आयकर अपीलीय अधिकरण, मुंबई "एल" खंडपीठ

Income-tax Appellate Tribunal -"L"Bench Mumbai

सर्वश्री राजेन्द्र,लेखा सदस्य एवं, राम लाल नेगी, न्यायिक सदस्य

Before S/Shri Rajendra,Accountant Member and Ram Lal Negi,Judicial Member

आयकर अपील सं./I.T.A./412/Mum/2016,निर्धारण वर्ष /Assessment Year: 2012-13

DCIT-(Intl. Taxation)-3(3)(2) Room No.1727, 17th Floor,Air India Building, Nariman Point Mumbai-400 021.	Vs.	Partners Medical International, Inc. (Earlier known as Partners Harvard Medical International Inc.) C/o. Pricewaterhouse Coopers (P.) Ltd. PwC House, Plot 18/A Guru Nank Road (Station Road) Bandra (W),Mumbai-400 050. **PAN:AABCH 2171 F**

(अपीलार्थी **/Appellant**) (प्रत्यर्थी **/ Respondent**)

Revenue by: Shri Samuel Darse-CIT-DR

Assessee by: Shri Dhanesh Bafna

सुनवाई की तारीख **/ Date of Hearing: 28.02.2018**

घोषणा की तारीख **/ Date of Pronouncement: 02.05.2018**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य ,राजेन्द्र के अनुसार -PER RAJENDRA, AM-

Challenging the directions,dated 23/11/2015, of the Dispute Resolution Panel(DRP)-2, Mumbai the Assessing Officer(AO)has filed the present appeal.Assessee- is a non-profit educational entity set up in the United States of America(USA).It filed its return of income on 27/11/2012,declaring total income at Rs.Nil.The case was selected for scrutiny and notice was issued on 06/08/2013 u/s.143(2) of the Act. Subsequently notice u/s. 142(1) was issued on 19/02/2014 and 24/12/2014 . The assessment was completed on 28/01/2016,determining its income at Rs.3.94 crores ,u/s. 143(3) r.w.s. 144C(13) of the Act.

2.During the assessment proceedings,the AO found that during the year under consideration, the assessee had received fees of USD 886,000 for providing various consulting services under agreements with various Indian entities, the break-up of which is as follows:

SN.	Indian entity to whom services rendered	Details of Agreements	Net Fees received in $
1	Vockhardt Hospitals Ltd CWHL')	Master Services Agreement,31.1.11	1,71,000
2	Four Seasons Foundation('FSF')	Master Services Agreement with FSF dated November 23, 2010 ('Master Services Agreement with FSF')	3,75,000
3	AERMID - Healthcare (India) Pvt. Ltd. ('AERMID')	Short Term Services Agreement dated April 27, 2011 with AERMID	3,40,000
	Total		8,86,000

The AO has proposed to treat 90% of the total receipts i.e. fees for services rendered, as taxable as Royalties as per Article 12(3) of DTAA and 10% of the total receipts as Fees for Included Services under the Article 12(4)(b) of the DTAA.He computed the total income of the assessee as under :-

Nature of Income	Amount (Rs.)
Income from Royalties (90% of total receipts)	3,55,15,332
Income from Fees For Included Services ('FIS') (10% of total receipts)	39,46,148
Total Income	3,94,61,480

3.It was brought to our notice that the identical issue-i.e.taxing 90% of the total receipts as Royalties as per Article 12(3) of DTAA and taxing the remaining 10% of the receipts as Fees for Included Services under the Article 12(4)(b) of the DTAA-was deliberated upon by the Tribunal,while deciding the appeals/cross objections for the earlier assessment years.We find that while deciding the appeal for the AY.2002-03,(ITA No.1558/Mum/07 dated 18/11/2011,the Tribunal has observed as under:

> "17. We *have considered the rival submissions. We are of the view that the consideration received by the assessee can neither be said to be royalty not FIS. The payment in question was purely for the purpose of advising, recommending and assisting in relation to healthcare projects. It was also for conducting education and training programmes. It was also for the purpose of review and giving feed back of various aspects and new cardiac hospital to be set up, recommendation on planned patient care delivery system. In page 15A to 15D of the CIT(A)'s order a summary of the activities undertaken by the assessee for WHL. have been given. A perusal of the same shows that the consideration received by the assessee cannot be said to be royalty as they were not a payment for use of order, the right to use any copy right, trademark or industrial, commercial or scientific experience. Similarly the assessee did not make available any technical knowledge, experience, skill knowhow or process. The decision of the Delhi Bench of the ITAT in the case of Sheraton International Inc. (supra) supports the plea of the assessee that where the agreement between the parties provides that there was no economic consideration for right to use the name it cannot he said that any payment can be called royalty. So also the consideration paid in a lumpsum cannot be split as a part being in the nature of royalty and any part being in the nature of FIS as laid down in the case of Motorola Inc. (supra). The payment cannot be said to be FIS for the reason that nothing is made available by the Assessee to WHL and in this regard, the observations while deciding payments received by the Assessee from MAX would be equally applicable to the payments received from WHL also. We are of the view that the entire payment received by the assessee from WHL is in the nature of business profits and since the assessee does not have a PE in India the same cannot be brought to tax in India. Consequently, Ground No.2 & 3 of the Cross Objection of the assessee are allowed.*

3.1. In the appeal for the A.Y. 2003-04 (Para 28, Page 41-42 of the paper book),the Tribunal has held as follows:

> *"28. ITA No. 1559/M/07 is an appeal by the revenue against the order dated 26/10/2006 of CIT(A) 33, Mumbai relating to A. Y2003-04 and C.O No, 146/Ml07 is a cross objection by the*

assessee against the very same order of the CIT(A). The ground raised by the revenue in its appeal and Ground No. 1 to 3 raised by the assessee in its Cross Objection are identical to the Grounds 1 & 2 raised by the revenue in its appeal ITA 1558/M/07 and Ground No. 1 to 3 in the Cross Objection No. 145/M/07 raised by the assessee in this Cross Objection forA.Y2002-03. For the reasons given while deciding identical grounds in A. Y 2002-03, we dismiss the grounds raised by the revenue and allow Ground N0.1 to 3 raised by the assessee in its Cross Objection. 'Both the parties agreed that the facts and circumstances prevailing in both the A.Ys are identical. Ground No.4 raised by the assessee in Cross Objection No. 146/A4/07 relating to charging of interest is academic and does not require any adjudication."

3.2. In the appeals of the AY.s 2006-07 to AY 2009-10,the Tribunal had held as under:

"9. We notice that the co-ordinate bench of Tribunal has passed the order dated 22-02-2013 in the assessee's own case relating to AY 2004-05 in ITA No.791/Mum/2008 and JTA No. 1020/Mum/2008, wherein it has followed the orders passed by the co-ordinate benches from AY 2000-01 onwards. In assessment year 2004-05, the assessee had received fees from M/s Max India Ltd. for identical services rendered by the assessee for advisory services rendered. Identical view was taken in the case of receipts from Wokhardt Hospitals. The Tribunal in paragraph 13 and 14 of its order has held as under:-

"13. Consistent with the aforesaid view taken by the Tribunal in Assessee's own case, we hold that the payments received from Max does not constitute FIS (Fee for Included Services) within the meaning of Article 12(4), as nothing is made available by the Assessee to Max and also the Assessee does not have any P.E in India. Therefore the income so arising to the Assessee in India cannot be taxed under Article 7 as 'Business Profits".

14. In case of WHL, (Wokhard Hospitals iJd) also, we hold that it is neither taxable as FIS nor as royalty and also the Assessee does not have any P.E in India and, therefore, the payment received by it cannot be taxed in India. Accordingly,consistent with the view taken in earlier years in assessee's own case, we allow grounds no. 1 and 2, raised by the assessee."

The above said decision of the Tribunal shall be applicable to the fees received by the assessee in the current year under Consulting Agreement (Wokhard Hospitals and Carol Info Services Ltd) and under Award Agreement of Vokhard Hospitals),"

3.3. We further find that the department is in appeal before the Hon'ble Bombay High Court for AY.s 2000-01 to AY 2004-05 ,that the Department had not filed appeal yet for AY 2006-07 to AY 2009-10 where decision was received in July,2015,that the DRP had adjudicated the issues in favour of the assessee following the orders of the Tribunal.

3.4. In our opinion,there is no need to interfere with the Directions of the DRP,as it had followed the orders of the Tribunal for the earlier AY.s.which are yet to reversed by the Hon'ble Bombay High Court.Following the orders of earlier AY.s.of the Tribunal,we decide the effective ground of appeal against the AO.

As a result,appeal filed by the AO stands dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है

Order pronounced in the open court on 2nd May,2018.

आदेश की घोषणा खुले न्यायालय में दिनांक 2 मई,2018 को की गई।

Sd/-	Sd/-
(**राम लाल नेगी / Ram Lal Negi**)	(राजेन्द्र / **Rajendra**)
न्यायिक सदस्य / **JUDICIAL MEMBER**	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक/Dated : 02 .05.2018.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी **2.** Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, **4.**The concerned CIT /संबद्ध आयकर आयुक्त

5.DR " L" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई **/ITAT, Mumbai.**