

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'D' NEW DELHI)**

**BEFORE S. RIFAUZ RAHMAN, ACCOUNTANT MEMBER
AND**

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

ITA No. 373 /Del/2021 (A.Y. 2017-18)

ITA No. 1459 /Del/2022 (A.Y. 2018-19)

M/s Six Continents Hotels Inc. c/o. BSR & Co. LLP DLF Building, 10 th Floor, Tower B, Cyber City, Phase-II, Gurgaon, 122002, Haryana- India PAN: AAACS7853B	V s	Assistant Commissioner of Income Tax, Circle- 3(1)(2) International Taxation New Delhi
Appellant		Respondent
Assessee by	Sh. S. K. Agarwal, CA & Sh. Himanshu Agarwal, CA	
Revenue by	Sh. Saroj Kumar Dubey, CIT, DR	
Date of Hearing	26/08/2025	
Date of Pronouncement	24/10/2025	

ORDER

PER YOGESH KUMAR, U.S. JM:

The above captioned appeals are filed by the assessee pertaining to Assessment Year 2017-18 and 2018-19 challenging the orders of Commissioner of Income Tax (Appeals)-26, New Delhi dated 04/02/2021 and 26/04/2022 passed u/s 143(3) r.w. Section 144C(13) of the Income Tax Act, 1961 ('Act' for short).

2. Brief facts of the case are that, the Assessee is a company incorporated and a tax resident of USA. The Assessee is part of the Inter-Continental Hotel Group ('IHG') and was the legal and beneficial owner of the registered trademark of certain IHG brands including

'Holiday Inn', 'Holiday Inn Express' and 'Crowne Plaza'. Assessee had entered into license/ franchisee agreements with various third-party hotels in India for allowing them the use of the trademarks for their business of operating the hotels. During both the years i.e. AY 2017-18 and AY 2018-19 Marketing and Reservation Contribution (which collectively includes Marketing Contribution, Priority Club Reward receipts, Reservation Contribution and Holidex Fees, hereinafter referred to as 'MRC) amounting to Rs. 33,50,85,843/- in AY 2017-18 and Rs. 39,31,30,050/- in AY 2018-19, respectively accrued to the Assessee. The said amount was claimed as tax exempt in the ROI on the ground that the same is not chargeable to tax in India under the beneficial provisions of India-USA DTAA. Furthermore, Assessee also received reimbursement receipts amounting to INR 8,10,38,864 from various hotels in AY 2018-19 which includes the travel Agent Commission Program (TACP) amounting to INR 8,08,03,021; and Other miscellaneous reimbursement receipts amounting to INR 2,35,843.

3. The Ld. AO while passing the draft assessment order for both the years, proposed the addition of MRC, treating the same taxable as Fees for Technical Services ('FTS') under the provisions of the Income-tax Act, 1961 ('Act' for short) and Fees for Included Services ('FIS') under India-USA Double DTAA. Further, AO proposed an addition of INR 8,10,38,864/- in relation to reimbursements in AY 2018-19.

4. The Ld. DRP in its directions for both the years, upheld the findings of the Ld. AO and held that MRC is taxable as FTS/ FIS under the provisions of the Act as well as under the DTAA. Further, DRP directed the AO to verify the invoices and back-up statements of TACP and other reimbursements in AY 2018-19. Thereafter, the Ld. AO while issuing the final assessment order for both the years, held that MRC and other reimbursements related receipts are taxable as FTS/ FIS under the Act and India-USA DTAA.

5. Aggrieved by the Final Assessment Orders dated 14/02/2021 and 26/04/2022 for Assessment Year 2017-18 and 2018-19 respectively, the Assessee preferred Appeal before this Tribunal. The Co-ordinate Bench of the Tribunal vide order dated 17th November, 2023, quashed the Final Assessment Orders in both the years on the ground that DRP direction did not bear document Identification No. (DIN). The Revenue preferred Appeals before the Hon'ble High Court of Delhi by challenging the orders of the Tribunal dated 17th November, 2023, wherein the Assessee requested the Hon'ble High Court to restore the Appeals to the Tribunal for consideration on merit and not pressed the Ground on DIN. The Hon'ble High Court of Delhi vide Judgment dated 15/05/2025 in ITA No. 263/2024 and 262/2024 remanded the Appeals in both the years to the Tribunal for considering the Appeals on merits.

6. The Ground No. 1 of the Assessee in the captioned Appeals reads as under:-

“AY 2017-18

Common Ground No.1:- Marketing Contribution, Priority Club Reward receipts (earlier know as Frequency marketing program and now known as IHG & One Rewards), Reservation Contribution and Holidex fees (collectively referred to as 'MRC') amounting to INR 33,50,85,843 are not taxable as Royalty and Fee for Technical Services (FTS) under the Act and India-USA DTAA:

Common Ground no. 1:- Additions made in respect of contribution received from Indian hotels on account of Marketing Contribution (including IHG Reward club) and Reservation Contribution (including Holidex fees) (collectively referred to as MRC) amounting to INR 39,31,30,050 are not taxable as Fee for Technical Services (FTS) under the Act and India-USA DTAA”

7. The Ld. Counsel for the Assessee addressing on Ground No. 1 in both the Appeals submitted that issue of taxability of MRC has been subject to scrutiny in the past years and it has been consistently held that MRC receipts are not taxable as royalty/FIS by the Hon'ble Jurisdictional High Court and the said issue is covered by the order of the Co-ordinate Bench of the Tribunal, sought for allowing Ground No. 1 of both the Appeals.

8. Per contra, the Ld. Departmental Representative though relied on the orders of the Lower Authorities, however, has not brought any contrary proposition put forth by the Assessee.

9. We have heard both the parties and perused the material available on record. The Co-ordinate Bench of the Tribunal in Assessee's own case for Assessment Year 2020-21 in ITA No. 2355/Del/20213 vide order dated 09/05/2024 held as under:-

“16. It was submitted that the issue of taxability of Marketing and reservation related receipts has been subjected to scrutiny in the past years and the same has been consistently held in favour of the Assessee by

(i) The ITAT in Assessee's own case for A .Y . 1997-98, A.Y . 2003-04 , A.Y . 2004-05 , AY 2005- 06 . These orders of the ITAT were accepted by the tax department and no appeal was filed before Hon'ble High Court.

(ii) The AO/DRP in the Assessment order(s) for A.Y . 2006-07 to A .Y. 2011-12 held that Marketing and reservation related receipts is not taxable as 'Royalty'/ 'Fee s for Technical Services' , following the aforesaid orders of the ITAT.

(iii) The Mumbai ITAT in their combined order dated 08 February 2024 for A.Y . 2012-13 to A.Y . 2015-16 again held that Marketing and reservation related receipts is not taxable as 'Royalty'/ 'Fees for Technical Services' under India-USA DTAA and deleted the additions made in the assessment order(s).

(iv) The Delhi ITAT in the order dated 10 April 2024 for A.Y . 2016-17 again held that Marketing and reservation related receipts is not taxable as 'Fee s for Technical Services' under Article 12(4)(a) of IndiaUSA DTAA and deleted the additions made in the assessment order.

(v) For A.Y . 2017-18 and A.Y . 2018-19, the Delhi ITAT quashed the assessment orders on non-compliance of the DIN requirement.

(vi) For A .Y . 2019-20, the matter was not picked up for scrutiny assessment and there was no assessment order .

17. Keeping in view of the above , the issue o f taxability of marketing and reservation related receipts as Royalty/FTS is squarely covered by the decision o f ITAT, the appeal o f the assessee on this ground is allowed.”

10. By respectfully following the ratio laid down, we allow Ground No. 1 of the Appeals of the Assessee filed for Assessment Year 2017-18 and 2018-19 respectively.

11. The Ground No. 2 in Assessment Year 2018-19 (ITANo. 1459/Del/2022) is regarding addition proposed in relation to receipts in the nature of reimbursement amounting to Rs. 8,10,38,864/- received from India Hotels. The Ld. Counsel for the Assessee submitted that the issue involved in the above ground No. 2 for Assessment Year 2018-19 is covered in Assessee's own case for Assessment Year 2020-21 wherein it has been held by the Tribunal that the amount of travel agent commission program received by the Assessee is not in the nature of Fees for Technical Services under the Act and under India US-DTAA, thus, sought for allowing the Ground No. 2 of the Assessee.

12. Per contra, the Ld. Departmental Representative relying on the findings and the conclusions of the Lower Authorities sought for dismissal of the Ground No. 2 in Assessment Year 2018-19.

13. Heard the parties and perused the material. The Co-ordinate Bench of the Tribunal in Assessee's own case for Assessment Year 2020-21 in ITA No. 2355/Del/2023 vide order dated 09/05/2024 held as under:-

“20. The ld. CIT (A) in Assessee’s own case in A.Y . 2013-14, A.Y . 2014-15 and A.Y . 2015-16 has held that the amount of TACP received by SCHI is not in the nature of FTS basis the observation o f the then AO made in the assessment order of AY 2016-17. Accordingly, the taxability of TACP receipts have ITA No. 2355/Del/2023 Six Continents Hotels Inc. 12 already been settled in favour of the assessee in previous years .

21. On perusal of de finition of FTS defined under the Act, there are broadly three components i.e .managerial, technical and consultancy services.

22. It was submitted that the expression 'managerial, technical and consultancy services' have not been defined either under the Act or under the General Clauses Act, 1897. Therefore , the said terms have to be read together with the word 'services' to understand and appreciate their purport and meaning.

23. In this respect the Delhi Tribunal, while interpreting the meaning o f FTS as per Explanation 2 of section 9(1)(vii) of the Income tax Ac t, 1961 held as under:

“..... ..A look at the above Explanation shows that it contains a definition of FTS and says that FTS means any consideration for the rendering o f any managerial , technical or consultancy services including the provision of services of technical or other personnel , but does not include consideration for any construction , assembly, mining or like project undertaken by the recipient or consideration which would be income o f the recipient chargeable under the head "Salaries The content o f the Explanation unmistakably is that the payment must be made as quid pro quo for such services rendered as have been enumerated therein. It postulates that the remitter o f the amount has received the benefit of the technical services and that the technical services have been rendered by the recipient o f the amount”(emphasis supplied)

24. Thus,

- The services were rendered by the travel agents to the Indian Hotels i.e . the Assessee did not render any service to the Indian hotels, as envisaged under section 9(1)(vii) of the Act;
- The Assessee made payments to travel agents on behalf of the Indian hotels; and
- Subsequently, the Assessee recovered such payments• made to distribution channels from Indian hotels on costto-cost basis without any element of income .

25. Thus, it can be found that the Assessee has rendered services in relation to booking of hotel rooms to the Indian Hotels in consideration o f commission, it cannot be treated as FTS under the Act.

26. *The following judicial precedents held that commission charged by commission agents outside India is not taxable in India:*

- *DIT (International Taxation) vs. PanalfaAutoelektrik Ltd [2014] 49 taxmann.com (Delhi High Court)*
- *Group Ism (P.) Ltd. 57 taxmann.com 450 (Delhi High Court)*
- *CIT (Central) vs. Model Exims [2014] 42 taxmann .com 446(Allahabad High Court)*
- *Le Passage to India Tours and Travel (P.) Ltd. 54 taxmann.com 138 (Delhi ITAT) ITA No. 2355/Del/2023 Six Continents Hotels Inc. 14*
- *Dy. CIT vs. Troikaa Pharmaceuticals Ltd. [IT Appeal No 2028/Ahd./13 and CO No 13/Ahd./14]*
- *DCIT vs. Welspun Corporation L td. [2017] 77 taxmann.com• 165 (Ahmadabad ITAT)*
- *Armayesh Global vs. ACIT 45 SOT 69 (ITAT Mumbai)*
- *DCIT , Chennai vs. Mainetti (India) (P.) Ltd. [2011] 12taxmann.com (ITAT Chennai)*
- *CLSA Ltd. vs . ITO, (International Taxation) [2013] 31taxmann.com 5 (ITAT Mumbai)*
- *PahilajraiJaikishin (66 taxmann .com 30) (ITAT Mumbai)*

27. *In view of the principles emerging from the above judicial precedents, it can be concluded that the amount charged by the Assessee as TACP for booking hotel rooms for third-party Indian Hotels cannot be said to be in the nature o f managerial, technical or consultancy in nature for treating the same as FTS under the provisions of section 9(1)(vii) of the Act. 28. The appeal o f the assessee on this ground is allowed.”*

14. By respectfully following the order of the Co-ordinate Bench of the Tribunal in Assessee’s own case for Assessment Year 2020-21 (supra) we allow Ground No. 2 of the Assessee’s Appeal in ITA No. 1459/Del/2022.

15. The Ground No.2 in ITA No. 373/Del/2021 (A.Y 2017-18) and Ground No. 3 in ITA No. 1459/Del/2022 (For A.Y 2018-19) are regarding short grant of TDS credit. The Ld. Counsel for the Assessee submitted that the TDS Credit were not granted by the A.O. in the

Final Assessment Orders for both the years which is tabulated as under:-

Assessment Year	TDS Credit claimed as per Rule 37BA(2) of Income-tax Rules 1962 ROI (A)	TDS Credit on interest on income tax refund (B)	Total (A)+ (B)
2017-18	1,14,37,016	-	1,14,37,016
2018-19	79,68,402	5,04,894	84,73,297

16. Considering the submission made by the Assessee's Representative, we remand the issue to the file of the A.O. to examine the claim of the Assessee and direct the A.O. to grant TDS Credit in accordance with law in both the Assessment Years after considering the submissions of the Assessee.

17. Further, the Assessee is also at liberty to claim/press the claim already made for income tax refund or TDS credit, which shall be considered by the A.O. in accordance with law.

18. In the result, Appeals of the Assessee in ITA No. 373 /Del/2021 (A.Y. 2017-18)& ITA No. 1459 /Del/2021 (A.Y. 2018-19) are partly allowed for statistical purpose.

Order pronounced in the open court on 24th October, 2025

Sd/-

Sd/-

**(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Date:- 24.10.2025
R.N, Sr.P.S*

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI