

Income Tax Appellate Tribunal - Delhi

Dcit (International Taxation), ... vs M/S Rolls-Royce Industrial Power ... on 26 December, 2018

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI

BEFORE SHRI G.D. AGARWAL, VICE PRESIDENT
&

SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

ITA No.6100/Del/2015)
Assessment Year: 2012-13

M/s Rolls Royce Industrial Power (I) Ltd.,K-39, Connaught Place, New Delhi. PAN: AAACR7629B	vs Dy. Commr. of Income-tax Circle 3(1)(1), International Taxation, New Delhi
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ITA No.6069/Del/2015
Assessment Year: 2012-13

Dy. Commr. of Income-tax Circle 3(1)(1), International Taxation, New Delhi	vs M/s Rolls Royce Industrial Power (I) Ltd.,K-39, Connaught Place, New Delhi. PAN: AAACR7629B
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Appellant

Respondent

Assessee by	Shri R.K. Kapoor, CA
Revenue by	Shri G.K. Dhall, CIT DR

Date of Hearing	19.12.2018
Date of Pronouncement	26.12.2018
ORDER	

PER K. NARASIMHA CHARY, JM These two appeals are preferred by the Revenue and the assessee respectively and are directed against the order dated 14.9.2015 passed by the learned Assessing Officer u/s 143(3)/144C(b) of the Income-tax Act, 1961 ("the Act") pursuant to the directions dated 30.7.2015 given by the learned Dispute Resolution Panel-2, New Delhi.

2. Brief facts of the case are that the assessee is a company incorporated under the laws of United Kingdom and is one of the group companies of "Rolls Royce Group". The principle activities of the assessee are relating to erection, commissioning, supervision, installation and operations and maintenance of huge power plants and other projects. The style of functioning of the assessee is typical as it negotiates an agreement and thereafter to execute the same sets project offices.

3. The operations of the assessee in India were carried out through various project offices in India which constitute its PE in India under Article 5 of the DTAA between India and UK. The assessee three project offices in India, namely-

(i) Godavari Operation and Maintenance Project (O&M)

(ii) Godavari EPC Project

(iii) Rihand project All the contracts have been completed and no revenue is derived by the assessee from Godavari EPC and Rihand project during the Assessment Year 2012-13. However, in the case of Godavari O&M Project, there was some income consisting of income from interest of Rs.10,85,072/- and gain on foreign exchange fluctuation on reinstatement of bank balance outside India for Rs.2,88,64,638/-. Besides these, the assessee has earned interest on income tax refund of Rs.5,64,45,782/-. Other than the income under these three counts, no other income was derived by the assessee and no other business or commercial operations are carried out in India as all the projects are either complete or terminated.

4. Assessee filed their return of income on 28.9.2012 declaring the nil income. During the assessment proceedings, learned AO proposed the addition of Rs.10,85,072/- on account of interest income from UK Bank accounts and Rs.2,88,64,638/- on account of exchange gain arising out of reinstatement of bank balance outside India. In respect of the interest income on the refund from Income-tax Department to the tune of Rs.5,64,45,782/-, the tax was deducted at source @ 42.33% but the assessee offered the receipt as taxable at 15% as per Article 12(2) of the DTAA between India and UK.

5. When the assessee filed objections before the learned DRP, Ld. DRP by order dated 30.7.2005 accepted the contention of the assessee in respect of the non taxability of interest income of RS.10,85,072/- from UK Bank accounts and Rs.2,88,64,638/- on account of exchange gain arising on the reinstatement of bank balance outside India. However, learned DRP refused to accept the contention of the assessee that the interest is liable to tax at 15% as prescribed under Article 12(6) of the DTAA. According to the learned DRP, the provisions under Article 12(6) of the DTAA shall apply because the assessee undisputedly had a PE in India and debt claim, which is tax refundable, is effectively connected with PE in India. Learned DRP, therefore, took the stand that such an interest on the income-tax refund is taxable in the same manner as business income under Article 7 of DTAA and hence taxable @42.23% in view of the decision in the case of B J Services Co. Middle East Ltd. (2015-TII-55- HC-UKHAND-INTL) and Pride Foramer SA (2013-TII-55-HC-UKHAND- INTL).

6. Revenue, therefore, challenging the findings of the learned DRP in so far as they relate to the interest income on account of the UK Bank accounts and exchange gain arising on reinstatement of bank balance outside India in Appeal No.6069/Del/2015 whereas challenging the finding of the learned DRP in respect of the rate of tax at 42.33% instead of 15% u/s 12(20 of the DTAA, assessee preferred ITA No.6100/Del/2015.

7. It is the argument of the learned AR that although as many as 9 grounds were taken in ITA No.6100/Del/2015 but the entire issue relates only to the rate of tax to be levied on the interest received on income-tax refund. It is their submission that such a question had arisen on the earlier occasion and in the appeal for the Asstt. Year 2006-07, a coordinate bench of this Tribunal remanded the matter to the file of the AO to decide the issue in the light of the decisions cited on behalf of the assessee. Learned AR brought to our notice that while giving effect to the directions of the Tribunal, AO while passing the order dated 13.9.2018 considered the submissions of the assessee in the light of the case law and reached a conclusion that the interest earned on income-tax refund has to be taxed as income from other sources as per Article 12(2) of DTAA between India and UK at 15% on gross basis. Learned AR, therefore, submits that the said view may kindly be confirmed in this appeal also.

8. Learned DR placed reliance on the orders of the authorities below.

9. We have gone through the record. The findings of the coordinate bench of this Tribunal in ITA No.801/Del/2014 and the assessment order u/s 143(3)/254 dated 13.9.2018 pursuant to the remand are not in dispute. A careful perusal of the order of the Tribunal and the order giving effect to the directions of the ITAT amply makes it clear that the decision of a coordinate bench of this Tribunal in the case of ACIT, Dehradun vs Clough Engineering Ltd., 130 ITD 137 is applicable to the facts of the case and the interest on income-tax refund cannot be treated as effectively connected with PE of the assessee and has to be taxed as per beneficial provisions of the treaty between the two countries.

10. In view of the decisions in the case of Clough Engineering Ltd. (supra) and the stand taken by the revenue in assessee's own case for earlier years, we are of the considered opinion that the interest earned on income-tax refund has to be taxed as income from other sources as per Article 12(2) of the DTAA between Indian and UK at 15% on gross basis. With this view of the matter, we uphold the contention of the assessee and direct the learned AO to levy the tax on the interest of income-tax refund at 15% on gross basis.

11. Now coming to the appeal of the revenue challenging the directions of the DRP in respect of interest free foreign bank account and also foreign exchange gains on reinstatement of bank balance of foreign bank account during the year. At the outset, it is brought to our notice by the learned AR that for the Asstt. Year 2006-07, a coordinate bench of this Tribunal in ITA No.801/Del/2014 considered both these issues at length vide para 27 & 32 and reached a conclusion that the interest earned outside India has to be excluded and also that the gain on account of fluctuations of foreign exchange on reinstatement of balance lying in the foreign bank outside India should not be subjected to tax in India at all.

12. We have gone through the order dated 11.8.2016 in ITA No.801/Del/2014 and these two aspects are dealt with vide para nos. 27 & 32. There is no change of facts for this year from the earlier years. We, therefore, find it difficult to take a different view from the one taken in ITA No.801/De/2014. While respectfully following the same, we hold these two issues in favour of the assessee and find the grounds of appeal of the revenue devoid of merits.

13. In the result, appeal of the assessee is allowed and the appeal of the revenue is dismissed.

Order pronounced in the Open Court on 26 th December, 2018.

Sd/-
(G.D. AGARWAL)
VICE PRESIDENT

sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 26th December, 2018

VJ

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

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