IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH-D : NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA Nos.1685/Del/2017, 6587/Del/2017, 304/Del/2019 & 6094/Del/2019
Assessment Years : 2013-14, 2014-15, 2015-16 & 2016-17

M/s Vodafone Group Services Limited, **C/o SRBC & Associates LLP,** **Authorised Representatives,** **1st Floor, Tower B,** **DLF Centre Court, Phase-V,** **Sector-42,** **Gurgaon – 122 002.** **PAN : AAECV1395C.**	**Vs.**	**Deputy Commissioner of Income Tax, Circle-3(1)(1), International Taxation, New Delhi.**
(Appellant)		(Respondent)

Appellant by : Shri Ketan Ved, CA.
Respondent by : Shri Vijay B. Vasanta, CIT-DR.

Date of hearing : **08.10.2024**
Date of pronouncement : **22.10.2024**

ORDER

Per Saktijit Dey, Vice President :

Captioned appeals by the same assessee are against the final assessment orders passed for assessment years 2013-14, 2014-15, 2015-16 and 2016-17 in pursuance to directions of learned Dispute Resolution Panel (DRP). Since the issues arising in the appeals are common, the appeals have been clubbed together and disposed of in a consolidated order as a matter of convenience.

ITA Nos.1685/Del/2017, 6587/Del/2017 & 304/Del/2019 (AY 2013-14, 2014-15 & 2015-16)

2. The common issue as per ground No.1 of all these appeals relates to attribution of profit to the Service Permanent Establishment (PE) in India. Before we delve into this issue, it is necessary to briefly discuss the relevant

facts. As stated, the assessee is a non-resident corporate entity incorporated in United Kingdom (UK) and a tax resident of that country. It has further been stated by the departmental authorities that the assessee is engaged in providing various services in areas, such as, procurement, marketing, product development, supply chain, network, legal, finance, human resource, etc. to its group companies and subsidiaries in India. For providing such services, the assessee has entered into an inter-company agreement. As discussed by the Assessing Officer, under the above said agreement, the assessee provided various support services to the Indian group companies.

3. In the returns of income filed for the assessment years under dispute, the assessee admitted existence of service PE in India and out of the amounts received towards provision of inter-group services, the assessee attributed certain percentage towards the profit of the PE. Before the Assessing Officer, the assessee contended that various support services were mostly rendered from outside India. However, it was submitted that few employees of the assessee visited India during the assessment years under consideration and provided services. It was acknowledged by the assessee that since the stay of such employees in India exceeded the period of 30 days in the relevant financial years, it constituted service PE in terms of Article 5(2)(k) of the India-UK Double Taxation Avoidance Agreement (DTAA). Accordingly, the assessee attributed profit to the PE on estimate basis.

4. The Assessing Officer, however, was not convinced with the attribution of profit to the PE made by the assessee. After calling for necessary information from the assessee regarding the revenue earned from Indian group companies, the Assessing Officer noticed that as against substantial income earned for provision of support services, the assessee has attributed a negligible amount towards the profit of the PE. The Assessing Officer observed that the services rendered by the assessee to Indian group companies are in the nature of technical services, hence, the fee received would qualify as Fee for Technical Services (FTS) both under Section 9(1)(vii) of the Act as well as under Article 13 of India-UK DTAA. Accordingly, he treated the entire receipt in assessment years 2013-14 and 2014-15 as FTS and brought it to tax. Insofar as assessment year 2015-16 is concerned, the

Assessing Officer made a departure from the view taken in assessment years 2013-14 and 2014-15. By relying upon the directions of the DRP in assessment year 2014-15, the Assessing Officer held that the profit of the PE has to be computed by applying the gross global profit ratio of 1.92% to the total revenue earned. Accordingly, he computed the income of the assessee.

5. Against the draft assessment order so framed, the assessee raised objections before learned DRP. While disposing of the objections, learned DRP did not agree with the view of the Assessing Officer that the receipts have to be treated as FTS. Learned DRP held that the receipts are in the nature of business income and accordingly, directed the Assessing Officer to attribute profit to the PE by taking the global gross profit ratio to the total turnover after reducing the expenses incurred. In terms with the directions of learned DRP, the Assessing Officer finally attributed profit to the service PE of the assessee based on the global profit ratio to the total turnover. Accordingly, he computed the income of the assessee.

6. Before us, learned Counsel appearing for the assessee submitted that identical nature of dispute arose in assessment year 2016-17, as well. He submitted, while disposing of the objections of the assessee, learned DRP had taken a view that 25% of the income computed after taking gross global profit margin over revenue earned in India should be attributable to the PE in India. He submitted, following the aforesaid direction of learned DRP, the Assessing Officer has not only computed the income in assessment year 2016-17 but has followed it up in assessment years 2017-18, 2018-19, 2019-20, 2020-21 and 2021-22. He submitted, since, from assessment year 2016-17 onwards the Assessing Officer has made the profit attribution to the PE following a particular method, for the sake of consistency, the assessee is agreeable to such method of attribution of profit to PE to settle the dispute. Learned Counsel further made a submission at the Bar that though against the final assessment orders passed in assessment years 2017-18 to 2021-22, the assessee has preferred appeals before learned first appellate authority challenging the attribution of profit, however, the assessee is willing to accept the profit attribution to the PE made by the Assessing Officer in the said assessment years. He submitted, the methodology applied by the

Assessing Officer for attribution of profit in assessment years 2016-17 to 2021-22 may be applied to assessment years 2013-14 and 2014-15 as well for the sake of consistency.

7. Learned DR submitted, the issue can be restored back to the Assessing Officer for re-examination.

8. We have considered rival submissions and perused materials on record. As discussed earlier, the assessee itself has admitted expenses of PE in India. Therefore, the only dispute which survives is the attribution of profit to the PE. At the cost of repetition, we must observe that though in assessment years 2013-14 and 2014-15 the Assessing Officer, while framing the draft assessment orders, has treated the receipts from intra-group services as FTS, however, learned DRP reversed the decision of the Assessing Officer and treated the receipts as business income of the assessee. However, learned DRP directed the Assessing Officer to attribute profit by adopting global gross profit ratio to the turnover reduced by the expenditure incurred by the assessee. This view was taken by learned DRP in assessment years 2013-14 to 2015-16. In assessment year 2016-17, learned DRP departed from the view taken in earlier assessment years and directed the Assessing Officer to attribute 25% of the income computed after taking gross group profit margin over revenue earned in India to the PE.

9. It is evident, the aforesaid direction of learned DRP in assessment year 2016-17 has been consistently followed by the Assessing Officer while completing assessment till assessment year 2021-22. Before us, learned Counsel appearing for the assessee has submitted that the assessee is willing to accept the methodology adopted by the Assessing Officer for attribution of profit in assessment years 2016-17 to 2021-22 for the purpose of settling the dispute once for all. We find the aforesaid proposition of the assessee acceptable. When learned DRP has directed the Assessing Officer to adopt a specific methodology of attribution of profit to the PE in assessment year 2016-17 and that methodology has been consistently followed by the Assessing Officer in subsequent assessment years, up to assessment year 2021-22, in our view, such method consistently followed by the Assessing

Officer should be applied for computing the attribution of profit to the PE in India even in assessment years 2013-14, 2014-15 and 2015-16. More so, when the assessee has agreed to the profit attribution method adopted by the Assessing Officer in assessment years 2016-17 to 2021-22.

10. In our view, since the Assessing Officer himself has adopted a particular methodology of attribution of profit in all subsequent assessment years, the Department should not have any dispute or grievance with regard to the adoption of such methodology in the impugned assessment years as well. Therefore, in our view, no useful purpose would be served by restoring the issue to the Assessing Officer. In view of the aforesaid, we direct the Assessing Officer to attribute profit to the PE by adopting the same methodology as was adopted by the Assessing Officer in assessment years 2016-17 to 2021-22. Grounds are partly allowed.

11. In ground No.2 of all these appeals, the assessee has raised the issue of short grant of TDS credit. Having considered rival submissions, we direct the Assessing Officer to factually verify assessee's claim and grant credit of TDS in accordance with law.

12. Ground No.3 in all these appeals, being premature, are dismissed.

ITA No.6094/Del/2019 (AY 2016-17)

13. At the outset, on instructions, learned Counsel appearing for the assessee did not press ground Nos.1 & 2 with their sub-grounds. Accordingly, these grounds are dismissed as not pressed.

14. In ground No.3, assessee has raised the issue of short grant of interest under Section 244A of the Act and, in ground No.4, the assessee has raised the issue of short grant of TDS credit.

15. Having considered rival submissions, we direct the Assessing Officer to factually verify assessee's claim and grant interest and TDS credit in accordance with law.

16. In the result, the appeal is partly allowed for statistical purposes.

17. To sum up, ITA Nos.1685/Del/2017, 6587/Del/2017 & 304/Del/2019 are partly allowed and ITA No.6094/Del/2019 is partly allowed for statistical purposes.

Above decision was pronounced in the open Court on 22nd October, 2024.

Sd/-	Sd/-
(S. RIFAUR RAHMAN)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

VK.

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar