INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER
AND
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 2409/Del/2023
(Assessment Year: 2020-21)

Rockwell Collins Southeast Asia Pte Ltd, 18, Loyang Lane, 508918, Singapore, Singapore	Vs.	DCIT, Circle-3(1)(1), Delhi
(Appellant) **PAN:AAJCR7985R**		(Respondent)

ITA No. 2410/Del/2023
(Assessment Year: 2020-21)

Rockwell Collins INC, 400, Collins Rd NE, Cedar Rapids, IA 52498, United States of America, USA,52498	Vs.	DCIT, Circle-3(1)(1), Delhi
(Appellant) **PAN:AAJCR7883E**		(Respondent)

Assessee by :	Shri Rajan Vora, CA Ms. Arradhna, CA
Revenue by:	Ms. C. Chandra Kanta, CIT DR
Date of Hearing	06/11/2024
Date of pronouncement	14/11/2024

<u>O R D E R</u>

<u>PER M. BALAGANESH, A. M.:</u>

1. The appeal in ITA No.2409/Del/2023 for AY 2020-21, arises out of the order of the ld Assessing Officer [hereinafter referred to as 'ld. AO', in short] in Appeal No. ITBA/AST/S/143(3)/2023- 24/1053995317(1) dated 27.06.2023. ITA No. 2410/Del/2023 for AY 2020-21 arises out of order ld

AO dated 28.06.2023 in appeal No. ITBS/AST/S/1043(3)/2023-24/1054030143(1).

2. Identical issues are involved in both these appeals and hence they are taken up together and disposed of by this common order for the sake of convenience.

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3. The ground No. 1 raised by the assessee is general in nature and does not require any specific adjudication.

4. Ground Nos. 3 and 4 raised by the assessee were stated to be not pressed by the ld AR for which a separate letter dated 05.11.2024 has been filed on behalf of the assessee. Accordingly, these two grounds are hereby dismissed as not pressed.

5. Ground Nos. 4 and 5 raised by the assessee are with regard to taxability of Rs. 12,78,69,526/- received towards repairs and maintenance services rendered by the assessee.

6. We have heard the rival submissions and perused the material available on record. Assessee is a company established under the laws of Singapore and is engaged in providing repair and maintenance services of aircraft equipment to Indian customers. For the captioned year, the assessee filed its return of income on 13 January 2021 declaring total income as NIL. The assessee claimed credit of the entire taxes deducted at source ('TDS') of Rs. 76,08,630/- as refund during the subject year. During the year under consideration, the Assessee has earned following receipts from Indian customers:-

Nature of Income	Amount (in Rs.)	Taxability	Comments
Repair services for aircraft equipment	12,78,69,526	Non-taxable under the Act as well India-Singapore tax treaty	In dispute
Income from HR consulting and e-business (Information technology) services	4,65,72,618	Non-taxable under the Act as well India-Singapore tax treaty	Not in dispute

7. The assessee provides repair and maintenance service for aircraft equipment to Indian customers. This is the primary business of the Assessee for which the assessee charge repair and maintenance fees. For the purpose of repair and maintenance, the aircraft equipments are shipped outside India where aircraft equipments are repaired and sent back to the customers in India. In this regard, the assessee enclosed the specimen document in relation to shipment of equipment including the e-mail communications in pages 301 to 330 of the Paper Book to prove the fact that the repairs were carried out outside India. The assessee earned revenue of 12,78,69,526/- from Indian customers on account of such repairs and maintenance services. The assessee also submitted the copy of agreement, purchase orders along with copy of invoices raised on the Indian customers on sample basis which are enclosed in pages 211 to 248 of the Paper Book. The ld AR drew our attention to the steps involved in the rendition of repairs and maintenance services by the assessee as under:-

Step 1: Intimation of need for repair and maintenance services by the customer

Step 2: Customer sends the aircraft equipment to the designated facility of the Assessee in Singapore

Step 3: On receipt of the equipment, the Assessee evaluates repairs to be undertaken, provides estimate to customer for their approval

Step 4: Post receipt of the customer's approval, the Assessee performs necessary repairs at the designated facility

Step 5: Post completion of repairs at the designated facility in Singapore, the Assessee informs the customer and confirms the place of delivery to ship back the equipment.

8. The ld AO however held that the sum of Rs. 12,78,69,526/- received by the assessee in the course of rendering repair services for aircraft equipment would have to be construed as 'Fee for Technical Services (FTS)' both under u/s 9(1)(vii) of the Act as well as under the India-Singapore Double Taxation Avoidance Agreement (DTAA). The ld AO observed that the consideration received by the assessee for rendering repair and maintenance services are in the nature of 'technical and consultancy services' since the solution provided by the assessee through a automated process by using of data provided by the customers involved special knowledge. The assessee raised an objection that services are rendered outside India. The ld AO buttressed this argument of the assessee by observing that place of rendition of service is not important as long as the services are utilized for a business or profession carried on in India. The ld AO also observed that income of the recipients would be chargeable to tax in the country where the source of payment is located i.e. where the buyer is located. In support of this proposition, he relied on the decision of the Hon'ble Supreme Court in the case of GVK Industries reported in 332 ITR 130 (SC). The ld AO also observed that the repairs and maintenance services were made available to the Indian customers so that they can use it independently without the support of the assessee. The equipments/ parts are essential parts of an aircraft and due to lack of technical expertise in India, the equipments are sent to Singapore for technical repair and maintenance. Once the parts are sent back to customer in India, the client is equipped to use that part and fly the

aircraft. Unless, the Assessee does not 'make available' the required technology to the client in India, it is not possible for the Aircraft clients to operate those aircrafts. In addition to repair and maintenance agreement, both the parties also exchange the proprietary information. There are restrictions placed on both the parties to prevent the use or the disclosures to any person outside the organization of all the data received i.e. the Assessee is sharing 'secretive and confidential' data with the customers in India which signifies that technical know-how and information is being 'made available' to the clients in India.

9. The assessee vehemently pleaded that the revenues earned by it on account of repairs and maintenance of aircraft equipment do not constitute payment for 'technical services' as defined in Explanation 2 to section 9(1)(vii) of the Act ; and that the repairs and maintenance services are routine maintenance services and not technical services as per the Act. The assessee placed reliance on the decision of the co-ordinate bench decision of this Tribunal in the case of Global Vectra Helicorp Ltd reported in 159 taxmann.com 282 (Del Trib) wherein it was held that the since the entire repairs and maintenance of Helicopter parts was carried out outside India and nothing was done in India, the payment in the nature of repair and maintenance services is not chargeable to tax in India in the hands of the non- resident. Admittedly, in the instant case, the assessee is a tax resident of Singapore and hence, the revenues earned thereon would not be chargeable to tax under the Act. The assessee also placed reliance on the decision of the Delhi Tribunal in the case of DLF Ltd Vs. ITO reported in 111 taxmann.com 214 (Del Trib) wherein that assessee made payment to UK based company for aircraft maintenance which was in nature of routine repairs and maintenance and the same would not fall under the

category of FTS u/s 9(1)(vii) of the Act. It was also pleaded that the expression 'technical repairs' are different from 'technical services' and reliance was placed on the decision of the Hyderabad Tribunal in this regard in the case of BHEL-GE-Gas Turbine Servicing Pvt. Ltd reported in 24 taxmann.com 25 (Hyd Trib). The assessee also pleaded that it has no Permanent Establishment (PE) in India. Hence, the payment received towards repairs and maintenance of aircraft would fall at best under the category of works contract constituting business receipts and in absence of PE in India, the same would not be taxable even as per the India-Singapore Treaty. In support of this proposition, the assessee relied on the decision of the Mumbai Tribunal in the case of DHL Air Ltd Vs. DCIT reported in 86 taxmann.com 277 (Mum Trib) wherein, it was held that services for repairs and maintenance of aircraft cannot be termed as technical services as defined in section 9(1)(vii) of the Act and rather it falls under the category of works contract as per section 194C of the Act which fact is also clarified by CBDT in its Circular No. 715 dated 08.08.1995 vide Question No. 29. Further, the assessee also submitted that co-ordinate bench of Delhi Tribunal in the case of Parasrampuria Synthetics Ltd reported 20 SOT 248 (Del Trib) held that use of services of technically qualified persons to render the services did not bring the amount paid as "fee for technical services" within the meaning of Explanation 2 to Section 9(1)(vii) of the Act. Similar decision was rendered by Delhi Tribunal in the case of Spicejet Ltd reported in 145 taxmann.com 622 (Del Trib). The assessee also pleaded that the services rendered by it does not make available any technical knowledge, technical plan or design which would enable the user to carry out the repairs of the aircraft on its own. Accordingly, even if the services rendered by the assessee are construed as technical services under the Act, the same could not be

construed as FTS under the treaty since the same does not make available technical knowledge to enable the end user to use the same by its own. In this regard, the assessee placed reliance on the decision of Hon'ble Karnataka High Court in the case of De Beers India Minerals Pvt. Ltd reported in 21 taxmann.com 214 (Kar HC) and decision of the Hon'ble Jurisdictional High Court in the case of Guy Carpenters reported in 20 taxmann.com 807 (Del HC), among other decisions. However, none of the aforesaid submissions were appreciated by the ld AO and ultimately the services rendered by the assessee were construed as FTS taxable u/s 9(1)(vii) of the Act as well as under Article 12 of India-Singapore Treaty.

10. From the modus operandi operated by the assessee for rendering of repairs and maintenance services, we find that the aircraft equipments are shifted outside India for repairs. The repairs are carried out outside India. The equipment after due repairs and maintenance are shipped back to the customers in India. There is absolutely no transfer of any technology, nor technical plan or design or make available technical knowledge to the recipient of the services, which would enable the recipient to carry out repairs on its own without the assistance of the assessee. In our considered opinion, the services rendered do not satisfy the 'make available' clause prescribed in Article 12 of India-Singapore treaty. Further, no technical knowledge, experience, skill, knowhow, technical plan or technical design was made available or transferred by the assessee to any party while rendering the said services. No representative of the assessee had come to India for rendering any services. The entire repairs and maintenance services, at the cost of repetition, are rendered only outside India. The crisis calls are attended over phone from Singapore. No training whatsoever is given by Singapore entity to the Indian representatives.

Further, it is not in dispute that the assessee does not have any PE in India. These facts are very clear from the sample Dispatch plus Product Service Agreement entered into by the assessee with Inter Globe Aviation Pvt. Ltd which is enclosed in pages 211 to 248 of the Paper Book. The copies of the invoices raised by the assessee are enclosed in pages 261 to 264 of the Paper Book.

11. The ld DR before us vehemently pleaded that the ld AO had applied 'source rule' in the instant case. She doubted the fact as to whether services per se were rendered in Singapore by the assessee. She stated that services of Airbus are rendered in France which is in public knowledge. We find that this argument to be completely absurd and devoid of merit in view of the fact that no consideration was received by the assessee from Airbus. Further, this was not even the case of the ld AO for treating the receipts as FTS in the hands of the assessee. We further find that the issue in dispute is squarely covered by the co-ordinate bench decision of the Delhi Tribunal in the case of Goodrich Corporation Vs. ACIT in ITA No. 988/Del/2024 for AY 2018-19 dated 22.08.2024 which is a sister concern of the assessee, wherein, exactly the identical issue was subject matter of consideration. For the sake of convenience, the relevant operative portion of the said order is reproduced hereinunder:-

> ***"Repairs and 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 avallable 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 avalled 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, can then only it 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."

12. In view of the aforesaid observations and respectfully following the judicial precedent hereinabove, we hold that the revenue earned by the assessee from rendition of repairs and maintenance services of aircraft equipment cannot be construed as FTS both under the Act as well as under the treaty. Accordingly, Ground Nos. 4 and 5 raised by the assessee are allowed.

13. Ground No. 6 raised by the assessee is challenging the chargeability of interest u/s 234A and 234B of the Act. If the return of income is filed beyond the prescribed due date u/s 139(1) of the Act, then interest u/s 234A of the Act shall be leviable. The ld AO is directed to examine this fact and decide accordingly. The chargeability of interest u/s 234B of the Act would be consequential in nature.

14. Ground No. 7 raised by the assessee is challenging the initiation of penalty proceedings u/s 270A of the Act. In view of the decision rendered by us for ground No. 4 and 5 hereinabove, the penalty proceedings would have no legs to stand.

15. In the result, the appeal of the assessee in ITA No. 2409/Del/2023 is partly allowed.

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16. The facts of this assessee are exactly identical to the facts adjudicated hereinabove in ITA No. 2409/Del/2023. Hence, the decision rendered hereinabove shall apply mutatis mutandis for this appeal of the assessee also except with variance in figure and ground numbers.

17. To Sum Up,

Appeal by	Assessment Year	ITA No.	Result
Rockwell Collins Southeast Asia Pte Ltd	2020-21	2409/Del/2023	Partly allowed
Rockwell Collins INC	2020-21	2410/Del/2023	Partly allowed

Order pronounced in the open court on 14/11/2024.

-Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

-Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Dated: 14/11/2024
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi