IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1824 OF 2016

Commissioner of Income Tax (IT) - 3 .... Appellant

versus

M/s Pramerica ASPF II Cyprus
Holding Limited ... Respondent

…….

- Mr.Suresh Kumar, Advocate for Appellant.
- Mr.F.V. Irani a/w Mr.Madhur Agrawal i/b. Mr.Atul Jasani, Advocate for Respondent.

CORAM : AKIL KURESHI &
SARANG V. KOTWAL, JJ.
DATE : 12th MARCH, 2019.

P.C. :

1. Revenue has filed this Appeal raising following question for our consideration;

> *"Whether on the facts and circumstances of the case and in law, the ITAT is correct in directing the Assessing Officer to accept the interest income returned by the assessee on cash basis whereas the A.O. has made additions on the ground that interest income was liable to be assessed on accrual basis?"*

2. Learned Counsel Mr.A. Jasani waives service for Respondent.

3. The issue is whether the interest income of the Respondent assessee can be taxed on the basis of accrual without receipt thereon or can it be taxed only upon receipt. This has to be decided on the basis of Double Taxation Avoidance Agreement (for short 'DTAA') between India and Cyprus, particularly, having regard to Article 11 of the said treaty. The tribunal relied upon earlier decision of this Court and held that such receipt can be taxed only upon receipt and not on accrual basis.

4. Article 11 of the DTAA between India and Cyprus pertains to interest. Clause (1) of Article 11 reads as under;

> *"1. Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State."*

5. It was pointed out by the learned Counsel for assessee that DTAA between India and Germany also contains an identical clause in Article VIII. Clause (1) thereto provides as under;

> *(1) Interest arising in a Contracting State and paid to a resident of the other Contracting State may be taxed in that other State."*

6. This Court in case of ***Director of Income-tax (International Taxation) Vs. M/s Siemens Aktiengesellschaft, in Income Tax Appeal No.124 of 2010 dated 22/10/2012*** considered following question;

> *"Whether on the facts and in the circumstances of the case the Tribunal was right in law in holding that the Royalty and fees for technical services should be taxed on receipt basis without appreciating the fact that the Hon'ble Supreme Court has held in the case of Standard Drum Motors Private Limited V/s. CIT 201 ITR 391 that*

the credit entry to the account of the assessee non-resident in the books of the Indian company amounted to receipt by the non-resident?"

7. This question was considered in following manner;

"2. As regards first question is concerned, the Income Tax Appellate Tribunal referring to para-1 to 3 under Article IIX-A of the Double Taxation Avoidance Treaty with the Federal Germany Republic as per Notification dated 26th August 1985 held that the assessment of royalty or any fees for technical services should be made in the year in which the amounts are received and not otherwise. Counsel for the Revenue relied upon the Special Bench decision of the Tribunal in the assessee's own case, which in our opinion, has no relevance to the facts of the present case, as it relates to the period prior to the issuance of Notification dated 26th August 1985. In this view of the matter the decision of the Income Tax Appellate Tribunal in holding that the royalty and fees for technical services should be taxed on receipt basis cannot be defaulted."

8. Thus, while interpreting similar clause of Indo-German DTAA in relation to taxing royalty or fees for technical services, this Court had confirmed the decision of tribunal holding that such service can be taxed only on receipt. This decision was later on followed in Income Tax Appeal No.1033/11 dated 20/11/2012 and thereafter in Income Tax Appeal No.2356/11 and connected Appeals vide the order dated 07/03/2013.

9. On the same principle, the Appeal is dismissed.

(SARANG V. KOTWAL, J.) **(AKIL KURESHI, J.)**