

Income Tax Appellate Tribunal - Bangalore

Abb Fz-Lic, Bangalore vs Deputy Commissioner Of Income ... on 29 November, 2017

IT(TP)A.2102/Bang/2016

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IN THE INCOME TAX APPELLATE TRIBUNAL  
BENGALURU BENCH 'C', BENGALURU

BEFORE SHRI. JASON P. BOAZ, ACCOUNTANT MEMBER

AND

SHRI. LALIT KUMAR, JUDICIAL MEMBER

I.T(TP).A No.2102/Bang/2016  
(Assessment Year : 2013-14)

ABB FZ-LLC,  
C/o. ABB India Ltd,  
21st floor, World Trade Centre, Dr. Rajkumar Road,  
Malleswara (West), Bengaluru 560 055 .. Appellant  
PAN : AAICA6462B

v.

Deputy Commissioner of Income-tax (IT),  
Circle -1(1), Bengaluru .. Respondent

Assessee by : None  
Revenue by : Shri. Deva Rathan Kumar, CIT

Heard on : 16.11.2017  
Pronounced on : 29.11.2017

ORDER

PER LALIT KUMAR, JUDICIAL MEMBER :

The present appeal is filed by the assessee against the order of the DCIT (IT), Circle -1(1), Bengaluru, dt.25.10.2016, passed u/s.143(3) r.w.s.144C(5) of the IT Act, 1961, pursuant to the directions of the DRP, for the assessment year 2012-13.

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02. The assessee has raised the following grounds :

03. Nobody appeared on behalf of the assessee. Therefore in the absence of any assistance, we are adjudicating the above said grounds.

04 The issue raised in the present appeal is squarely covered against the assessee by the order of the Tribunal in the assessee's own case in (2017) 83 taxmann.com 86. The Tribunal in paras 57 to 60

observed as under :

57. Thus respectfully following the path shown by the Apex Court (supra), in our view, the requirement of fixed place of business is not applicable to the clauses (2), (4) mid (5). Clause (i) of Article 5(2) which provides the service PE, is not dependent upon, the fixed place of business as is only dependent upon the continuation of the activity for the same project or connected project for a period / periods aggregating to more than 9 months within 12. Accordingly we hold that assessee is having the service PE in India, However the determination of this issue will only have any hearing on the issues under considerations if on examination of facts we come to conclusion that the activities of the assessee do not fall in any of the Article of DTAA.

58. Now, we would examine the claim of the assessee that it is rendering technical services based on the service agreement regarding 'Regional Headquarter Service Agreement' and its various reply falls under royalty or any other clause of DTAA. The information provided by the assessee to ABB Ltd, were acquired by the IT(TP)A.2102/Bang/2016 Page - 3 assessee of its expertise, experience and knowledge based on its association with ABB group Zurich. The said information are not available in the public domain or cannot be acquired by ABB Ltd on its own effort and the information which are provided were in the nature of special knowledge, skill and expertise. As is clear from the reply submitted by the assessee, the assessee has merely provided the access to such specialised knowledge, skill and expertise and has not done anything more, for rendering the services. For the abovesaid purpose, some of the important clauses, which we feel throw light on the activities of the assessee are as under :

- (i) Development of Regional OHS strategies in line with ABB strategies and considering the risk profile of the IMA region.
- (ii) Provision of information about strategies, goals, targets and instructions in the field of OHS.
- (iii) Coaching and monitoring the OHS Advisors of the service recipient in implementation of any procedure in line with group directives
- (iv) Acting as a contact point between the Group Safety Advisor and the Service Recipient.
- (v) Provision of information to provide information to monitor and review progress from the managerial, clerical and suggestion of corrections in order to provide key information indicators targets
- (vi) Setting up and marinating a Project Development Board in UAE.
- (vii) Development of a group business in Waste Heat to Power.
- (viii) Development of a working example of joint value proposition with IBM.

(ix) Monitoring and assistance to Strategic Account Managers of the service recipient with respect to the yearly account plans, ensuring alignment with the Business Unit.

(x) Setting up of sales targets, thereby utilising local business unit opportunities which sustain and to ensure mutual alignment with business unit goals.

(xi) Ensurement that the customer feedbacks are available to the service recipient through surveys and other customer satisfaction tools.

(xii) Guidance and development of strategic Account Manager team to move from a product sales view to an account management view and to understand and effectively operate and navigate within each organisation etc.,

59. 'The agreement gives ' opportunity to ABB Ltd. of using the information pertaining to industrial / commercial / scientific experience belonging to Assessee, IT(TP)A.2102/Bang/2016 Page - 4 Can on the basis of material available on record it can be concluded that the assessee had rendered the services mentioned in the agreement? In our view it would not be possible for the assessee to render these activities or services merely with the help of three persons sent only for 25 days to India as the nature of activities scope and ambit of clauses in the agreement is very wide and it is not possible to render these services either through 3 employees or through phone call (moreover the assessee has not provided any evidence of actual rendering of services), therefore instead of providing the services by the assessee through it employees, the assessee had merely given the access to ABB Ltd various secret, confidential, IPRs information and other information acquired by it from its past experience to ABB Ltd. If the services were actually rendered by the assessee, (as claimed by the assessee) than it is essential that the assessee would have sent some of its officer on its payroll to actually execute the services at various branch offices of ABB Ltd. In our view the assessee is required to undertake collecting, analysing and delivering of security intelligence and information to the service recipient under "The Regional Headquarter Services" to ABB Ltd , then the deployment of manpower by the assessee was necessary and similarly the deployment of manpower is equally necessary in case of education in basic sector procedure and regulations to new employees of service recipient (ABB Ltd).

60. In the reply of the assessee to AO, it is by the assessee, that coaching and monitoring the OHS advisors of ABB Ltd in implementing and developing OHS plans' and ' strategies, were rendered via visits, telephone calls, meeting trainings etc but no evidence was given by the assessee to AO or CIT or the Tribunal. In our view, these activities which were allegedly rendered by the assessee were in the form of sharing or permitting to use the special knowledge, expertise and experience of the assessee,(which the assessee had acquired from its parent company,) and was shared by it with ABB Ltd. squarely falls within the realm of 'royalty', as defined in Article 12(3) INDO -UAE DTAA and in the form of rendering the services. The visits of the officials of the assessee to ABB Ltd was only for the purposes of providing access for using the information pertaining to industrial / commercial / scientific experience belonging to Assessee and to help ABB Ltd to commercially exploiting it.

Thereafter in paras 75 to 78 the Tribunal held as under :

75. Therefore once payment of any kind received as a consideration for the use of, or the right to use, industrial commercial or scientific equipment by the assessee it will fall within the realm of Royalty as per DTAA.

76. It is worthwhile to mention here that the assessee has placed its reliance on the decision of ITAT, Bangalore Bench 'C in ABB FZ-LLC's case (supra) in assessee's own case for A.Y. 2012-13. In our view, there was no quarrel with respect to residence status of the assessee. In the said assessment year. Moreover, on examination of the agreement and information provided by the IT(TP)A.2102/Bang/2016 Page - 5 assessee to ABB Ltd, with a right to use the said information, was held by us to be 'Royalty'. We have not examined the character of the services rendered by the assessee as FTS or not, as has been so examined by the coordinate bench in the case cited above. In our view, this would be of no use as mentioned in para 31 (supra). Therefore, even on this count, the decision relied upon by the assessee is not applicable.

77. Before we conclude, we would like to record a note of appreciation for the valuable efforts and contribution made by the Id Senior DR, Mr G. R, Reddy for the revenue and Mr Percy Pardiwala Id Senior Advocate for assessee, in adjudication of present appeals.

78. In the result, appeals of the assessee for A.Y. 2010-11 and A. Y. 2011-12, are dismissed.

04. Thus following the order of the Tribunal as above, we dismiss the appeal of the assessee.

Order pronounced in the open court on 29th day of November, 2017.

Sd/-

Sd/-

(JASON P. BOAZ)  
ACCOUNTANT MEMBER

(LALIT KUMAR)  
JUDICIAL MEMBER

Bengaluru

Dated : 29th November, 2017

MCN\*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order

SENIOR PRIVATE SECRETARY