

**SATURDAY INTERNATIONAL TAX GYAN !!!**

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**Damco International A/S v. Deputy Commissioner of Income-tax  
(International taxation) <sup>1</sup>****Reimbursement of cost for rendering administrative services, cannot be  
considered as FTS.****Facts:**

- Appellant is a company incorporated in Denmark and is a part of A.P. Moller Maersk ('APMM') group, which was engaged in the business of Shipping & Logistics. In 2009, the Logistics business of APMM group was hived off into Damco group. Pursuant to this, Damco India Pvt. Ltd. ('DIPL') was formed having full-fledged board for earning its business.
- The appellant had incurred certain costs towards procurement of insurance, accounting software, travel, fixed assets (computer servers) etc. at group level which were subsequently recovered from various group entities including DIPL.

**Assessee's contention:**

- Ld. counsel submits that the above - mentioned services/ procurement rendered by the appellant are in the nature of coordinating services, whereby various costs incurred are pooled together and charged/recovered as reimbursement of costs on the basis of various allocation keys like number of Headcount/Headcount usage/Number of users/Country operational cost/Country revenue etc. which is uniformly applied across the group. It is stated that the Independent Auditor's Report shows the various allocation fees for each category of costs reimbursed to the appellant.

**Revenue's contention:**

- Assessing officer from examination of the 'Management & Service Agreement' entered into by the appellant with DIPL that the services provided by the appellant were in the nature of technical services. Accordingly, the AO brought to tax the same as royalty and fees for technical services. The reasons given by the AO are that under the IT support services, DIPL was getting access to the group IT network systems as well as related maintenance and support services. As per the AO, the systems to which DIPL was getting access included Logistics Information Systems; Ocean, Air and Supply Management Products; Outlook as Services; Maersk Line IT; INTTRA & FACT etc. Thus, the AO observed that the payment received by the appellant was towards IT Network Systems (Software) as well as related maintenance and support services.

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<sup>1</sup> [2020] 118 taxmann.com 37 (Mumbai - Trib.)

## Ruling:

- During the course of proceedings Ld. counsel for the assessee submits that (i) the appellant acts as the central coordinator for all Damco entities across the globe, and procures from various service providers services needed by Damco entities across the globe, (ii) it provides benefit from economies of scale and homogeneous services offered globally to all entities, (iii) the appellant enters into Management and Service Agreement ('MSA') with Damco operating entities and thereafter, recovers the cost of procurement/provision from these entities; **all these costs are only reimbursed to the appellant and there is no mark-up**, (v) the BPO processing are low end services outsourced by the appellant and done through Maersk Global Service Centre India (P.) Ltd. ('Maersk GSC') in India (vi) the administrative costs are basically salary cost of administrative employees of the appellant who are coordinating for procurement of various products and services.
- During the course of proceedings Hon'ble ITAT stated that we find that the abovementioned services/procurement rendered by the appellant are in the nature of coordinating services whereby various costs incurred are pooled together and charged/recovered as reimbursement costs on the basis of various allocation keys like number of Headcount/Headcount usages/Number of users/Country operational cost/Country revenue etc., which is uniformly applied across the group.
- In view of the factual scenario and position of law narrated hereinabove, we hold that the receipt of business support charge is not taxable as fees for technical services/royalty under the Act or the relevant DTAA as the same is purely in the nature of reimbursement of cost. In view of the above, the other grounds of appeal become academic in nature.

## Our comments:

- When we read this judgement along with the earlier case law discussed in [SITG Dt. 19.02.2022](#) we can conclude that any reimbursement of expense would not be taxed in India if various conditions are fulfilled:
  - Twin condition of reimbursement as mentioned in [SITG Dt. 19.02.2022](#).
  - The cost is recovered on cost to cost basis i.e. without any markup.
  - Head company is not adding any of its services in providing third party service to group entities and none of the head company service is bundled with the third party service i.e. the service of third party vendors is transferred to the group entities on "as is" basis.
- Thus, if all conditions are fulfilled and no additional service is provided by the head company then such reimbursement of expense will not be taxed in India.

<b>Section</b>	<b>Section 9, Article 12</b>
<b>DTAA/Country</b>	<b>India-Denmark</b>
<b>Court</b>	<b>Mumbai Tribunal</b>
<b>Date of Decision</b>	<b>20.07.2020</b>

**Note:** Case law name in **Red**- in favour of the Revenue, **Green**- In favour of the Assessee, **Orange** = Partial.

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