

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1995/Mum/2022
Assessment Year: 2019-20

Swiss Re Asia Pte Ltd. C/o Ernst and Young LLP 14 th Floor, The Ruby 29, Senapati Bapat Marg Dadar (West) Mumbai - 400028 [PAN: AAXCS8346P]	Vs	Deputy Commissioner of Income Tax (International Taxation), Circle - 4(2)(2)
अपीलकर्ता/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Anish Thacker & Pranay Gandhi, A/Rs
Revenue by :	Shri Satya Pal Kumar, CIT D/R

सुनवाई की तारीख/Date of Hearing : 23/09/2025

घोषणा की तारीख/Date of Pronouncement : 25/09/2025

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 20/07/2022 framed u/s 143(3) r.w.s. 144C(13) of the Act, pertaining to AY 2019-20.

2. The grievance of the assessee reads as under:-

"Based on the facts and circumstances of the case, Swiss Re Asia Pte Ltd (hereinafter referred to as the Appellant) craves leave to prefer an appeal against the assessment order (Order) dated 20 July 2022 passed by the Deputy Commissioner of Income-tax (International Taxation) Circle - 4(2)(2), Mumbai (hereinafter referred to as the 'learned AO') under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (Act), in pursuance of the directions issued by the Hon'ble Dispute Resolution Panel -2, Mumbai (hereinafter referred to as the 'Hon'ble DRP') on the following grounds, each of which are without prejudice to and independent of the others:

1. Ground 1

2.

The learned AO has erred in initiating and completing assessment proceedings under section 143(3) of the Act without issuing a valid notice under section 143(2) of the Act i.e, the notice under section 143(2) of the Act dated 31 March 2021 for initiating assessment was issued by National E-assessment Centre, NeAC (NeAC) instead of

being issued by Deputy Commissioner of Income-tax (International taxation) - 4(2)(2) [DCIT (IT) - 4(2)(2)] [i.e. Jurisdictional Assessing Officer (AO)].

2. Ground 2

The learned AO has, on the facts and circumstances of the case and in law, and based on the directions of the Hon'ble DRP, erred in proposing to assess the total income of the Appellant at Rs 1,381,509,960, as against NIL reported by the Appellant in its return of income

3. Ground 3

The learned AO has, on the facts and circumstances of the case and in law, erred in holding that in relation to the reinsurance premium amounting to INR 7,034,646,504 earned by the Appellant from its Indian cedents, the Appellant has a business connection in India as per the provisions of section 9(1)(i) of the Act and a Permanent Establishment (PE) in India as per Article 5 of the India-Singapore tax treaty (IS treaty)

In this regard, the learned AO has additionally inter alia erred on the following grounds:

3.1. The learned AO has made erroneous inferences in relation to the facts of the Appellant and consequently erred in holding that Swiss Reinsurance Company Ltd, India Branch (SRIB) and Swiss Reinsurance Global Business Solutions India Private Limited (SRGBS) constitute Fixed Place PE, Service PE and Agency PE of the Appellant in India under the IS treaty.

3.2 The learned AO has erred in holding that the third party Indian cedents to be the agents of the Appellant in India.

4. Ground 4

The learned AO has, on the facts and circumstances of the case and in law, erred in holding that the Appellant has a business connection in India as per the provisions of section 9(1)(i) of the Act and PE in India as per Article 5 of the IS treaty in relation to the retrocession premium amounting to INR 9,587,980,819 earned by the Appellant from SRIB.

In this regard, the learned AO has additionally inter alia erred on the following grounds:

4.1 The learned AO has made erroneous inferences in relation to the facts of the Appellant and consequently, erred in holding that SRIB and SRBS constitute Fixed Place PE, Service PE and Agency PE of the Appellant in India.

4.2 The learned AO has failed to consider that the facts pertaining to the retrocession premium and reinsurance premium are distinct from each other. Accordingly, the AO has erred in not providing separate reasoning/ rationale, as to why the Appellant has a business connection in India as per the provisions of section 9(1)(i) of the Act and a PE in India as per Article 5 of the IS treaty in respect of its retrocession premium.

5. Ground 5

Without prejudice to Grounds of appeal No. 3 and 4, the learned AO has, on the facts and circumstances of the case and in law, further erred in determining the amount of INR 831,131,366 as attributable to the alleged PE of the Appellant.

6. Ground 6

The learned AO has, on the facts and circumstances of the case and in law, erred in holding that the income earned by the Appellant from rendering of various support services to SRIB amounting to INR 314,641,333 and to SRBS amounting to INR 235,737,260, are taxable in India under Article 12 of the IS treaty.

7. Ground 7

Without prejudice to Ground 6, the learned AO has, on the facts and circumstances of the case and in law, erred in taxing the income earned by the Appellant from rendering of various support services to SRIB amounting to INR 314,641,333 and to SRBS amounting to INR 235,737,260, at the rate of 40% (plus surcharge and education cess) in place of the rate of 10% under Article 12 of the IS treaty.

8. Ground 8

The learned AO has, on the facts and circumstances of the case and in law, erred in grant short credit of Taxes deducted at Source (TDS) amounting to INR 31,730,564.

9. Ground 9

The learned AO has, on the facts and circumstances of the case and in law, erred in levying consequential interest under section 234D of the Act.

10. Ground 10

The learned AO erred in initiating penalty proceedings under section 270(A) of the Act for under reporting and mis reporting of income for the captioned Assessment Year.

The Appellant craves leave to add, alter, vary, omit, substitute or amend any or all of the above grounds of appeal, at any time before or at, the time of the appeal, so as to enable the Hon'ble Income-tax Appellate Tribunal to decide this appeal according to law."

3. The assessee has raised the following additional ground:-

"11. Ground 11

The Deputy Commissioner of Income-tax (International Taxation) Circle 4(2)(2), Mumbai ['Learned Assessing Officer' ('AO')] erred in law by not passing the order dated 20 July 2022 issued under section 143(3) read with section 144C(13) of the Income-tax Act, 1961 (Act) (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 20 July 2022

which is passed after 30 September 2021 (being the extended time limit as per the provisions of Section 153 of the Act) is time barred and liable to be quashed.

The Appellant craves for leave to add, amend, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing."

4. At the very outset, the authorized representatives of the assessee moved an application dated 22/09/2025 for not pressing Ground No. 1 and Ground No. 11. The same are dismissed as not pressed.

5. Representatives of both sides were heard at length. Case records carefully perused and the judicial decisions brought to our notice duly considered.

6. Briefly stated the facts of the case are that the assessee filed its return of income on 29/11/2019 declaring income at Nil. The assessee has claimed exempt income at Rs. 15,82,40,08,915/-. The return was selected for scrutiny assessment and accordingly statutory notices were issued and served upon the assessee. During the year under consideration, the assessee directed reinsurance services to various Indian insurers (Cedents). The Cedents have paid reinsurance premiums to the assessee amounting to Rs. 7,03,46,46,504/- to reinsure their part of the risk. On the happening of any adverse insurable event, the assessee settled the claim with the Cedent on the part of the risk reinsured by it.

6.1. The assessee has entered into a Retrocession Agreement with its associated enterprise i.e., SRIB, which involves reinsurance of risk of SRIB. For undertaking such risk, SRIB pays the part of the premium received by it from Indian cedents to the assessee as retrocession premium. During the year, the assessee has received Rs. 948,73,03,929/- from SRIB as retrocession premium. The reinsurance and retrocession premia income has been claimed as 'business income' and in the

absence of any PE in India, the entire business income is claimed not taxable in India as per Article 5 r.w. Article 7 of the IS Treaty. The assessee also earned income in the nature of FTS from Swiss Reinsurance Company Ltd., India Branch (SRIB) and Swiss Re Global Business Solutions India Private Limited (SRGBSIPL) towards rendering of support services. The said receipts have been claimed as non-taxable in India as they do not make available technological knowledge, experience etc. as per Article 12(4) of the IS Treaty. This income is treated in the nature of business income in the absence of any PE in India. The entire business income is not taxable in India under Article 5 r.w. Article 7 of the IS Treaty.

6.2. The aforementioned claim of the assessee did not find favour with the AO who proceeded by taxing retrocession/reinsurance premia in India holding that the assessee has PE in India. The AO simply followed the findings given in AY 2018-19 and having established a PE in India, attributed the profits as was held in AY 2018-19. The AO further taxed income earned from rendering support services to SRIB and SRGBSIPL as fees for technical services again following the findings given in AY 2018-19. The assessee raised objections before the DRP but the DRP rejected the grounds of objections following the directions given by the DRP in AY 2018-19 holding that material facts remain the same during the year under reference hence following the views and findings of the DRP in earlier assessment order, upheld the approach of AO/TPO.

6.3. In support of the objections relating to the treatment of rendering of technical services as royalty, the DRP once again rejected the objections following the views and findings of the DRP on this issue in the earlier AYs.

7. We find that in the earlier AY, the Co-ordinate Bench in ITA No. 1492/Mum/2022 vide order dated 17/01/2024 has held as under:-

“It is clear that the DRP was of the view that the issues raised were covered in favour of the appellant by the decision of the Tribunal in the case of Swiss Reinsurance Co. Ltd. v. Dy. CIT [IT Appeal No. 2759 (Mum.) of 2017, dated 4-7-2017] However, in order to keep the issue alive the DRP rejected the objections raised by the appellant. The appellant is now in appeal and has contended that the additions made should be deleted as the DRP has returned a finding that the issue stand covered in favour of the appellant by the aforesaid decision of the Tribunal. There is merit in the aforesaid contention of the appellant. The finding returned by the DRP is binding upon the Assessment Officer in terms of section 144C(13). The case now set up by the revenue, even if assumed to be meriting consideration, is contrary to the finding returned by the DRP. The revenue is not in appeal against the order passed by the DRP as after omission of section 253(2A) by the Finance Act, 2016 with effect from 1-6-2016, no appeal can be filed by the Assessing Officer against the order passed by DRP giving directions under section 144C(5). Since for the Assessment Year 2018-19 Assessing Officer is not permitted to challenge the findings returned by the DRP in appeal before the Tribunal, the revenue cannot be permitted to set up a case against the directions passed by the DRP. Therefore, taking a view consistent with the view taken by the Tribunal in the case of SRCL in order dated 04-07-2017, passed in appeal for the Assessment Year 2013-14 (ITA No. 2759/Mum/2017), the additions made by the Assessing Officer are deleted in view of the finding returned by the DRP that the 'impugned addition already stand adjudicated by the Tribunal in the case of a sister concern in identical facts and circumstances'. Other contentions dealing with the merits, having been rendered academic, are not adjudicated upon and are, therefore, left open. [Para 7.8]

■ *As regards the taxability of fee received by the appellant from SRCL-IB/SGB is concerned, it is noted that Assessing Officer had concluded that the services provided to SRCL-IB and SRGBS were to be chargeable to tax in India in terms of article 12 as the services are highly technical in nature which have made available the technology to SRCL-IB and SGB for further exploitation and use as income generating inputs. The DRP also observed that services provided were of enduring nature and were being provided continuously on a year-on-year basis. Hence, the same were liable to be treated as Fee for Technical Services. [Para 8]*

■ *It is noted that while examining the applicability of provisions contained in section 9(1)(vii) read with Explanation 2, the Assessing Officer had noted that even the rendering of any services by a technical or other personnel without any technology being transferred would also fall within the ambit of fee for technical services. At the same time, in the Final Assessment Order while examining the applicability of provisions contained in section 12(4) of DTAA, the Assessing Officer has noted that in order to satisfy the requirement of 'make available' contained therein the recipient of service should be in a position to utilize the knowledge or know how in future on his own. However, on perusal of the Assessment Order, it is found that the Assessing Officer has brought nothing on record to show that the services rendered made available any technical knowledge, know-how, skill, expertise to SRCL-IB/SGB which enables SRCL-IB/SGB to independently perform their function without support of the appellant in the future. The findings returned by the Assessing Officer that the services provided by the appellant enable SRCL-IB/SGB to provide onwards*

services cannot lead to an automatic conclusion/inference that some technical knowledge, skill or experience was made available by the appellant to SRCL-IB/SGB. In view of the aforesaid, the conclusion drawn by the Assessing Officer that the services under consideration qualify as fee for technical services in terms of article 12 of the DTAA cannot be sustained. [Para 8.1]

- *In view of the above, additions made by the Assessing Officer are deleted. [Para 9]*
- *In result, the appeal preferred by the assessee is allowed.[Para 10]”*

8. As there is a categorical mention by the DRP that the material facts remain the same, therefore respectfully following the decision of the Co-ordinate Bench, we direct the AO to delete the impugned additions. Accordingly, Ground No. 2 to 7 are allowed.

9. Ground No. 8 relates to the ground of short credit of taxes deducted at source. We restore this issue to the file of the AO with a direction to allow the credit of TDS after verification as per the provisions of law. Ground No. 8 is accordingly allowed for statistical purposes.

10. Ground No. 9 is in relation to the levy of interest u/s 234D of the Act. Though, the levy of interest is mandatory but consequential, the AO is directed to charge interest as per the provisions of law.

11. Ground No. 10, is premature and is accordingly dismissed.

12. In the result, appeal of the assessee is partly allowed.

Order pronounced in the Court on 25th September, 2025 at Mumbai.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 25/09/2025

SC S.P.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

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Assistant Registrar
आयकर अपीलीय अधिकरण
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