IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.7736/Mum./2014
(Assessment Year : 2011–12)

Global Hospitality Licensing Company SARL
C/o BMR & Associates LLP
36B, Dr. R.K. Shirodkar Marg ……. Appellant
Parel, Mumbai 400 012
PAN – AADCG5657K

v/s

Dy. Director of Income Tax
International Taxation ……. Respondent
Circle–3(1), Mumbai

Assessee by : Shri Paras Salva a/w
Shri Harsh Shah
Revenue by : Shri Milind Chavan

Date of Hearing – 31/05/2022	Date of Order – 12/07/2022

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 19/09/2014, passed under section 250 of the Income Tax Act, 1961 ('*the Act*') by the learned Commissioner of Income Tax (Appeals)–10, Mumbai, ['*learned CIT(A)*'], for the assessment year 2011–12.

2. In this appeal, assessee has raised following grounds:

"Based on the facts and circumstances of the case, Global Hospitality Licensing Company SARL hereinafter referred to as the Appellant, respectfully submits the following grounds of appeal against the order of the learned Commissioner of Income-tax (Appeals)-10, Mumbai [CIT(A) under section 250 of the Income-tax Act, 1961 (the Act) dated September 19, 2014, which are without prejudice to each other:

1. The CIT(A) erred in holding that all the payments received from the Indian hotels pursuant to the International Marketing Program and Participation Agreement (IMPPA) were income chargeable to tax in India as fee for technical services;

2. The CIT(A) erred in not considering the fact that the Appellant rendered all of the activities under the IMPPA outside India and that no part of the activities were undertaken in India;

3. The CIT(A) erred in not considering the fact that the Appellant does not have any business connection in India or a permanent establishment in India and therefore the payments received from the Indian hotels would not be chargeable to tax in India;

4. The CIT(A) erred in holding that the clam made by the Appellant that the payments are governed by the principle of mutuality is without any basis or substance;

The CIT(A) erred is applying the ruling rendered by the Authority for Advance Rulings in the case of IHLC, without giving cognizance to the fact that (i) a writ petition has been filed before the Honorable High Court and the same has been admitted, and (ii) the Income-tax Appellate Tribunal has admitted the ground of principle of mutuality raised by IHLC (for AY 2006-07 and AY 2008-09) and remanded the matter back to the Assessing Officer for examining its applicability;

The CITIA) erred in holding that the ground of appeal of the Appellant in relation to the initiation of penalty proceedings under section 271) of the Act is premature in nature."

3. The main issue arising in present appeal is pertaining to taxation of payments received by the assessee from Indian hotels pursuant to International Marketing Program and Participation Agreement ('*IMPPA*') as fees for technical services.

4. The brief facts of the case pertaining to this issue, as emanating from record, are: The assessee is a company incorporated in Luxembourg

and the tax resident of Luxembourg. For the year under consideration, assessee filed its return of income on 30/03/2012 declaring total income at Rs. Nil. During the year, assessee had received contribution from various Indian hotels for sales and marketing activities and reimbursement of expenditure under IMPPA.

5. The Assessing Officer vide order dated 13/05/2014 passed under section 143(3) r.w.s. 144C(3) of the Act observed that Marriott is a leading worldwide hospitality group. Under the IMPPA, assessee is to provide for advertising space in magazines, newspapers and other printing media, advertising slots on radio, television, and other electronic media. Further, the marketing and business promotion expenditure is intended not only for the benefit of Indian Hotel, but for the Marriott group as a whole. Further, the Assessing Officer noted that in the advertisements, the main emphasis is on the brand, Marriott and its other brands i.e. Renaissance Hotels & Resorts. Moreover, all the advertisements carried out by the assessee is to promote the Marriott brand at global level including India. The nature of activity is related to promote the global brand of Marriott in its group companies. The Assessing Officer further held that the expenditure incurred by the assessee in international advertising is for building up of the brand "Marriott" and accordingly payment has been made by the owner towards Royalty for the use of international brand and therefore the entire consideration received by the assessee from the Indian Hotel Owner under the IMPPA is taxable in India as Royalty under section 9(1)(vi) of the Act as well as relevant provisions

of DTAA. Further, following the ruling of learned Authority for Advance Rulings ('learned *AAR'*) rendered in the case of International Hotel Licensing Company Co., in Application no. AAR/674/2005, Assessing Officer also taxed the payments as fees for technical services.

6. In appeal, learned CIT(A) vide impugned order dated 19/09/2014, dismissed the appeal filed by the assessee, by observing as under:

> *"6. I have considered the A.O's order as well as the appellant AR's submissions. Having taken note to the same and after taking note to the IMPPA activities as detailed by the AO, 1 am of the considered view that the A.O was completely justified in his action in taxing the said sun, which was received by the appellant under the head royalty/FTS. As the appellant company was getting such receipt ls on the basis of services provided to the Indian Hotels here using the brand, the nature of services, which was provided was completely in the pt of technical services. The appellant was authorized for giving favour of the Mam group in a different manner as detailed in IMPPA agreement. Such Tamil services was so intended for providing better business and better clientele to the hands of the remitter, who have been provided the business avenues through such contribution. Therefore, I am of the considered view that the AO has rightly taken note of decision of the advance ruling decision in the case of in Appeal No AAR/674/2005 in the case of M/s. International Hotel Licensing Company SARL. Accordingly, the action of the A.O. of taxing the appellant's income under the head fee for technical services u/s 197 of the Act is completely justified and correct. Accordingly, the action of the A.O. is confirmed.*
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> *7. In addition to this, I would also like to mention here that the appellant's claim of principle of mutuality is completely without having any basis or substance. In my considered view, the Indian Hotels here using the Marriott brand were nowhere equal to the appellant in the exercise of its activities. Such kind of assertion that the payments were made merely to the extent of expenditure is completely without having any substance as there is no option left to the Indian Hotels to decide that of the contribution they have to make. The fact remained that they have to make the payment as demanded by the appellant. In addition to this, principle of mutuality cannot be applied amongst the unequal and not having equal right or duty. Therefore, in my considered view, the appellant's attempt to avail the benefit of principle of mutuality is in my considered view merely as if the appellant intends to make castle of sands. Therefore, the appellant's this argument is of no substance and the same is also rejected."*

Being aggrieved, assessee is in appeal before us.

7. During the course of hearing, learned Authorised Representative ('*learned AR*') submitted that the amount received cannot be treated as fees for technical services under the provisions of the Act as well as DTAA since the marketing services do not involve any advisory services to qualify as consultancy services nor the assessee is performing any management functions of the Indian hotel owners to qualify as managerial services. The learned AR further submitted that learned AAR ruling in International Hotel Licensing Company Co. (supra), which was followed by Assessing Officer as well as the learned CIT(A), has been challenged before Hon'ble jurisdictional High Court and Writ Petition is pending for disposal.

8. On the other hand, learned Departmental Representative ('*learned DR*') vehemently relied upon the orders passed by the lower authorities and submitted that the payment received by the assessee is taxable as fees for technical services, as held by learned AAR.

9. We have considered the rival submissions and perused the material available on record. The International Marketing Program Participation Agreement ('*IMPPA'*) was initially entered into between International Hotel Licensing Company SARL ('*IHLC'*), which is the wholly owned, indirect subsidiary of Marriott International Inc. and Indian hotel owners. Under the IMPPA, IHLC was required to provide international advertising, marketing, promotion and sales program to the Indian hotels. Further, the

hotel owner was required to contribute to costs and expenses associated with the international advertising, marketing, promotion and sales program for the Hotel at 1.5% of gross revenues, net of taxes, for each accounting period. The said IMPPA was subsequently assigned to the assessee pursuant to Assignment and Assumption Agreement dated 21/07/2008 entered into between IHLC and the assessee.

10. We find that in the case of International Hotel Licensing Company, [2007] 158 Taxmann 321 (AAR), learned AAR, while rendering the opinion on the issue whether the amount received from resident Hotel owner in connection with marketing and business promotion activities is taxable as fees for technical services, in respect of similar agreement, observed as under:

> *"22. In the instant case from the provisions of the IMPPA, referred to above, as well as the classification of expenditure of the fund, as noted by the independent auditors under the heads (a), (b), (c), (d), (f) indicated above, it is evident and it requires no elaboration to conclude that services provided by the applicant both within and outside India in the form of advertising, marketing promotion, sales programme and special services and other programmes for which payments are made by the owner, would amount to rendering managerial and consultancy services and therefore the requirements of the said definition of FTS are satisfied. In the light of the above discussion we conclude that the amounts received by the applicant from the Indian hotel owner under the IMPPA would be taxable in India.*
>
> *23. Accordingly, we rule on the aforementioned question that on the facts and circumstances of the case, amounts received by the International Hotel Licensing Company SARI. (referred to as the applicant) from the Indian Hotel owner in connection with the marketing and business promotion activities said to be conducted outside India would be taxable in India."*

11. The assessee is an assignee of the IMPPA entered into by IHLC with Indian hotels and under the said agreement, assessee rendered similar services as were considered by learned AAR in the aforesaid ruling. Further, no change in facts was alleged in the present case as were considered by the learned AAR in the aforesaid ruling. In view of the above, we find no infirmity in the impugned order passed by the learned CIT(A) following the learned AAR's ruling in International Hotel Licensing Company Co. (supra). As a result, grounds No. 1 to 5 raised in assessee's appeal are dismissed.

12. Ground No. 6 raised in assessee's appeal is pertaining to initiation of penalty proceedings, which is premature in nature and therefore is dismissed.

13. The assessee vide application dated 19/07/2017 sought admission of following additional grounds of appeal:

> *"7. On the facts and stances of the case and in law the assessment proceedings are barred by limitation, since the learned Assessing Officer (AO) has failed to pass the order giving effect to the direction in Commissioner of Income Tax (Appeals) [CIT(A)] order within the period of limitation as provided by the Income-Tax Act, 1961 (the Act).*
>
> *8. Without prejudice to the above, on the facts and circumstances of the case an in law, the AD has erred in not granting the TDS credit as directed by the CIT(A) within the period of limitation as provided by the Act.*
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> *9. On the facts and in the circumstances of the case, and in law, the AD has erred in levying interest amounting to Rs 7,55.562 under section 234A and Rs 47,85,231 under section 2348 of the Act."*

14. During the course of hearing, learned AR wish to not press the additional ground No. 7 raised in the present appeal. Accordingly, addition ground No. 7 is dismissed as not pressed.

15. As the other issues raised by the assessee, by way of additional grounds of appeal, are legal issues which can be decided on the basis of material available on record, we are of the view that same can be admitted for consideration and adjudication in view of the ratio laid down by Hon'ble Supreme Court in NTPC Ltd vs CIT: 229 ITR 383.

16. As regards, addition ground No. 8, the Assessing Officer is directed to comply with the directions of the learned CIT(A) and grant TDS credit in accordance with the provisions of law. As a result, additional ground No. 8 is allowed for statistical purpose.

17. Further, as regards levy of interest under section 234A of the Act, the Assessing Officer is directed to carry out necessary verification whether the return of income was filed by the assessee within time and levy interest under section 234A of the Act, in case of delay, in accordance with law. Further, as regards levy of interest under section 234B of the Act, it was submitted that taxes were fully withheld at source and therefore levy of interest under section 234B of the Act does not arise. In any case, no interest under section 234B of the Act is leviable, for the year under consideration the present case, in view of decision of Hon'ble Supreme Court in DIT v. Mitsubishi Corporation, [2021] 438 ITR

174 (SC). In view of above, addition ground No. 9 is allowed for statistical purpose.

18. In the result, appeal by the assessee is partly allowed for statistical purpose.

Order pronounced in the open court on 12/07/2022

Sd/-	**Sd/-**
PRAMOD KUMAR	**SANDEEP SINGH KARHAIL**
VICE PRESIDENT	**JUDICIAL MEMBER**

MUMBAI, DATED: 12/07/2022

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The CIT(A);
(4) The CIT, Mumbai City concerned;
(5) The DR, ITAT, Mumbai;
(6) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai