held that the management fees are not in the nature of 'technical service' as per Article 13(4) of India-UK DTAA.

8. The Revenue is in appeal before us, challenging the order of the Id. CIT(A).

9. We have heard the rival submissions and perused the materials available on record. The only issue that has to be adjudicated in the present appeal is whether the management service provided by the assessee to LRA-IBO and LRQA-IBO is in the nature of 'fee for technical service' on the ground that the said service is ancillary and subsidiary to the enjoyment of the intellectual property right akin to the license agreement.

10. The learned Departmental Representative (Id. DR for short) for the Revenue contended that the license agreement and the management service agreement are similar where the objectives are to promote safety on land, sea and air. The Id. DR further stated that the quantum of payments received as license fee and management charges are also the same which substantiates that both are for the enjoyment of IPR's rights and are

having nexus with each other. The ld. DR further stated that the management charges are nothing but technical service provided by the assessee which are deemed to accrue or arise in India, irrespective of the fact that whether there is a PE or not, the same is liable to be taxed in India.

11. The learned Authorised Representative (ld. AR for short), on the other hand, controverted the said fact and stated that the issue before us is already covered by the Tribunal's decision in the case of *Lloyd's Register Asia* (supra) wherein it was held that 'managerial services' are not 'fees for technical services'. The ld. AR further stated that the said proposition would also be applicable in the assessee's case also and relied on the order of the ld. CIT(A). The ld. AR also relied on the decision of the Hon'ble Delhi Court in the case of *Steria (India) Ltd. v. CIT* [2016] 72 taxmann.com 1/241 Taxman 268/386 ITR 390 which held that the payment made for managerial service cannot be treated as 'fee for technical service'. The relevant extract of the decision of the Tribunal is reproduced hereunder for ease of reference:

9. We have heard the rival contentions and gone through the facts and circumstances of the case. On the aforesaid facts, the reasons why the provisions of section 40(a)(i) of the Act will not apply to payment by way of management fees made by the assessee to LRS, we will deal with the last argument taken by the assessee that whether payment of management fees cannot be regarded as fees for technical services as per the DTAA between India and the U. K.. For this, the learned Counsel for the assessee stated that the said payment is in the nature of managerial services' which is not covered by the definition of fees for technical services as per article 13(4) of the said DTAA. He further deliberated that the License Agreement and the Management Services Agreement are independent of each other and, hence, payment under the later agreement (for management services) cannot be regarded as ancillary and subsidiary to the enjoyment of the property as per the earlier agreement (for license).

10. We have heard learned CIT DR also, who mainly relied on the order of DRP as well as that of the AO.

11. We noted the facts and also gone through the DTAA between India and UK, which shows that the article 13(4) deals with fees for technical services and it has been defined to mean consideration for rendering any technical and consultancy services. The expression 'managerial services' is not included in the said definition. The nature of services as covered by the Management Services agreement i.e. corporate communications, corporate finance and group reporting services, group quality assurance, human resources, information technology, integrated business system, internal audit services, legal services, operational management and

reporting, risk management and secretarial services and taxation and treasury services would fall in the category of managerial services which does not form part of fees for technical services. In this regard, Tribunal's attention was drawn to judgment of the Hon'ble Delhi High Court in the case of *Steria (India) Ltd. v. CIT* [2016] 72 taxmann.com 1/241 Taxman 268/386 ITR 390 wherein, the relevant services which are similar to the assessee's case, are referred to in paragraph 2 and 3 of the judgment and the Court's conclusion in paragraphs 19 to 24. Similar view has been taken by the Mumbai Bench of the Tribunal in *Dy. CIT v. Hyva Holding B.V* [2019] 106 taxmann.com 24 in that case, though the services were of a mixed nature, the Tribunal has characterised the services as managerial services based the predominant nature of the said services.

12. In the present case before us, the only reason given by the DRP to hold the payment under the Management Services agreement as fees for technical services is that the said services are ancillary and subsidiary to the enjoyment of the property for which the payment by way of royalty has been made. According to them, this test is fulfilled in the present case because the objective of the License agreement and the Management service agreement is the same i.e. to promote safety on land and at sea and in the air. The assessee before us stated that if the services referred to in the Management Services Agreement is accepted as for managerial services, then, the said aspect would not arise in the absence of the services falling in the main part of the definition of fees for technical services as per article 13(4) of the DTAA between India and the U. K.

13. We noted that the test of the object being common is not decisive of the fact that the Management Services agreement is ancillary or subsidiary to the enjoyment of the rights under the License Agreement. The DTAA between India and USA is also similarly worded. As per the Memorandum of Understanding which forms part of the said DTAA, the test of the services being ancillary and incidental to enjoyment of rights under the license agreement would be based on fulfillment of the following conditions:—

- i. The extent to which the services in question facilitate the effective application or enjoyment of the right, property or information described in paragraph 3 (i.e., royalty);
- ii. The extent to which such services are customarily provided in the ordinary course of business arrangements involving royalties described in paragraph 3;
- iii. Whether the amount paid for the services is an insubstantial portion of the combined payments for the services and the right, property or information described in paragraph 3.
- iv. Whether the payment made for the services and the royalty described in paragraph 3 are made under a single contract (or a set of related contracts); and
- v. Whether the person performing the services is the same persons as, or a related person to, the person receiving the royalties described in paragraph 3 or if a person providing the service is doing so in connection with an overall arrangement which includes the payer and recipient of the royalties.

14. Since none of the aforesaid tests, have been fulfilled in the present case, agreement towards Management Services cannot be regarded as ancillary and subsidiary to enjoyment of the property under the License Agreement. Before us, in the course of hearing before the Tribunal, the Revenue had relied upon the judgment of the Hon'ble Apex Court in the case of *PILCOM* (supra) for the proposition that provisions of the DTAA are not applicable when considering the obligation to deduct tax at source. The assessee distinguished on fact that the observations to that effect have been made in the said judgment as it was concerned with deduction of tax at source under section 194E of the Act where liability to deduct tax was unconditional when the condition relating to nature of payment was fulfilled. In the present case before us, we are concerned with deduction of tax at source under section 195 of the Act where the obligation arises only when the sum is chargeable to tax under the Act. For ascertaining chargeability to tax reference to the relevant DTAA is essential. This point of distinction has been

accepted by the Hon'ble Apex Court in Engineering Analysis Centre of Excellence (P.) Ltd. v. CIT [2021] 125 taxmann.com 42/281 Taxman 19/432 ITR 471 thereof while dealing with the obligation to deduct tax at source on software related payments. Hence, in the given facts and circumstances we hold that the assessee's services were managerial in nature and not technical services. Hence, the assessee is not liable to deduct TDS on the same. The disallowance proposed by DRP and made by AO is deleted. This issue of assessee's appeal is allowed.

12. From the above, it is observed that the issue in hand has already been dealt with by the Tribunal though for deduction of TDS, the view that has been taken in the said case will squarely be applicable in the assessee's case also for the reason that the management service agreement referred in the said decision pertains to the same agreement as that of the assessee in the present case. We do not find any infirmity in the order of the Id. CIT(A) in holding that the managerial service provided by the assessee is not in the nature of 'technical services'. We do not find any justification for taking any other view. For the above reason, we deem it fit to dismiss the grounds raised by the Revenue.

13. The findings in ITA No.1781/Mum/2024 (A.Y. 2012-13) will apply *mutatis mutandis* to all other appeals.

14. In the result, all the Revenue's appeal in ITA Nos. 1777/Mum/2024 to 1781/Mum/2024 are hereby dismissed.

ITA No. 1776/Mum/2024 (A.Y. 2016-17)

15. The grounds raised by the Revenue in ITA No. 1776/Mum/2024 (A.Y. 2016-17) reads as under:

1. *Whether on the facts and the circumstances of the case in law, the Ld.CIT(A) has erred in placing reliance on order of the Hon'ble ITAT in the assessee's own case and holding that the assessee's services cannot be regarded as ancillary and subsidiary to enjoyment of property under Licence Agreement despite Management Service provided by Lloyds Register are ancillary and subsidiary to enjoyment of intellectual property right as per Licence agreement despite Art 13(4)(a) of India -UK DTAA is applicable on payment.*

2. *Whether on the facts and the circumstances of the case in law, the Ld.CIT(A) was justified in holding that the assessee services are managerial in nature and not technical services and the assessee is not liable to deduct TDS on the same.*

16. The finding in ITA No.1781/Mum/2024 (A.Y. 2012-13) would be applicable to this also, though the same is on non deduction of TDS amount by the assessee for the payment made by it for the management service rendered by Lloyd's Register of Shipping to the assessee. It is also pertinent to point out that the Tribunal in IT APPEAL PPEAL NOS. 985 (MUM.) OF 2015 & 1918(MUM.) OF 2016 & ORS. has dealt with the issue of section 40(a)(i) of the Act holding that the assessee is not liable to deduct TDS for the services which are managerial in nature and not technical services for A.Ys. 2010-11 to 2015-16. As the said decision is squarely covered for this year also, we find no reason to deviate from the same. Therefore, the grounds of appeal raised by the Revenue are dismissed.

17. In the result, the appeal filed by the Revenue in ITA No. 1776/Mum/2024 (A.Y. 2016-17) is dismissed.

ITA No. 1455/M/2024 (A.Y. 2016-17)

ITA Nos.878 & 879/M/2024 (A.Ys. 2011-12 & 2012-13)

ITA Nos.880 & 881/M/2024 (A.Ys. 2014-15 & 2013-14)

18. These appeals are filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Ld.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), for different assessment years.

19. As the facts are identical in all these appeals, we hereby take ITA No.1455/Mum/2024 pertaining to A.Y. 2016-17 as a lead case.

20. The ground raised by the assessee in ITA No. 1455/Mum/2024 (A.Y. 2016-17) reads as under:

1. *The Learned CIT(A) erred in confirming the short credit of TDS given by the A.O. to the extent of Rs.15,10,82,044/-. In doing so, he has disregarded the rectification application filed with A.O. and details provided. He ought not to have done so.*

21. As the issue of non deduction of TDS for the payment made for managerial services received by the assessee from Lloyds Register of Shipping has already been decided by the Tribunal for this year and earlier years in favour of the assessee, the only issue that has been raised by the assessee in these appeals pertains to non grant of TDS credit by the lower authorities. The assessee has also submitted that it had filed rectification application u/s. 154 of the Act before the Id. A.O. which is pending for disposal. In the present situation, we deem it fit to remand these issues back to the file of the Id. A.O. for verification and thereby direct the Id. A.O. to grant the TDS credit subject to verification and in accordance with law. The assessee is also directed to comply with the proceeding and to furnish all documents in support of its claim.

22. In the result, all these appeals filed by the assessee are allowed for statistical purpose.

Order pronounced in the open court on 30.08.2024

Sd/-
(Renu Jauhri)
Accountant Member
Mumbai; Dated : 30.08.2024
Roshani, Sr. PS

Sd/-
(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai