IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA No.1923/DEL/2022	**:**	**A.Y. 2018-19**
ITA No.1924/DEL/2022	**:**	**A.Y. 2019-20**
ITA No.1789/DEL/2023	**:**	**A.Y. 2020-21**
ITA No.3347/DEL/2023)	**:**	**A.Y. 2021-22**

Salesforce.com Singapore Pte Ltd. C/0 Deloitte Haskins & Sells LLP, 15th Floor, 46-Prestige Trade Tower, Palace Road, High Grounds, Bengaluru, Karnataka-560001. PAN- **AAOCS 2588 L**	Vs	ACIT, Circle-3(1)(2), International Taxation, New Delhi.
APPLICANT		**RESPONDENT**
Assessee represented by	Shri Vishal Kalra Adv.; Ms. Sumisha Murgai, CA; & Shri Kashish Gupta, CA	
Department represented by	Shri Vijay B Vasanta CIT(DR)	
Date of hearing	13.05.2024	
Date of pronouncement	17.05.2024	

O R D E R

PER SAKTIJIT DEY, VP:

Captioned appeals, by the same assessee, arise out of final assessment orders passed u/s 143(3) read with Section 144C(13) of the Income-tax Act, 1961,

pertaining to assessment years 2018-19, 2019-20, 2020-21 & 2021-22, in pursuance to directions of learned Dispute Resolution Panel ('DRP'). Since the appeals involve more or less common issues, they are being clubbed together and disposed of in a consolidated order for the sake of convenience.

ITA no. 1923/Del/2022 (Assessment year 2018-19):-

2. Ground no. 1, being a general ground, does not require specific adjudication.

3. In ground nos. 2 to 6 the assessee has challenged the addition of receipts from Customer Relationship Management ('CRM') Services as Fee for Technical Services ('FTS'), both under the provisions of the Income-tax Act, 1961 as well as under India-Singapore Double Taxation Avoidance Agreement ('DTAA').

3.1 Briefly stated the facts are, the assessee is a non-resident corporate entity, incorporated under the laws of Singapore and is a tax resident of Singapore. As stated by the Assessing Officer, the assessee is engaged in providing CRM services to its customers/subscribers in various countries including India, which enables them to systematically record, store and act upon business data and to help businesses manage customer accounts, track sales leads, evaluate marketing campaigns and provide better post-sales service. The services provided enable customers to generate reports and summaries of their data and share such data with

authorized individuals across functional areas. The assessee provides such services through internet. It is stated, the assessee does not have any data centre or business premises of its own in India.

3.2 Be that as it may, for providing CRM services during the year under consideration, the assessee had received an amount of Rs. 297,06,94,174/- from Indian customers. However, the amount received was not offered to tax in India. The assessee claimed exemption from taxation qua the said receipts pleading that while rendering such services it has not allowed the use or grant of any right to use the copyright in the software to the Indian customers. Therefore, receipts cannot be treated as royalty. In this context the assessee further submitted that in assessee's own case in earlier years similar receipts have not been held to be taxable by the Tribunal and Hon'ble High Court. The Assessing Officer, however, did not accept the claim of the assessee. The Assessing Officer was of the view that the services rendered by the assessee are consultancy of technical nature, hence qualify as FTS u/s 9(1)(vii) of the Act as well as under Article 12(4) of India-Singapore DTAA. Accordingly, he framed the draft assessment order bringing to tax receipts from CRM services as FTS.

3.3 Against the draft assessment order so passed, the assessee raised objections before learned DRP. While deciding assessee's objections on the issue, learned

DRP though, upheld the action of the Assessing Officer, however, at the same time directed the Assessing Officer to examine the order dated 25.03.2022 of the Income Tax Appellate Tribunal ('Tribunal'), keeping in view assessee's claim that the issue is covered by the decision of the Tribunal. However, while finalizing the assessment, the Assessing Officer confirmed the addition made in the draft assessment order.

3.4 Before us, learned counsel appearing for the assessee submitted that the issue is squarely covered by the decisions of the Tribunal for assessment years 2010-11 to 2017-18. He further submitted, while deciding the appeals preferred by the Department against the decisions of the Tribunal, the Hon'ble Jurisdictional High Court has not only held that the receipts are not in the nature of royalty but held that they are not in the nature of FTS as well. Thus, he submitted, issue is squarely settled in favour of the assessee.

3.5 The learned Departmental Representative, though, fairly submitted that the issue stands covered in favour of the assessee by decisions of the Tribunal and the Hon'ble High Court in assessee's own case in earlier assessment years, however, he relied on the observations of the Assessing Officer.

3.6 We have considered rival submissions and perused materials on record. We have also examined the orders passed by the Tribunal and the Hon'ble

Jurisdictional High Court while dealing with the issue in assessee's case for earlier assessment years. The factual matrix reveals that whether the receipts from CRM services is taxable or not as royalty/ FTS, is a legacy issue between the assessee and the Department starting from assessment year 2010-11 onwards. While deciding the appeals of the assessee on identical issue in assessment year 2010-11 to 2016-17, the Tribunal in ITA no. 4915/Del/2016 and others, dated 25.03.2022, has held that the receipts from CRM services cannot be treated as royalty. Similar view was reiterated by the Tribunal while deciding assessee's appeal for assessment year 2017-18 in ITA no. 316/Del/2021 dated 30.08.2022. Pertinently, against the aforesaid decisions of the Tribunal, Revenue went in appeal before the Hon'ble Jurisdictional High Court. While deciding the issue for assessment years 2010-11 to 2017-18, in a consolidated order passed in ITA 144/2023 and others dated 14.02.2024 the Hon'ble Jurisdictional High Court, after deeply examining the nature of dispute, held that neither receipts from CRM services are in the nature of royalty nor FTS. In other words, the Hon'ble Jurisdictional High Court upheld the decision of the Tribunal in assessment years 2010-11 to 2017-18. For better appreciation, the relevant observations of the Hon'ble Jurisdictional High Court are reproduced hereunder:

> "*11. Since the copyright in the application was never transferred or came to vest in a subscriber, we fail to appreciate the contentions which are addressed on the anvil of Section 9 of the Act. This issue, in any case, stands*

conclusively settled bearing in mind the pertinent observations which were rendered by the Supreme Court in Engineering Analysis Centre for Excellence vs. CIT and have been noticed in Relx and have been reproduced hereinabove.

12. We deem it appropriate to additionally observe that the right of subscription to a cloud-based software cannot possibly be said to be equivalent to the 'use' or 'right to use' any industrial, commercial or scientific equipment. This more so since the respondents sought to place the consideration received under Article 12 (4)(b) and which is specifically excluded from sub-article (3)(b).

13. The argument based upon Article 12(4)(a) also cannot sustain since the same pertains to payments received as consideration for managerial, technical or consultancy services and which are ancillary or subsidiary to enjoyment of the right, property or information referable to paragraph 3. This again would be founded upon the payment foundationally falling within the ambit of royalty as defined therein.

14. Similar would be the position which would obtain bearing in mind the unambiguous language in which Article 12(4)(b) of the DTAA is couched. Article 12(4)(b) would have been applicable provided the appellants had been able to establish that the assessee had provided technical knowledge, experience, skill, knowhow or processes enabling the subscriber acquiring the services to apply the technology contained therein. The explanation of the assessee, and which has gone unrefuted even before us, was that the customer is merely accorded access to the application and it is the subscriber which thereafter inputs the requisite data and takes advantage of the analytical attributes of the software. This would clearly not fall within the ambit of Article 12(4)(b) of the DTAA.

15. In any event, clauses (a), (b) and (c) are factors which must be found to exist in addition to the consideration for service being relatable to the provision of managerial, technical or consultancy services. This is clearly evident from Article 12 (4) using the expression "if such services....". However, once we have found that the principal conditions spelt out in Article 12(4) are themselves not satisfied, this issue would pale into insignificance.

16. Before parting, we deem it expedient to notice Explanation 4 to Section 9(1)(vi) of the Act which reads as follows:-

"Explanation 4. For the removal of doubts, it is hereby clarified that the transfer of all or any rights in respect of any right, property or information includes and has always included transfer of all or any right for use or right to use a computer software (including granting of a licence) irrespective of the medium through which such right is transferred."

17. It becomes pertinent to observe that Explanation 4 in essence introduces a deeming fiction and includes transfer of all or any rights "for use" or "to use" a computer software including by way of a license irrespective of the medium through which such right is transferred. Significantly, the DTAA does not bring within its sweep a right for use or a right of use of a computer software.

18. We, accordingly, find that the view taken by the ITAT merits no interference. We find that the appeals raise no substantial question of law. The appeals shall consequently stand dismissed."

3.7 Observations made by the learned DRP in the directions issued for the impugned assessment year clearly reveal parity of facts between the impugned assessment year and assessment years 2010-11 to 2017-18. Therefore, respectfully following the decisions of the coordinate Bench and Hon'ble Jurisdictional High Court in assessee's own case, as discussed above, we hold that receipts from CRM services are not taxable in India as royalty or FTS. Grounds are allowed.

4. In ground no. 7 assessee has raised the issue of inclusion of interest on income-tax refund amounting to Rs. 2,69,11,689/- in the receipts from CRM services.

4.1 We have heard the parties and perused the materials on record. Before us it is the case of the assessee that though on 26.11.2019 the assessee had filed a revised return of income declaring income of Rs. 2,94,91,40,080/- towards subscription fee from CRM services and Rs. 2,69,11,689/- towards interest from income-tax refund, however, while computing assessee's income in the final assessment order the Assessing Officer has erroneously included the interest on income tax refund in the receipts of CRM services.

4.2 On a query from the Bench, learned counsel appearing for the assessee submitted that rectification application filed by the assessee is still pending before the Assessing Officer.

4.3 Having considered the submissions of the parties, we direct the Assessing Officer to factually verify assessee's claim and pass necessary orders. Ground is allowed for statistical purposes.

5. In ground no. 8 the assessee has challenged the levy of interest u/s 244C of the Act.

5.1 In view of our decision in ground nos. 2 to 6, the issue has become academic. Suffice to say, interest u/s 234C of the Act can be levied only on the returned income.

6. In ground no. 9 the assessee has challenged levy of interest u/s 234A of the Act.

6.1 We have heard the parties and perused the materials on record. It is the case of the assessee that without granting refund due as per return of income the Assessing Officer has erroneously levied interest u/s 244A of the Act. In this context learned counsel for the assessee submitted that rectification application filed by the assessee is still pending before the Assessing Officer.

6.2 Considering the nature of dispute, we direct the Assessing Officer to factually verify assessee's claim and accordingly decide the validity of levy of interest u/s 244A of the Act.

7. Ground no. 10 being premature at this stage is dismissed.

8. Appeal is partly allowed.

ITA no. 1924/Del/2022 (assessment year 2019-20):

9. Ground no. 1 is general in nature, hence requires no specific adjudication.

10. In ground nos. 2 to 6 the assessee has challenged the taxability of receipts from CRM services as FTS.

10.1 The issue raised in these grounds is identical to the issue raised in grounds 2 to 6 of ITA no. 1923/Del/2022, decided by us in earlier part of this order. Therefore, our decision therein would apply mutatis mutandis to these grounds as well. Grounds are allowed.

11. In ground no. 7 the assessee has raised the issue of short grant of TDS credit.

11.1 We have heard the parties and perused the materials on record. Before us learned counsel for the assessee submitted that assessee's rectification application on the issue is still pending before the Assessing Officer. Be that as it may, we direct the Assessing Officer to factually verify assessee's claim and grant credit for TDS in accordance with law.

12. In ground no. 8 the assessee has challenged the levy of interest under section 234D of the Act.

12.1 We have heard the parties and perused the materials on record. It is the case of the assessee that though the assessee was not issued any refund, still interest u/s 234D of the Act has been levied. Undisputedly, interest under section 234D of the Act is to be levied in case of excess refund being granted to an assessee. That being the case we direct the Assessing Officer to factually verify assessee's claim that interest u/s 234D is not leviable since no refund has been granted to the assessee.

13. Ground nos. 9 and 10 being consequential and premature at this stage are dismissed.

14. Appeal is partly allowed.

ITA no. 1789/Del/2021 (Assessment year 2020-21):

15. Ground no. 1 being general in nature, requires no specific adjudication.

16. In ground nos. 2 to 6 the assessee has challenged the taxability of receipts from CRM services as FTS.

16.1 The issue raised in these grounds is identical to the issue raised in grounds 2 to 6 of ITA no. 1923/Del/2022, decided by us in earlier part of this order. Therefore, our decision therein would apply mutatis mutandis to these grounds as well. Grounds are allowed.

17. In ground no. 7 the assessee has raised the issue of short grant of TDS credit.

17.1 We have heard the parties and perused the materials on record. Before us learned counsel for the assessee submitted that assessee's rectification application on the issue is still pending before the Assessing Officer. Be that as it may, we direct the Assessing Officer to factually verify assessee's claim and grant credit for TDS in accordance with law.

18. Ground nos. 8,9 & 10 being consequential or premature at this stage are dismissed.

19. Appeal is partly allowed.

ITA no. 3247/Del/2023 (Assessment year 2021-22):

20. Ground no. 1 being general in nature requires no specific adjudication.

21. In ground nos. 2 to 7 the assessee has challenged the taxability of receipts from CRM services as FTS.

21.1 The issue raised in these grounds is identical to the issue raised in grounds 2 to 6 of ITA no. 1923/Del/2022, decided by us in earlier part of this order. Therefore, our decision therein would apply mutatis mutandis to these grounds as well. Grounds are allowed.

22. In ground no. 8 the assessee has raised the issue of short grant of TDS credit.

22.1 We have heard the parties and perused the materials on record. Before us learned counsel for the assessee submitted that assessee's rectification application on the issue is still pending before the Assessing Officer. Be that as it may, we direct the Assessing Officer to factually verify assessee's claim and grant credit for TDS in accordance with law.

23. Ground nos. 9,10 & 11 being consequential or premature at this stage, are dismissed.

24. Appeal is partly allowed.

25. Consequently, all the assessee's appeals are partly allowed.

Order pronounced in open court on 17.05.2024.

Sd/-	**Sd/-**
(BRAJESH KUMAR SINGH)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

Dated: 17.05.2024.
MP
Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI