1IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JM AND SMT. RENU JAUHRI, AM

ITA No.1253/Mum/2014
(Assessment Year: 2009-10)

M/s. Shell International Petroleum Company Limited C/o. BSR & Co. LLP, 1st Floor, Lodha Excelus, Apollo Mills Compound, N.M. Joshi Marg, Mahalaxmi, Mumbai-400 011	Vs.	Dy. Director of Income Tax (International Taxation)-2(1) Room No. 120, Scindia House, Ballard Estate, N.M. Road, Mumbai-400 038
PAN/GIR No. AAICS 0357 B		
(**Assessee**)	:	(**Respondent**)

Assessee by	:	Shri J. D. Mistry/ Madhur Agarwal/Ms. Reema Grewal
Respondent by	:	Smt. Shaileja Rai

Date of Hearing	:	13.06.2024
Date of Pronouncement	:	10.09.2024

O R D E R

Per Kavitha Rajagopal, J M:

This appeal has been filed by the assessee, challenging the final assessment order dated 20.12.2013 u/s. 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 ('the Act') passed in pursuance of the direction of the Hon'ble Dispute Resolution Panel-II, Mumbai passed u/s. 144C(5) of the Act vide order dated 13.11.2013, pertaining to the Assessment Year ('A.Y.' for short) 2009-10.

2. The assessee has raised the following grounds of appeal:

On the facts and circumstances of the case and in law, the learned AO based on the directions of the Hon'ble DRP:

1. erred in assessing the total income at Rs 75,96,54,674/- as against the returned income of Rs 15,18,43,700/-

2. erred in holding that the payments received by the Assessee constitutes 'income' in nature of 'Fees for Technical Services' (FTS) which is liable to be taxed in India

3 erred in not appreciating that the receipts from General Business Support Services (BSS') are in the nature of cost-recharge, which does not constitute as income chargeable to tax in India

4. without prejudice to the above, erred in holding that the payments received by the Appellant for providing General BSS constitutes FTS under the India-UK Double Taxation Avoidance Agreement (DTAA)

5. failed to appreciate that such advisory services do not 'make available' any technical knowledge, skill, experience etc to the service recipient under Article 12 of the India-UK DTAA and hence not subject to tax in India

6. erred in initiating penalty proceedings under section 271(1)(c) of the Act

3. The assessee had also filed an additional ground, challenging the assessment order as being barred by limitation as per the ratio laid down by the Hon'ble Madras High Court in the case of *CIT vs. Roca Bathroom Ltd*. [2022] 445 ITR 537 (Madras).

4. The brief facts of the case are that the assessee - Shell International Petroleum Company Ltd. (SIPCL) is a Shell Group Company, tax resident of UK and incorporated in UK, engaged in the business of providing consultancy services to various Shell operating companies and had filed its return of income on 21.03.2011, declaring total income of Rs.15,18,43,700/-. The assessee's case was selected for scrutiny and notices u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee.

5. The learned Assessing Officer (ld. A.O. for short) had passed the draft assessment order u/s. 143(3) r.w.s. 144C(3) of the Act on 28.02.2013, proposing to make addition on payments received by the assessee to be in the nature of 'fee for technical services' on account of the General Business Support Services (BSS), for which the assessee filed its objection before the Hon'ble DRP which vide direction dated 13.11.2013, proposed the addition on the impugned payment for the services received by the assessee to be in the nature of 'fee for technical services'. The ld. A.O. passed the final assessment order dated 20.12.2013 pursuant to the direction of the Hon'ble DRP, thereby determining the total

income at Rs.75,96,54,674/-, after making an addition on account of 'fee for technical services' amounting to Rs.60,78,10,974/-.

6. Aggrieved, the assessee is in appeal before us, challenging the impugned assessment order.

7. The learned Authorised Representative (ld. AR for short) for the assessee submitted that the additional ground raised by the assessee is not pressed and requires no adjudication as to the legal ground raised by it. The ld. AR contended that during the year under consideration, the assessee has received the impugned amount as per the Cost Contribution Agreement (CCA in short) entered into with Shell India Markets Pvt. Ltd. (SIMPL) for BSS. The ld. AR further contended that the said amount was received by way of cost recharge for general BSS which are in the nature of management support, development and provision of support and business tools, provision of marketing support, promotion of professional competence, legal services, etc. which are not liable to be taxed in India and would not be categorized as 'income of the assesse' as per section 2(24) of the Act. Further, the ld. AR contended that the services are not been made available to the Indian entity and would not be categorized as 'fees for technical services' as per India-UK DTAA. The ld. AR iterated that the lower authorities have relied on the decision of Hon'ble Authority for Advance Ruling (Hon'ble AAR for short) in the case of *Shell India Market Pvt. Ltd.* (vide Application No. 833 of 2009), which has held that the payment received for the services rendered by the assessee from Shell India Market Pvt. Ltd. to be in the nature of 'fees for technical services' which is for providing specialized, technical inputs, which are taxable in India as per the provisions of the I. T. Act and the

India-UK DTAA. The ld. AR further stated that the said decision of the Hon'ble AAR was reversed by the Hon'ble Jurisdictional High Court in the case of *Shell India Market Pvt. Ltd.* The ld. AR contended that since the lower authorities had merely relied on the ruling of Hon'ble AAR on this issue and the same has been quashed by the Hon'ble High Court, which finding would squarely be covered in the case of assessee also. The ld. AR prayed that the addition be deleted.

8. The learned Departmental Representative (ld. DR for short), on the other hand, fairly agreed that the decision of the Hon'ble High Court reversing the ruling of Hon'ble AAR stands covered in favour of the assessee on the issue of holding that the service rendered by the assessee does not qualify as 'technical service' for which the payment received is not a 'fee for technical service' which is not liable to be taxed in India. The ld. DR brought our attention to pg. no. 11 of the Hon'ble High Court order at clause 7 which highlighted the fact that the Hon'ble AAR has not dealt with the issue of 'permanent establishment' of SIPCL, i.e., the assessee in this case as per Article 7 of DTAA for which the Hon'ble High Court has given a direction that the department is at liberty to take necessary steps in accordance with law for dealing with the issue of 'permanent establishment' as per Article 7 of DTAA. The ld. DR prayed that the similar direction should be given on the said issue.

9. The ld. AR in rebuttal to the same, relied on the decision of the Hon'ble Jurisdictional High Court in the case of *Indira Balakrishna, Manager of Estate of Balakrishna Purshottam Purani vs. CIT* [1956] 30 ITR 320 (Bom), wherein it was held that the Tribunal should confine itself to the question that arises in appeal before it and

should not travel beyond the jurisdiction and express opinion which are prejudicial to the assessee that may enhance the department to proceed against the assessee. The ld. AR contended that since the issue of existence of permanent establishment has not been raised by both the sides, the Tribunal ought not to get into the said issue as per the ratio laid down in the decision of *Indira Balakrishna, Manager of Estate of Balakrishna Purshottam Purani* (supra). The ld. AR contended that only the issues for which specific grounds of appeal has been raised, has to be adjudicated.

10. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has entered into a Cost Contribution Agreement dated 01.04.2008 with SIMPL for general BSS which are in the nature of management support, development and provision of support and business tools, provision of marketing support, promotion of professional competence, legal services, development, communication and audit of standards of performance, contracting and procurement services, taxation advice and services, general financial advice and services, employee relations and public affairs/media advice and other business support services. The assessee contends that the cost incurred by the assessee is to be allocated amongst Shell operating companies based on cost allocation keys as per the terms of CCA and further the said costs are without mark up and are charged to the cost sharers on the basis of actual cost incurred by the assessee. It also contended that the payments received without markup are in the nature of reimbursement and not in the character of income which is chargeable to tax in India. They are merely in the nature of cost-recharge as per the CCA. It is further observed that SIMPL filed an application before the Hon'ble AAR for

determining its tax withholding obligation in respect of the cost contribution made by it to the assessee and the Hon'ble AAR vide its order dated 17.01.2012 held that the payments made by SIMPL to the assessee was in the nature of 'fee for technical service' as per Article 13 of India-UK DTAA for which SIMPL was liable to withhold taxes as per section 195 of the Act. Parallely the assessee's case was picked up for scrutiny where the lower authorities made an addition on the impugned payment received by the assessee from SIMPL by extensively relying on the ruling of the Hon'ble AAR which held the same to be 'fee for technical service' in the case of SIMPL. Though the assessee during the assessment proceeding had objected for placing reliance on the ruling of the Hon'ble AAR as being not binding on the assessee, the lower authorities failed to agree with the assessee's contention and held that as per section 245S of the I. T. Act, the ruling of the Hon'ble AAR had binding effect on the assessee unless there is a change in law or facts. The relevant extract of the Hon'ble AAR is cited herein under for ease of reference:

> *" We therefore rule on Que.No.(i) & (ii) that the payment made by the applicant to SIPCL for availing the General BSS under the CCA would constitute income in the hands of SIPCL and is in the nature of fees for technical services within the meaning of Article 13.4 (c) of the DTAC between India and UK; and not in the nature of royalty within the meaning of the term in Explanation 2 to Clause (vi) of Section 9(1) of the Act and under Article 13 of DTAC, while we rule on Que. No. (iii) & (iv). Based on answer to Que. No. (i) & (ii) that the payment received by SIPCL is chargeable to tax in India and the declaration provided by SIPCL that it does not have a Permanent Establishment (PE) in India in terms of Article 5 of DTAC, we rule that the applicant is under obligation to withhold tax under section 195 of the Act. "*

11. Pursuant to the said ruling SIMPL had filed a Writ Petition before the Hon'ble Jurisdictional High Court challenging the validity and legality of the order passed by the Hon'ble AAR and the Hon'ble High Court (in Writ Petition No. 10788 of 2012 vide order dated 01.03.2024), quashed the order of the Hon'ble AAR as being not sustainable by law and by holding that the payment received by the assessee from SIMPL is not in the nature of 'fee for technical service' and further held that the services are in the nature of

managerial service and not technical service which are made available. The relevant extract of the said decision is cited herein under for ease of reference:

> *15. Be that as it may, the crux of the matter lies in ascertaining whether the finding of the AAR that services availed by Petitioner from SIPCL or payments made by Petitioner to SIPCL are off/for 'technical/'consultation' services and secondly, whether such services are 'made available' to Petitioner. Article 13 of DTAA reads as under:*
>
> *"ARTICLE 13*
> *ROYALTIES AND FEES FOR TECHNICAL SERVICES*
>
> *1. Royalties and fees for technical services arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State.*
>
> *2. However, such royalties and fees for technical services may also be taxed in the Contracting State in which they arise and according to the law of that State; but if the beneficial owner of the royalties or fees for technical services is a resident of the other Contracting State, the tax so charged shall not exceed:*
>
> *(a) in the case of royalties within paragraph (3)(a) of this Article, and fees for technical services within paragraph (4)(a) and (c) of this Article;*
> *(i) during the first five years for which this Convention has effect;*
> *(aa) 15 per cent of the gross amount of such royalties or fees for technical services when the payer of the royalties or fees for technical services is the Government of the first-mentioned Contracting State or a political subdivision of that State, and*
> *(bb) 20 per cent of the gross amount of such royalties or fees for technical services in all other cases; and (ii) during subsequent years, 15 per cent of the gross amount of such royalties or fees for technical services; and*
> *(b) in the case of royalties within paragraph (3)(b) of this Article and fees for technical services defined in paragraph (4)(b) of this Article, 10 per cent of the gross amount of such royalties and fees for technical services.*
>
> *3. For the purposes of this Article, the term "royalties" means:*
> *(a) payments of any kind received as a consideration for the use of, or the right to use, any copyright of a literary, artistic or scientific work, including cinematograph films or work on films, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trademark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; and*
> *(b) payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, other than income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic*
>
> *4. For the purposes of paragraph (2) of this Article, and subject to paragraph (5), of this Article, the term "fees for technical services" means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including the provisions of services of technical or other personnel) which:*
> *(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph (3)(a) of this Article is received; or*
> *(b) are ancillary and subsidiary to the enjoyment of the property for which a payment described in paragraph (3)(b) of this Article is received; or*
> *(c) make available technical knowledge, experience, skill, know-how or processes, or consist of the development and transfer of a technical plan or technical design."*

16. From the bare words of the Article, it is clear that income of Shivgan SIPCL will be chargeable to tax in India only if the payment by Petitioner is towards fees for 'technical services'. Under Article 13(4), the term 'fees for technical services' means payments of any kind in consideration for the rendering of any technical or consultancy services. Sub-para (c) to Article 13(4) further restricts the meaning of the term to only that which makes available technical knowledge, experience, skill, know-how or processes, or consists of the development or transfer of a technical plan or technical design.

17. The principle of noscitur a sociis mandates that the meaning of a word is to be judged by the company of other words which it keeps. The word 'consultancy' services follows 'technical' which is further followed by the phrase "which make available technical knowledge, experience, skill, know-how or processes, or consist of development and transfer of a technical plan or technical design." A clear reading indicates that even if consultancy services is 'stand alone', the bunch of words indicate that the said 'consultancy' necessarily relates to consultancy which makes available technical or any other knowledge, experience, skill, know-how or processes and does not relate to consultancy on managerial issues.

18. The Appendix 2 of CCA contains the General BSS. The list of services availed are as follows:

EXAMPLES OF GENERAL BUSINESS SUPPORT SERVICES:

- *Management Support*
- *Development and Provisions of Support and Business Tools*
- *Provision of Marketing Support.*
- *Development, Communication and Audit of Standards of*
- *Performance Promotion of Professional Competence*
- *Information Technology Advice and Services*
- *General Financial Advice and Services*
- *Taxation Advice and Services*
- *Legal Services*
- *Employee Relations and Public Affairs/Media Advice and Services*
- *HR Advice and Services*
- *Contracting and Procurement Services*
- *Other Business Support Services*

A perusal of the list of services relate to managerial services not involving anything of a technical nature. The AAR has discussed the services appearing in the CCA and has concluded that these activities in a retail business are at the core of retail marketing and hence advice tendered in taking a decision of commercial nature is a consultancy service. The AAR has further considered the definition of the word 'Consultancy' as defined in the Oxford English dictionary and has observed that a consultant is a person who gives professional advice or services in a specialized field. However, the AAR failed to appreciate that the word 'Consultancy' appearing in the Article is to be interpreted in the context of consultancy which makes available technical knowledge, etc. and not of managerial nature. The reading of the Article clearly indicates that the consultancy service must be which makes available technical knowledge, etc. Sub-para (c) to Article 13(4) restricts such services to those which make available technical knowledge or consist of development and transfer of a technical plan or technical design. Thus, a harmonious reading of the provision of Article 13 in its entirety, clearly establishes the intent of the DTAA in making income chargeable to tax only if the services availed pertain to technical services or consultancy services. Technical services in this context mean services requiring expertise in a technology. By Consultancy Services, in this context, would mean advisory services. The categories of technical and consultancy services are to some extent, overlapping. Under paragraph 4, technical and consultancy services are considered included services only to the following extent: (1) as described in paragraph 4(a), if they are ancillary and subsidiary to the application or enjoyment of a right, property or information for which a payment described in paragraph (3)(a) of Article

13 is received; (2) are ancillary and subsidiary to the enjoyment of the property for which a payment described in paragraph (3)(b) of Article 13 is received; or (3) as described in paragraph 4(c), if they make available technical knowledge, experience, skill, know-how, or processes, or consist of the development and transfer of a technical plan or technical design. Thus, under paragraph 4(c), consultancy services which are not of a technical nature cannot be included services. Thus, the services availed by Petitioner cannot be said to be technical services and Article 13 is wholly inapplicable in the facts and circumstances of the present case.

19. It will be useful to refer to a decision of the Madras High Court in the case of Skycell Communications Ltd and Anr. v. Deputy Commissioner of Income-Tax and Ors.8 which held as follows:

> *"8. Thus while stating that "technical service" would include managerial and consultancy service, the Legislature has not set out with precision as to what would constitute "technical" service to render it "technical service". The meaning of the word "technical" as given in the New Oxford Dictionary is adjective*
> *1. of or relating to a particular subject, art or craft or its techniques : technical terms (especially of a book or article) requiring special knowledge to be understood : a technical report.*
> *2. of involving, or concerned with applied and industrial sciences : an important technical achievement.*
> *3. resulting from mechanical failure : a technical fault.*
> *4. according to a strict application or interpretation of the law or the rules : the arrest was a technical violation of the treaty.*
>
> *9. Having regard to the fact that the term is required to be understood in the context in which it is used, "fee for technical services" could only be meant to cover such things technical as are capable of being provided by way of service for a fee. The popular meaning associated with "technical" is "involving or concerning applied and industrial science".*
>
> *10. In the modern day world, almost every facet of one's life is linked to science and technology inasmuch as numerous things used or relied upon in every day life is the result of scientific and technological development. Every instrument or gadget that is used to make life easier is the result of scientific invention or development and involves the use of technology. On that score, every provider of every instrument or facility used by a person cannot be regarded as providing technical service.*
>
> *11. When a person hires a taxi to move from one place to another, he uses a product of science and technology, viz., an automobile. It cannot on that ground be said that the taxi driver who controls the vehicle, and monitors its movement is rendering a technical service to the person who uses the automobile. Similarly, when a person travels by train or in an aeroplane, it cannot be said that the railways or airlines is rendering a technical service to the passenger and, therefore, the passenger is under an obligation to deduct tax at source on the payments made to the railway or the airline for having used it for travelling from one destination to another. When a person travels by bus, it cannot be said that the undertaking which owns the bus service is rendering technical service to the passenger and, therefore, the passenger must deduct tax at source on the payment made to the bus service provider, for having used the bus. The electricity supplied to a consumer cannot, on the ground that generators are used to generate electricity, transmission lines to carry the power, transformers to regulate the flow of current, meters to measure the consumption, be regarded as amounting to provision of technical services to the consumer resulting in the consumer having to deduct tax at source on the payment made for the power consumed and remit the same to the Revenue. 15.The use of the internet and the world wide web is increasing by leaps and bounds, and there are hundreds of thousands, if not millions, of subscribers to that facility. The internet is very*

> *much a product of technology, and without the sophisticated equipment installed by the internet service providers and the use of the telephone fixed or mobile through which the connection is established, the service cannot be provided. However, on that score, every subscriber of the internet service provider cannot be regarded as having entered into a contract for availing of technical services from the provider of the internet service, and such subscriber regarded as being obliged to deduct tax at source on the payment made to the internet service provider.*

20. Thus, it is clear from the said decision that any service is construable as technical but one has to see the true import of the service actually rendered and the determination must be made in this context. There is no such discussion in the Impugned order and the finding is based on a generic reference to the meaning of the word 'consultancy' as given in the Oxford English Dictionary. The AAR further holds that the list of services mentioned in the CCA is not an exhaustive list and may include other technical services. Thus Petitioner is correct in contending that the AAR has proceeded on conjectures and surmises to render the finding in the impugned order.

21. The AAR has further held that the services are made available to Petitioner since while providing General BSS, SIPCL works closely with the employees of the applicant and supports/advises them. It is held that Petitioner is able to use the know how/intellectual property generated from the General BSS independent of the service provider and hence the services under the agreement are clearly made available to Petitioner.

In order to understand the import of the words 'made available' as used in the context of Article 13(4)(c), it will be useful to refer to a decision of the Karnataka High Court in CIT, Central Circle v. De Beers (Supra). Paragraph 22 reads as follows:

> *"22. What is the meaning of "make available". The technical or consultancy service rendered should be of such a nature that it "makes available" to the recipient technical knowledge, knowhow and the like. The service should be aimed at and result in transmitting technical knowledge, etc., so that the payer of the service could derive an enduring benefit and utilize the knowledge or know-how on his own in future without the aid of the service provider. In other words, to fit into the terminology "make available", the technical knowledge, skill?, etc., must remain with the person receiving the services even after the particular contract comes to an end. It is not enough that the services offered are the product of intense technological effort and a lot of technical knowledge and experience of the service provider have gone into it. The technical knowledge or skills of the provider should be imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in the future without depending upon the provider. Technology will be considered "made available" when the person acquiring the service is enabled to apply the technology. The fact that the provision of the service that may require technical knowledge, skills, etc., does not mean that technology is made available to the person purchasing the service, within the meaning of paragraph (4)(b). Similarly, the use of a product which embodies technology shall not per se be considered to make the technology available. In other words, payment of consideration would be regarded as "fee for technical/included services" only if the twin test of rendering services and making technical knowledge available at the same time is satisfied." (emphasis supplied)*

22. Similarly, the Delhi High Court in the CIT (International Taxation)-1, Delhi v. M/s Bio-rad (Supra) has discussed the said concept accordingly. Paragraphs 14 and 15 read as under:

> *14. According to the Tribunal, the agreement between the respondent/assessee and its Indian affiliate had been effective from 01.01.2010, and if, as contended by the appellant/revenue, technical knowledge, experience, skill, and other processes had been made available to the Indian affiliate, the agreement would not have run its course for*

such a long period. 14.1 Notably, this aspect is adverted to in paragraphs 17 to 23 of the impugned order. For convenience, the relevant paragraphs are extracted hereafter:

> *"17. A perusal of the aforementioned provision shows that in order to qualify as FTS, the services rendered ought to satisfy the 'make available' test. Therefore, in our considered opinion, in order to bring the alleged managerial services within the ambit of FTS under the India-Singapore DTAA, the services would have to satisfy the 'make available' test and such services should enable the person acquiring the services to apply the technology contained therein.*
>
> *"18. As mentioned elsewhere, the agreement is effective from 01.01.2010 and we are in Assessment Years 2018-19 and 2019-120.[sic.....20]. In our considered opinion, if the assessee had enabled the service recipient to apply the technology on its own, then why would the service recipient require such service year after year every year since 2010?*
>
> *19. This undisputed fact in itself demolishes the action of the Assessing Officer/DRP. Facts on record show that the recipient of the services is not enabled to provide the same service without recourse to the service provider, i.e, the assessee.*
>
> *20. In our humble opinion, mere incidental advantage to the recipient of services is not enough. The real test is the transfer of technology and on the given facts of the case, there is no transfer of technology and what has been appreciated by the Assessing Officer/ld. CIT(A) is the incidental benefit to the assessee which has been considered to be of enduring advantage.*
>
> *21. In our understanding, in order to invoke make available clauses, technical knowledge and skill must remain with the person receiving the services even after the particular contract comes to an end and the technical knowledge or skills of the provider should be imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in the future without depending upon the provider. " [Emphasis is ours]*

15. We tend to agree with the analysis and conclusion arrived at by the Tribunal." (emphasis supplied)

23. Therefore, even if it is fees for technical or consultancy services, it can be only where fees are paid in consideration for making available technical knowledge, experience etc. Thus the view of the AAR that SIPCL works closely and advises the employees of Petitioner and hence makes available the services is not correct. This view in fact suffers from fallacy since the agreement continues to operate till date. If the view of AAR is to be held as correct then the contract must stand concluded as once the services and the know how, skill etc is transferred to Petitioner, the need of continuing to render said services must end. This is factually not so as the CCA is in effect till date.

24. Considering the above discussion it is clear that the AAR has interpreted the requirements to be satisfied for 'make available' based on its own general notion of the said term without appreciating the applicable law on the subject and also reached an erroneous conclusion that the services availed are technical services.

25. Moreover, the AAR has not dealt with the issue relating to the 'Permanent Establishment' of SIPCL and there is no determination on the same. Of course, that was not a subject of reference before AAR.

26. Thus, we have no hesitation in holding that the impugned order dated 17th January 2012 of AAR suffers from legal infirmity and is quashed and set aside.

27. During the course of the arguments, Mr. Mistry stated that Petitioner only seeks relief prayed in clauses (a) and (b) of the petition and does not press the other prayers. Rule is thus made absolute in terms of prayer clauses (a) and (b) which read as follows –

> *"a) That this Hon'ble Court be pleased to declare that the transactions under CCA do not amount to being technical in nature per Article 13 of DTAA between India and UK and therefore, would not be taxable in India;*
>
> *b) That this Hon'ble Court may be pleased to issue a Writ of Certiorari or a Writ in the nature of Certiorari and/or any other appropriate writ, order or direction under Article 226 of the Constitution of India calling for the records and papers of the Petitioner's case and after examining the legality and validity thereof quash and set aside the impugned order dated 17.01.2012 passed by the Authority in AAR No. 833/2009, in the case of the Petitioner and further."*
>
> *28. It is made clear that that the Department is at liberty to take necessary steps as available to it in law including as to whether the subject will be covered under Article 7 of the DTAA. We express no opinion. In such proceedings, if taken, the time taken in the present proceedings will stand excluded for the purpose of limitation.*

12. From the above it is observed that the Hon'ble High Court has categorically held that the services rendered by the assessee are not in the nature of technical service and are merely managerial in nature, though in the case of SIMPL, the same has a binding effect on the assessee for the reason that it arises out of the same CCA for availing General BSS. As the ruling of Hon'ble AAR holding that the same is liable to be taxed in India as 'fee for technical service' has been reversed by the Hon'ble High Court, we find no reason to uphold the order of the ld. A.O. who in fact has relied on the Hon'be AAR's ruling to decide the issue in hand. We, therefore, deem it fit to allow the grounds of appeal raised by the assessee. As the issue relating to permanent establishment of the assessee is not specifically raised before us by both the sides in the grounds of appeal, except for the arguments enhanced by the ld. DR at the time of hearing, we decline to adjudicate on the same.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 10.09.2024.

Sd/-	Sd/-
(Renu Jauhri) Accountant Member	(Kavitha Rajagopal) Judicial Member

Mumbai; Dated : 10.09.2024

Roshani, Sr. PS

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