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

BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.1329/MUM/2025
Assessment Year: 2022-23

Maersk Logistics & Services International A/S (Erstwhile, Damco International A/S.) Unit No.401 & 402, Godrej Two Pirojsha Nagar, Eastern Express Highway, Vikhroli (East) Maharashtra- 400 079 PAN:AAECD1262G	vs	Dy. Commissioner of Income Tax (International Taxation) Circle-3(2)(1), Mumbai
Appellant		Respondent

Present for:

Appellant by : Shri Manish Kanth, AR
Respondent by : Shri Satya Pal Kumar, CIT DR

Date of Hearing : 21.08.2025
Date of Pronouncement : 29.09.2025

O R D E R

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Dispute Resolution Panel (DRP), Commissioner of Income Tax (Dispute Resolution Panel-3), Mumbai, vide order no. ITBA/DRP/F/144C(5)/2024-25/1070919413(1), dated 05.12.2024, passed u/s. 144C(5) of the

Income-tax Act, 1961 (hereinafter referred to as the "Act"), for Assessment Year 2022-23.

2. Grounds taken by the assessee are reproduced as under:

"(*1). On the facts and in the circumstances of the case and in law, the DRP/ learned AO erred in treating the Network Fee of Rs. 1,12,86,35,000, earned during the year by the Appellant as fees for technical services and royalty under the Income-tax Act, 1961 (Act').*

(2). On the facts and in the circumstances of the case and in law, the DRP/ learned AO erred in treating, the Network Fee of Rs. 1,12,86,35,000, earned during the year by the Appellant, as fees for technical services and royalty under Article 13 of the India-Denmark Double Tax Avoidance Agreement (DTAA)

(3). Without prejudice to the above, on the facts and circumstances of the case and in law, the final assessment order issued/passed by the learned Assessing Officer (AO') pursuant to directions passed by the Hon'ble Dispute Resolution Panel ('DRP") is bad in law, in excess of jurisdiction, void ab initio and liable to be quashed being barred by limitation under provisions of Section 144C read with Section 153 of the Income-tax Act, 1961 ('the Act').

(4). On the facts and in the circumstances of the case and in law, the learned AO erred in considering the tax rate as 20% instead of the correct rate of 10% as per the section 9(1)(vii) r.w.s. 115A of the Act while computing the tax on network fees at para 12 of the assessment order.

(5). On the facts and in the circumstances of the case and in law, the learned AO erred in calculating tax @20% as per DTAA while computing the assessable tax in the computation accompanying the assessment order instead of the beneficial rate of 10% under section 115A(1)(b) of the Income Tax Act 1961 with applicable surcharge and cess.

(6). On the facts and in the circumstances of the case and in law, the learned AO erred in levying interest of Rs. 3,38,18,400 under section 234B of the Act and of Rs. 30,81,173 under section 234C of the Act.

(7). On the facts and in the circumstances of the case and in law, the learned AO erred in initiating penalty proceedings under section 270A of the IT Act."

3. The only issue involved in the present appeal is in respect of treatment of network fees earned during the year by the assessee, treated as fees for technical services and royalty under the Act as well as under the India-Netherlands Double Taxation Avoidance Agreement (DTAA).

4. Brief facts of the case are that assessee filed its return on 29.11.2022, reporting total income at 'Nil', claiming refund of Rs.12,32,46,940/-. Return was revised on 27.12.2022 with revised total income at Rs.10,82,41,410/-. Assessee provided the following services to Damco India Pvt. Ltd.:-

a) Services for maintenance of front-end platform which supports the Ocean, Air and Supply Chain Management product.

b) Services related to General IT support such as running and maintaining IT systems.

c) Services related to General Service Centre which provides range of services including finance and accounting and service desk facilities

d) Services for accounting system and for annual running work of infrastructure, maintenance and support.

e) Services to Damco India Pvt. Ltd across specified categories such as travel, fixed assets etc. in order to leverage Damco Group synergies. Assessee coordinates and gets best deal for the group.

f) Services to Damco India Pvt. Ltd obtaining insurance policy for the freight forwarding business and insured under the policy taken by the assessee with TT club. Insurance policy covers global risk for freight forwarding, haulage operator, logistic operator, NVOCC, warehouse operator, in-transit warehousing, space/slot charter.

g) Various administrative services such as Human resources.

4.1. On the analysis of the above, ld. AO categorized these into three broad categories as –

(i) Supply Chain Management;

(ii) Forwarding and Groupage Services;

(iii) IT System Usage and Support.

4.2. Ld. AO in his draft assessment order proposed these services are covered as fees for technical services both under the provisions of the Act as well as Article 12 of the DTAA.

5. Ld. DRP in its directions observed by referring to the decision given by it in the A.Y. 2021-22 in assessee's own case whereby, these services were held to be fees for technical services and royalty in para 5.4 of its order. Ld. DRP noted that the issue involved is *pari materia* to the one dealt in the earlier years as decided by it and hence, there is no material change in the facts to make any deviation from its decisions made in the earlier years.

6. Before us, ld. Counsel for the assessee submitted that the issue in the present appeal is squarely covered by the decision of the Co-ordinate Bench in assessee's own case as well as its other group company for A.Y. 2021-22 vide ITA Nos. 4345/Mum/2023 & 4325/Mum/2023 dated 14.08.2024. The said order is placed in the legal paper book at page 1-11. Ld. Counsel also referred to the orders of the Co-ordinate Bench for A.Y. 2020-21 in ITA No. Nos. 909/Mum/2023 and 937/Mum/2023 dated 19.06.2023. He also referred to similar decisions in assessee's own case as well as in the case of its other group company for A.Ys. 2012-13, 2013-14, 2018-19, 2019-20 which have dealt with this issue and has consistently allowed the claim of the assessee, holding non-taxability of network fee received by the assessee.

6.1. For dealing with the present case, we refer to the most recent decision of the Co-ordinate Bench in assessee's own case for A.Y.2021-22. Relevant extract of the order is reproduced here in below:-

"4. Briefly stated the facts of the case are that the assessee company is engaged in the business of logistics and freight forwarding across the globe. The assessee has various business infrastructures such as IT network, E-commerce portal facilitating interface with customers, network pool of various service providers, such as freight insurance etc.. During the course of scrutiny assessment proceedings the AO noticed that, the assessee has earned its income from services provided to its Indian AE i.e., Damco India Private Limited (DIPL), as network transportation fee. The transportation fee received from DIPL, was subjected to TDS treating the remittance as FTS but in the return of income was not offered to tax treating the same as business income on the ground that there was no PE in India. Since the payment was in the nature of FTS, a showcause notice was issued proposing to treat the transportation fee as FTS. The assessee filed a detailed reply explaining that it is overall responsible for operation and maintenance of the business at global level and since DIPL is part of such network it makes use of facilities like integrated supply chain management, freight forwarding network, Group IT for common platform for integrated and efficient operations. It was explained that, the assessee does not charge any separate charge for use of such facilities. The assessee explained the year-wise split of network fees and network income as per financials of DIPL as under:-

Sr. No.	Financial Year	Network Fee	Network Income
1	2012-13	8,46,91,990	-
2	2013-14	-	32,41,27,789
3	2014-15	-	4,71,16,250
4	2015-16	1,03,25,977	-
5	2016-17	29,53,69,631	-
6	2017-18	33,36,28,382	-
7	2018-19	48,50,40,762	-
8	2019-20	64,97,23,323	-
9	2020-21	41,06,79,169	-

5. From the above chart it was explained that the gross margin in excess of operational costs + arm's length markup, if any, is remitted to the assessee as network fee. The network fee is designed to levy DIPL with the return which would be earned by a local stand-alone freight forwarding and logistics provider. At the same time, the network fee is intended to ensure that if profit of DIPL is less than the arm's length margin, the network income will be paid to DIPL which ensures that DIPL is insulated from the shortfall. From the above chart it was explained that in FY 2013-14 and 2014-15, DIPL has received network income in which it failed to earn profits less than arm's length margin. It was clarified that network fee/network income is not a charge and hence it thus comes under the purview of FTS under Article 12 of India Netherlands Tax Treaty. It was strongly contended that such network fee receipts from DIPL are business income under Article 7 of India Netherlands Tax Treaty and in business of a PE, such network fee receipts are not taxable in India.

6. The explanation of the assessee did not find favour with the AO who was of the firm belief that as per Explanation 2 to Section 9(1)(vii) of the Act, FTS has been defined as any consideration for rendering any managerial, technical or consultancy services and the taxability of the FTS is also applicable in view of the treaty. Accordingly, the network fees of Rs.41,06,79,169/- was taxed as fees for technical services and royalty.

7. Objections were raised before the DRP and the DRP after considering the facts and the submissions, was of the opinion that the DRP in AY 2016-17 had upheld the additions made by the AO to the total income of the assessee treating the impugned receipts as FTS. The DRP further observed that the issues at hand is similar to those which were dealt by the DRP in AY 2012-13 and 2013-14.

8. Though the DRP fairly conceded that identical additions were made in assessee's own case for AY 2013-14, 2017-18, 2019-20 and 2020- 21 and the said additions were deleted by the Tribunal and since the decisions of the Tribunal were not accepted by the revenue, the DRP confirmed the action of the AO.

9. We have given a thoughtful consideration to the orders of the authorities below. The Co-ordinate Bench in ITA No. 7447/Mum/2017 for AY 2013-14; ITA No. 545/Mum/2022 & ITA No. 2240/Mum/2022, for AYs 2018-19 & 2019-20 and ITA No. 909 & 937/Mum/2023, AYs 2017-18 and 2020-21, has deleted the impugned addition. The latest order being that for AY 2017-18 and 2020-21 in ITA Nos. 909 & 937/Mum/2023, the relevant finding of which read as under:-

> *"7. Heard both the sides and perused the material on record. With the assistance of the ld. Representative we have perused all the three judicial pronouncements in the case of the assessee itself as referred supra. The relevant operating part of the decision of ITAT for assessment year 2018-19 vide ITA No. 545/Mum/2022 after considering the decision of ITAT for assessment year 2013-14 is reproduced as under:*
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> > *"9. We have considered the rival submissions and perused the material available on record. We find that the coordinate bench of the Tribunal in assessee's own case in Damco International BV vs DCIT, in ITA No. 7447/Mum./2017, for the assessment year 2013-14, vide order dated 22/08/2022 held that network fees received by the assessee from Damco India are neither in the nature of Royalty nor*

Fees for Technical Services. The relevant findings of the coordinate bench of the Tribunal, in the aforesaid decision, are as under:-

"6. We have heard submissions made by the rival sides and have examined the orders of authorities below. We have also considered the documents on which rival sides have placed reliance in support of their respective submissions. The assessee during the period relevant to the assessment year under appeal has received network fees from Damco India. The services have been rendered by the assessee in accordance with Network Agreement dated 01/01/2013 (at page 3 of the paper book). The contentions of the assessee is that it does not have Permanent Establishment (PE) in India in terms of Article -5 of India- Netherland DTAA. And by virtue of Article-7 of India - Netherland DTAA, network fees earned by the assessee is not taxable in India. At the outset it would be pertinent to mention that the network fee which is subject matter of dispute in the present appeal was earned by the assessee for the period starting from 01/03/2013 to 31/03/2013. For the period starting from 01/04/2012 to 31/12/2012 falling under the same assessment year i.e. assessment year 2013-14, Damco India had agreement with Damco International AS, a Danish entity. Both the agreements i.e. agreement between Damco International AS - Damco India and assessee - Damco India are stated to be similar. A perusal of the directions of DRP dated 11/09/2017 would show that the DRP has placed heavy reliance on the directions of the DRP for assessment year 2012-13, wherein instead of present assessee, Damco International AS, a Danish entity was the assessee. In para 4.2 of the DRP directions, the DRP has categorically mentioned that the only change in the impugned assessment year is that instead of Damco International AS, the Damco India has entered into new agreement w.e.f. 01/01/2013 with Damco International BV (the assessee). Thereafter, the DRP has listed the general/ specific obligations of the assessee and Damco India as per the Network agreement. In the assessment order for assessment year 2013-14 the Assessing Officer while passing the final assessment order reiterated the observations made by the DRP. The Assessing Officer has made no observation that the facts or the agreement in the impugned assessment year are in any manner at variance with the facts of the earlier agreement between the assessee and Damco International AS. The Assessing Officer based on the observations made by DRP finally concluded that the amount of Rs.8,46,91,990/- is taxable as "Royalty"

and "Fee for Technical Services" under the provisions of the Act as well as under Indo-Netherland Tax Treaty.

7. We find that in the case of Damco International AS vs. DCIT in ITA No.933 & 6465/Mum/2017 for assessment years 2012- 13 and 2013- 14, decided on 20/07/2020 the Tribunal has held that business support charges paid by Damco India are not taxable as FTS/Royalty under the Act or the relevant DTAA as the same is purely in the nature of reimbursement of cost.

8. We have thoroughly examined network agreement dated 01/01/2013. The remuneration clause for the services and obligation of Damco India is contained in Clause -7 read withAppendix-3 of the agreement. As per the terms of Appendix

- 3, Damco India shall pay to the assessee network fee calculated as under:

Network Fee = CMI - (Company Costs+ Mark up) CM1 has been defined in the Definitions clause of the Network Agreement as under:

" 1.2 "CM1" OR "GROSS MARGIN" is the result of the Company computed by deducting carriage and consolidation charges, including direct labour cost and related costs, from sales revenue;"

In Addendum Network Agreement "Network Fee Basis" and "

Mark Up" has been explained. For the sake of completeness the relevant extracts of Addendum Network Agreement are reproduced herein below:

"3 NETWORK FEE BASIS As per Appendix 3 of the Network Agreement, the Network Fee shall be an amount equal to the CM1 in the accounts of the Company, reduced by the Company Costs and Mark-up. It is understood by Parties that the CM1 and Company Costs are determined on the basis of financials reported in the HFM accounting system (based on IFRS principles) as used by INTERNATIONAL and Company.

4. xxxxxxxx 5 MARK UP

With reference to item (d) of Appendix 3 of the Network Agreement, Parties agree that the Mark-Up for the Territory will be set at 10% for 2013 and onwards- until otherwise agreed. In another addendum network agreement "Network Fee Payment" has been explained, the same is reproduced herein below:

" NETWORK FEE PAYMENT Thus, Parties declare and confirm that in the event the calculation of Network Fee results in a negative figure, Company shall be entitled to receive from INTERNATIONAL a payment as compensation for damages for not having been able to obtain the committed results.

By virtue of the foregoing, if the calculation of Network Fee is negative, INTERNATIONAL shall pay compensation as indemnity for damages to Company. Such compensation is valued in advance by the parties, as penalty clause, in an amount such as to enable the Company to obtain EBT based on Cost Company, equivalent to the agreed Mark Up, as defined in the Network Agreement."

From above clauses in the Network Agreement it is ambiguously clear that Damco India remunerates the assessee only in the event of surplus profits. In the event of insufficient receipts Damco India is entitled to retain "Cost + 10% Mark Up". In the impugned assessment year Damco India had surplus that was shared with the assessee in accordance with the terms and conditions of agreement. We observe that the entire risk is borne by the assessee and Damco India is insulated from the risk. It has been contended that the obligation under both the agreements i.e. agreement between Damco International AS and Damco India as was applicable in the assessment year 2012-13 and 2013-14 (from 01/04/2012 to 31/12/2012) and the subsequent agreement between the assessee and Damco India effective from 01/01/2013 to 31/03/2013 relevant to assessment year 2012-13 are similar. This fact has not been rebutted by the Revenue. In fact, as pointed earlier, the DRP and the Assessing Officer has admitted this fact. The Ld. Counsel for the assessee has drawn our attention to the order passed under section 93CA(3) of the Act by the TPO for assessment year 2014-15 and 2015-16 in the case of Damco

India, where Damco India has received minimum guaranteed network income of Rs.32.41 crores in assessment year 2014-15 and Rs.4.71 crores in assessment year 2015-16 from the assessee.

9. It has been further submitted that network fees received by the assessee does not fall within the meaning of FTS or Royalty under Article -12 of India - Netherland DTAA. For the sake of ready reference the relevant extract of Article -12 is reproduced herein below:-

> *" 4. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work including cinematograph films, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.*

5. For purposes of this Article, "fees for technical services"

means payments of any kind to any person in consideration for the rendering of any technical or consultancy services (including through the provision of services of technical or other personnel) if such services:

(a) are ancillary and subsidiary to the application or enjoyment of the right, property or information for which a payment described in paragraph 4 of this Article is received; or

(b) make available technical knowledge, experience, skill, know-

how or processes, or consist of the development and transfer of a technical plan or technical design.

A bare perusal of Article -12 of the DTAA defining the term „Royalty" would show that the nature of payment received by the assessee does not fall within the meaning of Royalty. The clause -5 of Article 12 defines FTS. A reading of clause -5 shows that FTS is with respect to rendering of any technical or consultancy services.

It does not include managerial services. Further, sub-clause (b) to clause (5) refers to "make available" condition. In the present case nothing has been brought on record by the Revenue to substantiate that any technical knowhow has been "made available" to Damco India by the assessee.

10. Thus, in view of our above observations we hold that network fee received by the assessee from Damco India is neither in the nature of Royalty nor FTS. Consequently, the aforesaid amount received by the assessee is not exigible to tax under the provisions of the Act or India - Netherlands DTAA."

10. The learned DR could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the order passed by the coordinate bench of the Tribunal in assessee's own case cited supra,

we uphold the plea of the assessee and direct the AO to delete the impugned addition on account of receipt of network fees from Damco India Private Ltd. As a result, grounds no.1-3 raised in assessee's appeal are allowed."

10. Respectfully following the order of the Co-ordinate Bench (supra), we direct the AO to delete the impugned addition on account of receipt of network fees from DIPL.

11. As regards ITA No. 4325/Mum/2023, the Co-ordinate Bench in and 2013-14, has decided the issue in favour of the assessee and against the revenue. We hold accordingly.

12. In both the appeals, assessee has also challenged the validity of the assessment order claiming that the same has been passed beyond the limitation period provided in terms of Section 144C r.w.s. 153 of the Act. Vide letter dt. 30/07/2024, the assessee has conceded that it does not want to press the said ground, therefore, the same is dismissed as not pressed.

13. In the result, both the appeals of the assessee are partly allowed."

7. We have perused the said order and find that there is no material change in the factual matrix when compared with the present case before us. Co-ordinate Bench has elaborately dealt with the provisions of the Act as well as articles of the DTAA relevant to the issue contested in the appeal. It has also referred to various decisions in the case of assessee as well as its other group companies noted above for its finding. It referred to the decision for A.Y.2017-18 and 2020-21 and in the final analysis held that addition made on account of receipt of network fees from the India entity is not liable to tax in the hands of the assessee.

8. Respectfully following the decision of the Co-ordinate Bench (supra), there being no material change in the factual matrix and the provisions of the law, both under the Act and the treaty, we delete the addition so made by the ld. AO on account of receipt of network fees treated as fees for technical services and royalty.

Accordingly, ground nos. 1 and 2 raised by the assessee are allowed.

9. In the present case before us, assessee has also raised a legal issue on the limitation aspect under the provisions of Section 144C r.w.s.153. This ground was also there before the Co-ordinate Bench in the appeal for A.Y.2021-22. Since the present appeal is covered on merits of the case by the decision of the Co-ordinate Bench, legal issue raised by the assessee is left open and not adjudicated upon.

10. Other grounds are consequential in nature or premature and therefore, not adjudicated upon.

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

Order pronounced in the open court on 29.09.2025.

Sd/-	Sd/-
[Saktijit Dey]	[Girish Agrawal]
Vice President	Accountant Member

Dated: 29.09.2025

Karuna, Sr. PS

Copy to :

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

BY ORDER,
(Dy./Asstt.Registrar)
ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	26.09.2025		Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed	Yes		