(2024) 02 ITAT CK 0021

Income Tax Appellate Tribunal (Delhi C Bench)

Case No: Income Tax Appeal No. 2855/DEL/2023

Expeditors International Of Washington Inc		APPELLANT
	Vs	
ACIT		RESPONDENT

Date of Decision: Feb. 9, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 9(1)(vi), 9(1)(vii), 40(a)(i), 143(3), 144C(13), 234A, 234B, 270A

Hon'ble Judges: N.K. Billaiya, (AM); Astha Chandra, J

Bench: Division Bench

Advocate: Deepak Chopra, Rohan Khare, Priyam Bhatnagar, Vizay B. Vasanta

Final Decision: Allowed

Judgement

1. The appeal filed by the assessee is directed against the final assessment order dated 22.09.2023 passed under section 143(3) r.w.s. 144C(13) of the Income Tax Act, 1961 (the "Act") in pursuance to the directions of Ld. Dispute Resolution Panel ("DRP") pertaining to the Assessment Year ("AY") 2021-22.

2. The assessee has raised the following grounds of appeal:-

"1 That on the facts and in the circumstances of the case and in law, the order dated 22 September, 2023 passed by the Assessing Officer ("AO") under section 143(3), r.w.s 144C(13) of the Income-tax Act, 1961 ("the Act") is erroneous and bad in law as well as in facts.

2. That the AO and the Ld. DRP on the facts and in law, have erred in holding that fee for freight/ logistic support services amounting to INR 149,85,14,454 received by the Appellant, for services rendered outside India, is in the nature of Fee for

Technical Services/Fee for Included Services ("FTS'/ "FIS") as per the provisions of section 9(1)(vii) of the Act and Article 12 of the India-USA Double Taxation Avoidance Agreement ("DTAA").

3. That the AO and Ld. DRP, on the facts and in law, have erred in holding that reimbursement of Global, Account Management ("GAM") charges amounting to INR 7,68,26,193 received by the Appellant from Expeditors International (India) Private Limited (EI India) is in nature of FTS/ FIS as per the provisions of section 9(1)(vii) of the Act and Article 12 of the India-USA DTAA.

4. That the AO and the Ld. DRP, on the facts and in law, have erred in holding that the reimbursement of lease line charges amounting to INR 1,03,04,852 received by the Appellant from EI India is in nature of royalty under Explanation 2 to section 9(1)(vi) of the Act and Article 12 of the India-USA DTAA.

5. That without prejudice to any other ground of appeal, the AO on the facts and in law, has erred in levying interest under section 234A of the Act.

6. That without prejudice to any other ground of appeal, the AO on the facts and in law, has erred in levying interest under section 234B of the Act.

7. That on the facts and in law, the AO has erred in initiating penalty proceedings under section 270A of the Act mechanically by alleging that the Appellant has furnished incorrect particulars of income without recording any adequate satisfaction for such initiation."

3. Briefly stated the facts are that the assessee is a non-resident company headquartered in Seattle, Washington and is engaged in the business of providing global freight logistics services worldwide. It carries out operations in three primary segments, namely airfreight, ocean freight and ocean services, customs brokerage and import services. The nature of services primarily includes consolidation or forwarding of air and ocean freight. Additionally, these services include distribution management, vendor consolidation, cargo insurance, purchase order management, customised logistics information. These operations are rendered by the assessee from outside India. For AY 2021-22 the assessee filed its return of income on 14.03.2022 declaring income of Rs. 2,40,68,13,280/-.

3.1 The Ld. Assessing Officer ("AO") in his draft assessment order assessed the income of the assessee at Rs. 3,99,24,58,779/- as against the income of Rs. 2,40,68,13,280/- returned by the assessee on account of the following additions proposed by him:-

i. Sale of logistic services and global account manager expenses received, assessed as Fees for Technical Services ("FTS") under the Act as well as India-USA Double Taxation Avoidance Agreement ("India-USA DTAA") amounting to Rs. 1,57,53,40,647/-.

ii. Receipts on account of lease line charges, assessed as royalty under the Act as well as India-USA DTAA amounting to Rs. 1,03,04,852/-.

3.2 Against the above additions proposed by the Ld. AO, the assessee raised objections before the Ld. DRP who vide its order dated 22.08.2023 recorded its finding in para 4.4.3 as under:-

"4.4.3 The assessee has submitted that the ITAT by following its own order for AY 2010-11 and AY 2011-12 has provided complete relief to assessee by consolidated order passed for AY 2012-13 to AY 2015-16 and AY 2017-18 and separate order for AY 2018-19 and AY 2020-21. There is no change in factual and legal matrix in the case from AY 2020-21 and earlier years, as well as the argument of the AO in the DAO. The panel directs the AO to verify if the decisions of the Hon'ble ITAT relied upon by the assessec are based on identical facts and has been accepted by the revenue and no appeal has been filed. If the decision of the Hon'ble ITAT has been accepted by the Revenue, the AO shall follow the same. On the other hand if the decision has been challenged before higher appellate forum, in order to keep the issue alive, the panel upholds the conclusion of the AO, following its decision in the earlier A. Y."

3.3 The Ld. AO in his final assessment order dated 22.09.2023 confirmed the impugned additions.

4. Aggrieved, the assessee is in appeal before the Tribunal and ground Nos. 2, 3 and 4 relate thereto.

5. At the outset of the hearing, the Ld. AR submitted that the issues raised by the assessee in ground Nos. 2, 3 and 4 under consideration are squarely covered by the decision of the Co-ordinate Bench of the Tribunal in assessee's own case for the assessment years 2010-11, 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2017-18, 2018-19 and 2020-21. He submitted that the issues in question are no longer res-integra and has consistently been decided in favour of the assessee in preceding AYs. He further submitted that there is no change either in the factual or legal position relating to the disputed issues presently under consideration in AY 2021-22. The Ld. DR fairly conceded to the submission of the Ld. AR.

6. We have heard the Ld. Representative of the parties and perused the material on record. The Revenue has not disputed the fact that the Co-ordinate Bench of the Tribunal for the preceding AY(s) have decided the issues raised in AY 2021-22 in favour of the assessee. We have gone through the orders of the Co-ordinate Bench for AY 2010-11 (at page 286-316 of the Paper Book Volume II); for AY 2011-12 (at page 317-323 of the Paper Book Volume II); for AY 2012-13 to 2015-16 and 2017-18 (at page 324 to 345 of the Paper Book Volume II); for AY 2018-19 (at page 346-354 of the Paper Book

Volume II) and for AY 2020-21 (at page 355 to 361 of the Paper Book Volume II). We note that the Co-ordinate Bench of the Tribunal in ITA No. 355/Del/2023 pertaining to AY 2020-21 has observed that all the issues under consideration in the present appeal have been consistently decided in favour of the assessee in assessee's own case in AY(s) 2010-11 to 2015-16, 2017-18 and 2018-19.

6.1 With respect to ground No. 2 relating to addition of Rs.1,49,85,14,454/- made by the Ld. AO on account of sale of logistic services treating the same as FTS under the Act as well as India-USA DTAA, the Coordinate Bench of the Tribunal in its decision dated 02.05.2023 in ITA No. 355/Del/2023 for AY 2020-21 in turn relying on its decision dated 31.10.2022 in ITA No. 1464/Del/2022 for AY 2018-19 observed and held as under:-

"7. On perusal of material placed before us, we find, this is a recurring issue between the assessee and the revenue starting from assessment year 2010-11. While deciding the issue in assessment year 2010-11, the Tribunal, in ITA No.1740/Del/2015 dated 30.09.2020 has held that the amount received by the assessee from freight/logistic support services cannot be treated as FTS/FIS either under the Act or under treaty provisions. Accordingly, the addition was deleted. Identical view was expressed by the Tribunal while deciding the appeals for subsequent assessment years, as noted above. In fact, though, the departmental authorities were conscious of the fact that the Tribunal has decided the issue in favour of the assessee in earlier assessment years, however, for the purpose of keeping the issue alive, a contrary decision has been taken. There being no change either in the factual or legal position relating to the disputed issue in the impugned assessment year, respectfully following the consistent view of the Tribunal in assessee's own case in the preceding assessment years, as mentioned above, we delete the addition made by the assessing officer. This ground is allowed."

6.2 With respect to ground No. 3 relating to the addition of Rs. 7,68,26,193/- made by the Ld. AO representing reimbursement of global account management charges received by the assessee treating the same as FTS under the Act as well as India-USA DTAA, the Coordinate Bench of the Tribunal in its decision dated 02.05.2023 in ITA No. 355/Del/2023 for AY 2020-21 in turn relying on its decision dated 31.10.2022 in ITA No. 1464/Del/2022 for AY 2018-19 observed and held as under:-

"10. Having considered rival submissions, we find that this is a recurring issue between the parties continuing right from the assessment year 2010-11. On going through the relevant orders of the Tribunal in assessment years 2010-11 to 2015-16 and 2017-18, it is observed that the issue has been consistently decided in favour of the assessee in all these years, while holding that the amount received towards reimbursement of global account management charges is not in the

nature of FTS/FIS. Facts being identical, respectfully following the decision of the co-ordinate benches, we delete the addition made by the assessing officer. Ground raised is allowed. "

6.3 With regard to ground No. 4 relating to the addition of Rs. 1,03,04,852/- made by the Ld. AO representing reimbursement of lease line charges received by the assessee treating the same as royalty under the Act as well as India-USA DTAA, the Coordinate Bench of the Tribunal in its decision dated 02.05.2023 in ITA No. 355/Del/2023 for AY 2020-21 in turn relying on its decision dated 31.10.2022 in ITA No. 1464/Del/2022 for AY 2018-19 observed and held under:-

"13. Having considered rival submissions, it is observed that while deciding identical issue in assessee's own case in assessment years 2012-13 to 2015-16, the Tribunal in ITA No.1904/Del/2017 and Ors. Dated 05.01.2022 has held that lease line charges are not in the nature of royalty. The same view was reiterated by the Tribunal while deciding the issue in assessment year 2017-18. It is further relevant to observe, while considering the allowability of payment made towards lease line charges at the hands of assessee's payer, the assessing officer had held that the payment made is in the nature of royalty, hence, the assessee was required to deduct tax at source. Since, the assessee has not done so, the assessing officer made disallowance under section 40(a)(i) of the Act. However, while deciding the issue in case of the payer, the Hon'ble High Court held that the payment made, being not in the nature of royalty, no disallowance under section 40(a)(i) of the Act can be made. Thus, in view of the decision of the Tribunal in assessee's own case and the decision of the Hon'ble High Court in case of the payer, the addition made cannot be sustained. Accordingly, we delete it. This ground is allowed."

7. It is, therefore, apparent that all the issues challenged by the assessee in ground Nos. 2, 3 and 4 relating to receipts on account of logistic support services, reimbursement of global account management charges and lease line charges respectively have been consistently decided in favour of the assessee in preceding AYs, the latest being the decision (supra) of the Co-ordinate Bench of the Tribunal in ITA No. 355/Del/2023 for AY 2020-21 wherein the Tribunal in turn relied upon the favourable decisions of the Co-ordinate Bench in preceding AYs prior to AY 2018-19. The Revenue has not brought to our notice any change in to facts and circumstances in the year under consideration. The Revenue has also not brought to our notice any other binding precedent on the issues under consideration. We, therefore, respectfully following the decision (supra) of the Co-ordinate Bench of the Tribunal in assessee's own case, the facts being identical as admitted by both the parties, decide ground No. 2, 3 and 4 in favour of the assessee. Accordingly ground No. 2, 3 and 4 are allowed.

8. Ground No. 1 is general in nature.

9. Ground No. 5 and 6 relating to levy of interest under section 234A and 234B of the Act are consequential in nature.

10. Ground No. 7 relating to initiation of penalty proceedings under section 270A of the Act being premature, do not require adjudication.

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