

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 4797/MUM/2023
Assessment Year: 2021-22**

UPS Asia Group Pte. Ltd.,
Bhagwati Compound, Plot No. 2,
Compartment 10/11, Marol Co-
operative Industrial Estate, Off M.V.
Road, Andheri (East),
Mumbai-400059.

**PAN NO. AABCU 5192 M
Appellant**

Asst. CIT (International Taxation)-
4(3)(1),
Vs. 16th floor, Air India Building,
Nariman Point,
Mumbai-400021.

Respondent

Assessee by : Mr. Nitesh Joshi
Revenue by : Mr. Anil Sant, Addl. CIT-DR

Date of Hearing : 19/09/2024
Date of pronouncement : 28/10/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee has been preferred against final assessment order dated 31.10.2023 passed by the Ld. Assistant Commissioner of Income-tax (International Taxation)-4(3)(1), Mumbai [in short 'the Ld. Assessing Officer'] for assessment year 2021-22, pursuant to the direction of the Ld. Dispute Resolution



Panel (DRP) dated 22.09.2023. The grounds raised by the assessee in its appeal are reproduced as under:

Ground No. 1 - Erroneous conclusion of the Appellant constituting a 'Business Connection' under Section 9(1)(i) of the Income-tax Act, 1961 (the 'Act') and Permanent Establishment (PE) under Article 5 of the India-Singapore Tax Treaty (Tax Treaty) in India

1.1 On the facts and circumstances of the case and in law, the Assessing Officer (AO) erred in concluding and the Dispute Resolution Panel ('DRP') erred in confirming that the Appellant has a Business Connection under Section 9(1)(i) of the Act and PE under Article 5 of the Tax Treaty in India due to the activities of UPS SCS (India) Private Limited (*USIPL) without appreciating that the Appellant operates entirely outside India and does not have any presence in India / carry out any operations in India.

1.2 The Appellant prays that the conclusion of Appellant having a Business Connection under Section 9(1)(i) of the Act and PE under Article 5 of the Tax Treaty is erroneous, unwarranted and should be deleted.

Ground No. 2 - Erroneous attribution of taxable income of Rs.1,46,69,018 to the alleged Business Connection under Section 9(1)(i) of the Act / PE under Article 5 of the Tax Treaty in India (this Ground is without prejudice to Ground No. 1)

2.1 On the facts and circumstances of the case and in law, the AO erred in concluding and the DRP erred in confirming the attribution of revenues / profits (55% of revenue in case of outbound consignments and 22.5% in case of inbound consignments as gross India taxable revenue) to the alleged Business Connection / PE without appreciating that the transactions between the Appellant and USIPL (the alleged Business Connection / PE) is at an arm's length price.

2.2 The Appellant prays that the attribution of further revenue / profits to the alleged Business Connection / PE of the Appellant in India is erroneous, unwarranted and should be deleted

Ground No. 3 - Erroneous taxation of interest on Income-tax refund of Rs.51,46,211 as per the provisions of the Act

3.1 On the facts and circumstances of the case and in law, the AO erred in concluding and the DRP erred in confirming that the interest on Income-tax refund is taxable as per the normal provisions of the Act instead of Article 11(2)(b) of the Tax Treaty



without appreciating that the interest on Income-tax refund is attributable to the Appellant and not to the alleged PE in India.

3.2 The Appellant prays that the conclusion of taxation of interest on Income-tax refund as per provisions of the Act is erroneous, unwarranted and should be deleted

2. Briefly stated facts of the case are that the assessee is a company incorporated under the laws of Singapore and is engaged in the business of provision of supply chain management, including the provision of freight forwarding and logistics services. For the year under consideration, the assessee filed return of income on 15.03.2022 declaring total income at Rs.52,93,600/-. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Act were issued and complied with. The assessee had entered into an original transport service agreement w.e.f. 01.01.2012 with Indian Associated Enterprises (AE) namely UPS, SCS (India) Pvt. Ltd. for the provision of freight and logistics services under the transportation agreement. Under the transport agreement, the assessee arranged to perform international freight transportation through the Ocean Liner/Airlines and provide overseas support services, while the Indian AE performed freight and logistics service in India to its Indian customers and to the assessee. The service agreement was slightly modified in relation to assessment year under consideration.

2.1 During the course of the assessment proceedings, the assessee was asked to explain as why the Indian AE should not treated as



business connection of the assessee in India u/s 9(1)(i) of the Act and profit be attributed thereto in the relevant assessment year. In the draft assessment order dated 20.12.2022, the Assessing Officer held that assessee had a business connection in India u/s 9(1)(i) of the Act in the form of its Indian AE, thus, its business income, attributable to the operation in India is taxable in India. The Assessing Officer further held that the Indian AE of the assessee constitute Permanent Establishment (PE) in India within the meaning of Article 5(1), 5(2), 5(8) of the India-Singapore DTAA. The Assessing Officer, accordingly, following earlier years assessments orders, attributed 55% of the revenue in respect outbound transaction amounting to Rs.4,28,63,752/- and 25% of the revenue from the inbound transaction amounting to Rs.28,75,19,543/- totaling to Rs.33,03,83,295/- as attributable to the assessee and applying global profitability rate of 4.4% computed profit of Rs.1,46,69,018/- and was added in the hands of the assessee. The Assessing Officer also held that interest received on the Income-tax refund was taxable at the normal rates i.e. taxable @ 40% along with applicable surcharge and cess instead of claim of the assessee of taxability @ 15% as per article 11(2) of the India Singapore DTAA. The assessee filed objections against the draft assessment order before the Ld. DRP, however could not succeed. Aggrieved, the assessee is in appeal before the Tribunal by way of raising grounds as reproduced above.



3. Before us, the Ld. counsel for the assessee submitted that the ground No. 2 of the appeal in relation to attribution of the profit to the assessee has been held in favour of the assessee by the Tribunal in earlier years and therefore the issue of whether there is permanent establishment of the assessee in India, is merely academic.

4. We have heard rival submission of the parties and perused the relevant materials on record. The ld DR has referred to slight change in the service agreement in the year under consideration but, in our opinion that might be relevant for determination of existence of PE, but as far as issue of attribution of the profit in case of assessee is concerned same is not relevant, because the AO has treated the Indian AE as an dependable agent permanent establishment (DAPE), and said agent has been remunerated on arm's length value and no adjustment had been made by the TPO in the case of DAPE, then no further attribution of the profit is required in the case of the assessee. This principle has been followed in the case of the assessee by the Tribunal in ITA No. 7171/Mum/2017, 7319/Mum/2018 and 6631/Mum/2019 for assessment years 2013-14 to 2015-16. Thereafter in ITA No. 1220/Mum/2021 for assessment year 2017-18 and in ITA No. 2243 & 2244/Mum/2022 for assessment years 2018-19 and 2019-2020 also this ratio has been followed and it is held that since, the Indian AE which has been held to be dependable agent permanent



establishment, has been remunerated at arm's length price, hence no further attribution of profit is required in the case of the assessee. We are of the opinion that unless any activities or the transaction of the assessee with Indian AE i.e. DAPE, other than the transactions which are covered by the transfer pricing study are observed by the AO and no adjustment had been made by the TPO, then no further profit can be attributed to the Indian entity which has been held to be DAPE by the AO. The addition for profit attribution by the AO is accordingly deleted. The issue whether the Indian entity is permanent establishment of the assessee is therefore, merely rendered academic. The ground No. 2 of the appeal of the assessee is accordingly allowed in favour of the assessee and ground No. 1 of the appeal of the assessee is rendered academic and therefore we are not adjudicating upon.

5. The ground No. 3 of the appeal relates to the taxation of interest on income-tax refund of Rs,51,46,211/-. The brief facts qua the issue in dispute are that assessee received interest on income-tax refund amounting to Rs.51,46,211/- which was offered to tax @ 15% of India-Singapore Tax Treaty. But according to the Assessing Officer, the assessee was not qualified for the benefit of the 15% tax rate on the interest of the income-tax refund and should have been taxed as per the normal provisions of the income-tax Act. The Ld. AO held that as per the para 4 of the Article of DTAA between India and Singapore, 15% tax of the interest income cannot be given if



the interest arises through PE in the contracting state. According to the Assessing Officer, the assessee had DAPE in India and only source of income as trademark/technical assistance fees from USPIL. Therefore, interest income received from the Income-tax Department arises through DAPE in India and thus taxable as per the normal provisions of the Act. The Ld. DRP also upheld the finding of the Assessing Officer.

5.1 Before us, the Ld. counsel for the assessee relied on the decision of the Co-ordinate Bench of the Tribunal in the case of ACIT v. Clough Engineering Ltd. [2011] 11 taxmann.com 70 (Delhi) (SB) and Co-ordinate Bench Tribunal in the case of Dy. CIT v. Marubeni Corporation [2022] 139 taxmann.com 367 (Mumbai-Trib.).

5.2 We have heard rival submission of the parties and perused the relevant material on record. The issue of interest arising from the Income-tax refund has been dealt by the Co-ordinate Bench of the Tribunal in the case of the Clough Engineering Ltd. (supra) and held that such interest was not effectively connected with the PE either on the basis of asset test or activities test and therefore, it was taxable under paragraph 2 of the Article 11 of the DTAA. The relevant finding of the Tribunal is reproduced as under:

“11.4 Thus, we are again left with the fundamental question as to whether the debt-claim in this case can be said to be effectively connected with the PE. We have already held that the claim is connected with the PE in the sense that it has arisen on account of tax deduction at source from the receipts of the PE. However, it is also a



fact that payment of tax is the responsibility of the foreign company. The same is determined after computation of its income and the tax forms not an expenditure for earning the income but an item of appropriation of profit. Therefore, even if the debt is connected with the receipts of the PE, it cannot be said to be effectively connected with such receipts because the responsibility to pay the tax lies on the shoulders of the assessee-company from the final profit ascertained as on the last date of the previous year and on closing the books of account. It is for the company to pay the tax from any source available with it. It so happened in this case that the tax got automatically deducted from the receipts of the PE by operation of law. Such collection of tax by force of law would not establish effective connection of the indebtedness with the PE as ultimately it is only the appropriation of profit of the assessee company. However, we may add that we do not venture to say that the interest income has to be necessarily business income in nature for establishing the effective connection with the PE because that would render provision contained in paragraph 4 of Article XI redundant. Thus, there may be cases where interest may be taxable under the Act under the residuary head and yet be effectively connected with the PE. The bank interest in this case is an example of effective connection between the PE and the income as the indebtedness is closely connected with the funds of the PE. However, the same cannot be said in respect of interest on income-tax refund. Such interest is not effectively connected with PE either on the basis of asset-test or activity-test. Accordingly, it is held that this part of interest is taxable under paragraph No. 2 of Article XI. Thus, the ground referred to the Special Bench is partly allowed. The Division Bench shall dispose off the appeal in conformity with this order.”

5.3 Further in the case of Marubeni Corporation (supra), the Tribunal held that unless the interest is connected with the permanent establishment it has to be taxed under Article 11(2) of DTAA. The Article 7 of DTAA comes into play only when the interest income is directly or indirectly attributable to its PE. Respectfully following the finding of the Special Bench of the Tribunal in the case of Clough Engineering Ltd. (supra), the interest received on income-tax refund is held to be not connected with the PE. Accordingly, we set aside the finding of the Assessing Officer and hold that interest received on the income-tax refund is not



effectively connected with the PE and to be taxed as per Article 11(2) of the DTAA between India and Singapore. The ground No. 3 of the appeal is accordingly allowed.

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

Order pronounced in the open Court on 28/10/2024.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 28/10/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai