

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER,
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**I.T.A. No.1700/Mum/2024
(A.Y. 2018-19)**

Assistant Commissioner of Income Tax (IT) – 2(1)(1), Mumbai PAN : AACCC7328N	Vs.	Credit Suisse (Singapore) Limited, 1 Raffles Link, 3334-01, South Lobby Singapore, Singapore,
(Appellant)		(Respondent)

Assessee by	Shri Harsh Shah, AR
Department by	Shri Ajay Kumar Modi (CIT-DR)
Date of Hearing	19.09.2024
Date of Pronouncement	23.09.2024

ORDER

PER SMT. BEENA PILLAI, JM :

The present appeal filed by the Revenue arises out of the order dated 19.01.2024 passed by the Ld. Commissioner of Income Tax (Appeals)-56, Mumbai, National Faceless Appeal Centre (NFAC), Delhi [‘CIT(A)’ in short] for A.Y. 2018-19 on following revised grounds of appeal.

“1. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) is right in holding the commission income received by the

assessee of Rs 26,01,20,559/- from HDFC Asset Management Company is in the nature of business income and not of the nature of business income and not of the nature of other income?

2. Whether on the facts and in the circumstances of the case and in law, the Ld CIT(A) is right in deleting the addition by the AO amounting to Rs 26,01,20,559/ - as commission income taxable as per Article 23 of India-Singapore treaty?"

2. At the outset, both the sides submitted that identical issue in assessee's own case was considered by Co-ordinate Bench of this Tribunal for Assessment Years 2014-15 and 2015-16 in ITA No.6098/Mum/2019 and ITA No.7262/Mum/2019 respectively vide order dated 06.06.2022.

2.1 It is submitted that the Co-ordinate Bench of the Tribunal observed as under:

"10. We have considered the rival submissions and perused the material available on record. At the outset, it is pertinent to note certain provisions of the Act, which are relevant in order to decide the issue at hand. Section 5(2) of the Act provides that the total income of a person who is non-resident includes all income from whatever source derived, which is received or deemed to be received in India; or accrues or arises or is deemed to accrue or arise in India to the assessee. Further, section 9 elaborates the expression "Income deemed to accrue or arise in India". As per section 9(1)(i) of the Act, all the income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source in India, or through the transfer of a capital asset situated in India shall be deemed to accrue or arise in India. Explanation 1 to section 9(1)(i) of the Act, further provides as under:

"(a) in the case of a business of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India;"

Thus, as per the aforesaid provision of Explanation 1(a) to section 9(1)(i) of the Act, it is only that portion of the income which is 'reasonably attributable' to the operations carried out in India shall be deemed to accrue or arise in India for the purpose of taxation under the Act.

11. In the present case, it is not in dispute that the assessee is nonresident for the purpose of the Act. It is also not in dispute that the assessee earns offshore distribution commission income by distributing Mutual Fund schemes launched by HDFC Asset Management Co Ltd, with a view to procure subscriptions for such schemes from investors outside India. It is further not in dispute that assessee does not carry out any operation within India for the purpose of earning offshore distribution commission income. The Revenue has sought to tax the said offshore distribution commission income only by treating the same to be having sufficient nexus / business connection with India, as the Mutual Funds distributed by the assessee were controlled and regulated by SEBI and RBI in India. In the present case, it is pertinent to note that the Revenue has sought to tax the offshore distribution commission income earned by the assessee by invoking the provisions of section 9(1)(i) of the Act and it is not the case of the Revenue that the income is taxable under any other provision of section 9 of the Act. Further, as noted above, for the purpose of treating the income as deemed to accrue or arise in India, it is relevant that the said income should be 'reasonably attributable' to the operations carried out in India. As, in the present case, all the operations of the assessee were carried out outside India, therefore, in such circumstances offshore distribution commission income earned by the assessee cannot be treated as being 'reasonably attributable' to any operation carried out in India.

12. Before concluding, it is relevant to note that the following observations of Hon'ble Supreme Court in Toshoku Ltd. (supra):

"The second aspect of the same question is whether the commission amounts credited in the books of the statutory agent can be treated as incomes accrued, arisen, or deemed to have accrued or arisen in India to the non-resident assesseees during the relevant year. This takes us to s. 9 of the Act. It is urged that the commission amounts should be treated as incomes deemed to have accrued or arisen in India as they, according to the department, had either accrued or arisen through and from the business connection in India that existed between the non-resident assesseees and the statutory agent. This contention overlooks the effect of cl. (a) of the Explanation to cl. (i) of sub-s. (1) of s. 9 of the Act which provides that in the case of a business of which all the operations are not carried out in India, the income of the business deemed under that clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India. If all such operations are carried out in India, the entire income accruing therefrom shall be deemed to have accrued in India. If, however, all the operations are not carried out in the taxable territories, the profits and gains of business deemed to accrue in India through and from business connection in India shall be only such profits and gains as are reasonably attributable to that part of the operations carried out

in the taxable territories. If no operations of business are carried out in the taxable territories, it follows that the income accruing or arising abroad through or from any business connection in India cannot be deemed to accrue or arise in India (See CIT v. R.D. Aggarwal and Co. [1965] 56 ITR 20 (SC) and Carborundum Co. v. CIT (1977) 108 ITR 335 (SC) which are decided on the basis of s. 42 of the Indian I.T. Act, 1922, which corresponds to s. 9(1)(i) of the Act).

In the instant case, the non-resident assessee did not carry on any business operations in the taxable territories. They acted as selling agents outside India. The receipt in India of the sale proceeds of tobacco remitted or caused to be remitted by the purchasers from abroad does not amount to an operation carried out by the assessee in India as contemplated by cl. (a) of the Explanation to s. 9(1)(i) of the Act. The commission amounts which were earned by the non-resident assessee for services rendered outside India cannot, therefore, be deemed to be incomes which have either accrued or arisen in India. The High Court was, therefore, right in answering the question against the department."

13. Further, as the assessee conducts portfolio investments in Indian securities in its capacity as SEBI registered FIL/FPI, conclusion of the learned CIT(A) that the offshore distribution commission income is in the nature of 'business income' of the assessee does not require any interference. Thus, in view of the above factual and legal position, we do not find any infirmity in the impugned order passed by the learned CIT(A). As a result, grounds raised by the Revenue are dismissed.

14. In the result, appeal by the Revenue for assessment year 2014-15 is dismissed."

2.2 Subsequently, it is submitted that Co-ordinate Bench of the Tribunal in ITA No.761 and 762/MUM/2022 in assessee's own case for A.Ys. 2016-17 and 2017-18 vide order dated 17.10.2022 following the order passed by this Tribunal for A.Y. 2014-15 and 2015-16 (*supra*) held that, offshore distribution commission income is in the nature of business income, in the hands of the assessee. And since, the assessee does not have a permanent establishment in India the same does not accrue and arise in India and cannot be taxable in India under the Income Tax Act.

3. The factual matrix of the present year under consideration is admitted to be identical and similar with the facts preceding assessment year referred to hereinabove in assessee's own case. Respectfully following the view taken by the Co-ordinate Bench of this *Tribunal (supra)* in assessee's own case in the preceding assessment years, we hold that "the offshore distribution commission income is in the nature of 'business income' of the assessee does not require any interference.

Accordingly, the grounds raised by the Revenue stands dismissed.

In the result, the appeal filed by the Revenue stands dismissed.

Order pronounced in the open court on 23.09.2024

Sd/-
[RATNESH NANDAN SAHAY]
ACCOUNTANT MEMBER

MUMBAI, DATED: 23/09/2024

Prabhat

Sd/-
[BEENA PILLAI]
JUDICIAL MEMBER