

**IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

S.A. No.87/Del/2022

[Arise out of ITA No.439/Del/2022]

Assessment Year: 2018-19

AXA France Vie, 5 th Floor, Office Tower, District Centre, Saket Select City Walk, Plot No. A-3, Delhi	Vs.	ACIT, Circle-Intl. Taxation-1(1)(1), Delhi
PAN :AAPCA9799]		
(Applicant)		(Respondent)

Applicant by	Sh. Gaurav Jain, Advocate Sh. Sanket Gupta, CA
Respondent by	Sh. Umesh Takyar, Sr.DR

Date of hearing	01.04.2022
Date of pronouncement	01.04.2022

ORDER

PER SAKTIJIT DEY, JM:

Captioned application has been filed by the assessee seeking stay on realization of outstanding demand quantified at Rs.6,29,73,067/- pertaining to assessment year 2018-19.

2. Learned counsel for the assessee submitted, the entire demand has been created because of disallowance made under section 40(a)(ia) of the Income-tax Act, 1961 (for short 'the Act')

for alleged failure of the assessee to deduct tax at source under section 194D of the Act. Learned counsel for the assessee submitted, the assessee is a non-resident company incorporated in France and is engaged in the business of providing reinsurance services. He submitted, assessee has been duly approved by Insurance Regulatory Development Authority of India (IRDAI) to undertake reinsurance business in India. Explaining the modus operandi of assessee's activities, learned counsel for the assessee submitted, the assessee is in the business of reinsurance ceded from insurance company, meaning thereby, the portion of one or more risks that the insurance company undertakes is transferred to the reinsurer with the object of reducing cedants liability by sharing with reinsurer the insurance liability, premium and losses from the reinsured business in that proportion. In other words, with reinsurance, the insurance company passes on a part of its own insurance liability to the reinsurance company. Thus, he submitted, the assessee does not have any direct access or contact with the policy holders of the insurance company.

3. Drawing our attention to section 194D of the Act, learned counsel for the assessee submitted, the provision is applicable only in respect of commission paid to solicit or procure insurance

business. He submitted, the assessee neither solicited nor procured any insurance business. He submitted, what the assessee receives from the insurance company towards reinsurance commission is not a commission in strict sense of the term, but, in the nature of compensation towards cost of procurement incurred by insurance company for accepting insurance business through agents. He submitted, rather than making any payment to the insurance company towards commission, in fact, the assessee has received payment from insurance company net off administrative cost termed as commission.

4. Drawing our attention to Circular No. 120(a)/2/2010-ST, dated 16th April, 2010, issued by Central Board of Excise & Customs (CBEC), learned counsel for the assessee submitted, though, the payments made to reinsurer by insurance company are termed as commission, however, they are shared expenses not strictly coming within the nature of commission. Further, he submitted, the Circular makes it clear that it is the reinsurer which provides insurance services to the insurance company. Proceeding further, he drew our attention to the decision of the Tribunal in case of General Insurance Corporation India Vs. ACIT,

[2009] 28 SOT 453 (Mum.) to emphasize that since the commission paid by the assessee to the insurance company is in the nature of compensation towards cost of procurement business incurred by the insurance company, it will not come within the purview of section 194D of the Act. He submitted, the aforesaid view expressed by the Tribunal has been approved by the Hon'ble Bombay High Court in case of PCIT Vs. Tata AIG General Insurance Co. Ltd. [2019] 111 taxmann.com 92 (Bom.). Further, he submitted, learned DRP has wrongly relied upon the decision of the Tribunal in case of United India Insurance Co. Ltd. Vs. JCIT, which stands reversed by the Hon'ble Madras High Court. Thus, learned counsel for the assessee urged for absolute stay on recovery of the demand, since according to him, the issue in dispute is squarely covered in favour of the assessee by various judicial precedents. Further, he submitted, the assessee is prepared and ready to argue the issue on merits, hence, requested for fixation of the corresponding appeal on out of turn basis.

5. Opposing grant of absolute stay, learned Departmental Representative submitted, let the assessee be directed to pay 20% of the outstanding demand.

6. We have considered rival submissions and perused the materials on record. It is evident, the demand in dispute is as a result of disallowance made under section 40(a)(ia) of the Act due to alleged non-compliance with the provisions of section 194D of the Act. It is the claim of the assessee that the provision contained under section 194D is not applicable to the reinsurance commission. The acceptability or otherwise of the aforesaid contention of the assessee has to be tested when the issue is heard on merits at the time of hearing of the appeal. However, after careful examination of the ratio laid down in various judicial precedents cited before us by learned counsel for the assessee, we are of the prima facie view that the issue in dispute appears to be covered in favour of the assessee by a number of judicial precedents. Therefore, we are inclined to grant expeditious hearing of the corresponding appeal of the assessee. Accordingly, with the consent of both the parties, Registry is directed to fix the appeal for hearing on 28.04.2022. Paper-books, if any, shall be filed by the parties sufficiently ahead of the date of hearing of the appeal, in accordance with the extant rules. Since, the date of hearing of the appeal is announced in the open court in presence

of both the parties, issuance of separate notice for hearing to the parties is dispensed with.

7. As regards the impugned demand, the Assessing Officer may pursue the assessee for paying a part of the demand. However, no coercive action shall be taken by the Assessing Officer for recovery of the demand till the date of hearing of the appeal, i.e., 28.04.2022. It is made clear, in case of any unnecessary adjournment being sought by the assessee, the interim protection granted to the assessee will be vacated and the assessee will also lose the benefit of early hearing of appeal.

7. In view of the aforesaid, the stay application is allowed, in the terms indicated above.

Order pronounced in the open court on 1st April, 2022

Sd/-
(G.S. PANNU)
PRESIDENT

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 1st April, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi