

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

**Before Dr. B. R. R. Kumar, Accountant Member,
Sh. Sudhir Kumar, Judicial Member**

ITA No. 988/Del/2024 : Asstt. Year: 2018-19

Goodrich Corporation, 2730, Four Coliseum Centre, West Tyvola Road, Charlotte, NC 28217-4578, USA-28217 (APPELLANT)	Vs	ACIT, International Taxation, Circle-1(3)(1), New Delhi-110002 (RESPONDENT)
PAN No. AADCG2976M		

**Assessee by : Sh. Nikhil Ranjan, Adv.
Revenue by : Ms. Banita Devi Neorem, CIT-DR**

Date of Hearing: 06.06.2024	Date of Pronouncement: 22.08.2024
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order dated 05.01.2024 passed by the AO u/s 147 r.w.s. 144C(13) of the Income Tax Act, 1961.

2. Following grounds have been raised by the assessee:

"General ground

1. erred in assessing income of the Appellant at INR 52,78,75,682 as against returned income of Nil;

Final assessment order passed is time-barred

2. erred in not passing the final assessment order within the time limit prescribed under section 153 of the Act which is the outer time limit for passing the final assessment order and hence, the final assessment order dated 05 January 2024 is time barred and liable to be quashed;

Order issued under section 143(3) read with 144C(13) of the Act following the DRP directions dated 29 September

2023 is void and invalid on account of the directions being issued in violation of Circular No. 19/2019 dated 14 August 2019

3. erred in issuing the impugned final assessment order following the DRP directions dated 29 September 2023 where the DRP directions are in contravention of Circular No. 19/2019 dated 14 August 2019 and thereby, vitiating the entire assessment proceedings;

Taxability of repair and maintenance services rendered by the Appellant of INR 51,50,28,965

4. erred in making an addition of INR 51,50,28,865 by treating the repair and maintenance services rendered by the appellant as fee for technical services ('FTS') under the provisions of the Act without appreciating the fact that repair and maintenance services were performed in USA and do not constitute technical services as per the provisions of the Act as well as India-USA Double Taxation Avoidance Agreement ('DTAA'),

5. erred in making an addition of INR 51,50,28,965 by treating the repair and maintenance services rendered by the appellant as Fee for technical services ('FTS') under the provisions of Article 12 of the India-USA DTAA without appreciating the fact that repair and maintenance services do not make available any technical knowledge, know-how or skill to the customers in India and hence, not taxable under Article 12 of India-USA DTAA,

Taxability of corporate allocation charges received by the Appellant of INR 1,28,46,717

6. erred in not appreciating that corporate allocation charges amounting to INR 1,28,46,717 are in the nature of cost-to-cost reimbursement without any profit element involved and hence are not liable to be taxed under the provisions of the Act;

7. erred in making an addition of INR 1,28,46,717 by treating the corporate allocation charges provided by the assessee as FTS under the provisions of Article 12 of the India-USA DTAA without appreciating the fact that such services do not 'make available' any technical knowledge, know-how or skill to the customers in India and hence, not taxable under Article 12 of India-USA DTAA.

Levy of interest under section 234A

8. erred in levying interest under section 234A of the Act amounting to INR 2,37,54,375.

Levy of interest under section 234B

9. erred in levying interest under section 234B of the Act amounting to INR 3,69,51,250.

Levy of late filing fees under section 234F

10. erred in levying interest under section 234F of the Act amounting to INR 10,000.

Initiation of penalty proceedings under section 270A of the Act

11. erred in initiating penalty proceedings under section 270A of the Act against the Appellant.”

Repairs & Maintenance Services - FTS or not:

3. The assessee is a non-resident, TRC holder of USA primarily engaged in the business of providing services in the nature of repair & maintenance of aircraft equipment.

4. Before the AO, the assessee submitted that for the purpose of repair & maintenance, the aircraft equipment are shipped outside India where they are repaired and sent back to Indian customer to India and hence they do not qualify the clause of 'make available'. However, the AO held that the on ground aircraft services provided by the assessee qualify it as 'make available'.

5. The Id. DRP held that “*repair and maintenance services of aircraft parts is a very specialized field requiring technical expertise skill and experience at every stage. They are specific and customer based. Customer of the assessee are airlines which operate passenger and goods carrier. They are not equipped in handling the issues related to break down of aircraft. It is a complete and separate science and art in itself. The services provided by way of repair and maintenance are technical in nature and fall under ambit of services under Fee for Technical Services. As discussed above, once it is established that the services which have*

been provided are specialized customer-based services, what remains to see is whether they pass the test of make available or not under India USA DTAA. Interpretation of make available clause will differ with specific areas of the services under consideration. For instance, interpretation of make available for a concern providing services for the agricultural sector vis-à-vis education sector would be vastly different from each other. In the same way interpretation of make available is different for a concern engaged in providing services revolving around a highly specialized sector such as Aircraft industry. The make available clause deals with not only making available technical knowledge or know-how or processes or consist of the development and transfer of a technical plan or technical design but also deals with imparting experience and skill. Within the make available clause itself the enduring benefit would be different for all the items mentioned in it for example the enduring benefit of a technical design or know-how cannot be same as enduring benefit coming from imparting of skill or experience. In the former case enduring benefit will outlive the enduring benefit brought in by the latter. In case of assessee company, the enduring benefit and make available fall under skill/experience which is shared by assessee company with its customers. Both the parties in these service transactions are engaged in highly specialized work which can be rendered and availed by them only and once the skill/experience is rendered, it continues to give benefit until required again. When it comes to services rendered as skill and experience, the make available and enduring benefit, will almost always have a comparatively short shelf life in this context. This being the case, it cannot be ignored that the make available clause and enduring benefits are satisfied and the service is not of the nature which is so highly technical and specialized that it should be taxed as Fee for Technical Services.”

6. From the above, we find that it could be technical services but the 'make available' clause is totally absent. The repairs & maintenance services are 'not made available' to the clients so that in future they can repair & maintain their own. There is no transfer of technology, no transfer of skill or knowledge or

processes. There is no imparting of experience or benefit. The Id. DRP wrongly interpreted that the 'enduring benefit' gained by the client by the way of repairs & maintenance is akin to 'make available' which cannot be accepted. Rather, it should be the enduring benefit to the clients to undertake repairs & manage the maintenance services, then only it can be considered that the 'make available' clause is satisfied. Since, such 'make available' clause is not satisfied, the services cannot be treated as FTS as per India-USA DTAA.

7. The appeal of the assessee on this ground is allowed

Corporate Allocation Charges – FTS or not:

8. The assessee submitted that they have incurred various charges such as IT expenses, legal charges, back office support on behalf of Goodrich Aerospace Services Pvt. Ltd. and claimed that such expenses have been reimbursed without any profit element. The service agreement entered by the assessee is as under:

As per AO

".....Management, software maintenance and management, infrastructure, server, storage, web hosting, telephonic and electronic communications (including AT&T teleconferencing), global network security, emails, disaster recovery, SAP licenses, procurement and operations software and support, and related services. From time to time, Service Providers will also initiate special....."

intelligence, performing internal and external platform reviews, assisting the business units and Service Recipient in developing plans to meet customer obligations, creating and providing processes and tools across sites to manage programs, and all other services related or incidental to the foregoing.

Service Providers may provide engineering support services to Service Recipient consisting of some or all of procurement and supply of engineering software, provision of training to engineers, engineering software licenses and maintenance fees, finance and engineering back-office support, and all other services related or incidental to the foregoing.

Service Providers may provide legal services to Service Recipient consisting of some or all of review and drafting of contracts and agreements, corporate liability support, board meetings.

1. Design, support and maintain the global HR information systems, applications and processes, including: Learning Portal, Employee Scholar Program, Performance.....

2. Coordinate employees learning and development including: training, support and monitoring of Performance Feedback Tool; assist with talent development and recruiting, coordinate service awards; support relocations and assignments; and support other staffing, organizational and compensation needs as necessary.

F. OPERATIONS SUPPORT

Service Providers may provide operations and sourcing support services to Service Recipient consisting of some or all of inventory and demand planning, supervising and monitoring inventory levels, establishing and managing strategic sourcing process, assisting with supplier selection process, conducting supplier rationalization initiatives, providing supplier support,

treasury, payroll (including design, support and maintenance of global payroll processing.”

9. Based on above, the Assessing Officer proposed to treat the services as FTS. The assessee submitted that they are not rendering any service which enables recipients to not avail similar service in future. Also the assessee submitted, no employee visited India for rendering any such Training. The AO held that the services rendered enhances and enables the recipient for its future endeavour and hence treated the same as FTS.

10. The Id. DRP supported the draft order of the Assessing Officer on the grounds that the assessee is providing “*entire gamut of services ranging from consultancy, managerial, engineering, HR etc. which by the very inherent nature of it, are not standard services but are rendered on basis of specific requirement of specific customers since the kind of problems faced by various customers would not be identical and would not require identical solutions. Once it is established that the services which have been provided are specialized customer- based services, what remains to see is whether they pass the test of make available or not under India USA DTAA. Interpretation of make available clause will differ with specific areas of the services under consideration. For instance, interpretation of make available for a concern providing software vis-à-vis factory equipment would be vastly different from each other. In the same way interpretation of make available is different for a concern engaged in providing services revolving around a highly specialized sector such as Aircraft industry. 'One size fits all' cannot be the underlying principle due to the different nature of business conducted/services given. The make available clause deals with not only making available technical knowledge or know-how or processes or consist of the development and transfer of a technical plan or technical design but also deals with imparting experience and skill. Within the make available clause itself the enduring benefit would be different for all the items*

mentioned in it for example the enduring benefit of a technical design or know-how cannot be same as enduring benefit coming from imparting of skill or experience. In the former case enduring benefit will outlive the enduring benefit brought in by the latter. In case of assessee company, the enduring benefit and make available fall under skill/experience which is shared by assessee company with its customers. Both the parties in these services transactions are engaged in highly specialized work which can be rendered and availed by them only and once the skill/experience is rendered, it continues to give benefit until required again. When it comes to services rendered as skill and experience, the make available and enduring benefit, will almost always have a comparatively short shelf life in this context. This being the case, it cannot be ignored that the make available clause and enduring benefits are satisfied and the service is not of the nature which is so highly technical and specialized that it should be taxed as Fee for Technical Services."

11. From the facts on record, we find that the amounts have been received by the assessee as reimbursement from Goodrich Aerospace Services Pvt. Ltd. an Indian company and it collected the aforesaid charges on the basis of actual expenses incurred. The assessee was not engaged in providing any kind of 'technical' or 'consultancy services' or training which would enable the Indian customer to perform the services independently in future. It was merely customer based information and guidance to the recipient. There was no problem solving skill or operations or knowledge or technology which has been made available to the client. Hence, we hold that the provisions of FTS as per the Article of India-USA DTA are not attracted on the services.

12. The appeal of the assessee on this ground is allowed.

13. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 22/08/2024.

Sd/-

**(Sudhir Kumar)
Judicial Member**

Dated: 22/08/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

**(Dr. B. R. R. Kumar)
Accountant Member**

ASSISTANT REGISTRAR