Canon India Pvt Ltd vs. The A.C.I.T National Faceless Assessment Centre, New Delhi [TS-986-ITAT-2021(DEL)] dated 20th October, 2021

Facts:

- The assessee company rendered software related services to its AE in Japan wherein withholding tax was deducted under Article 12 of India-Japan treaty.
- The assessee claimed deduction u/s. 10A of the Income Tax Act, 1961 against income earned by STP unit.
- The assessee claimed 100% Foreign Tax Credit (FTC) with respect to tax paid in Japan in its return of income.
- AO did not allow complete credit of taxes paid by the assessee in Japan.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether 100% Foreign tax credit can be claimed with respect to taxes paid in Japan?

Held:

- ITAT noted that the issue of allowance of claim for 100% FTC was given in the coordinate bench ruling in "HCL Comnet" in context of the India-US DTAA.
- ITAT also stated that the income u/s. 10A was charged to tax u/s. 4 and was to be included in the total income u/s. 5, but no tax will be charged for a period of 10 years because of the exemption granted u/s 10A.
- However, the income earned by the assessee would be liable to be taxed after a period of 10 years and section 90(1)(a)(ii) would apply in this case.
- ITAT found that the Indian-Japan DTAA was worded similarly to that of India-USA DTAA and holds assessee's case to be squarely covered by the HCL Comnet ruling.
- Accordingly, ITAT ruled in favour of the assessee.

GE Energy Management Services Inc vs. The Asstt. D.I.T Circle-1(2) International Taxation, New Delhi [TS-1103-ITAT-2021(DEL)] dated 24th November, 2021

Facts:

- The assessee entered into an agreement with an Indian company to provide offshore maintenance and support services for a period of 5 years.
- The services under agreement included remote troubleshooting, support and supply of some incidental spare parts in respect of Energy Management System (EMS) and Supervisory Control and Data Acquisition System (SCADA) installed at specified locations in the southern region of India.
- All the services were provided by the assessee from outside India and no part of the services defined under the agreement were rendered from India.
- AO contented that the services rendered by the assessee to the Indian company would be taxable as Fees for Included Services (FIS) under section 9(1)(vii) of the Act and/or Article 12 of the Tax Treaty.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether offshore maintenance and support services would be liable to be taxed as FIS?

Held:

- ITAT observed that agreement stated that any services falling under the head "Technical Training", if any provided by the assessee would be quoted separately.
- ITAT observed that under Article 12(4) of India-US DTAA, the services provided by the assessee would qualify as FIS if the recipient acquired the relevant skills used by the service provider and that recipient can itself use independently without getting any assistance or being dependent on the service provider in future.
- ITAT observed that the assessee had entered into an agreement for a period of 5 years and are ongoing in nature which cleared that the recipient of services was not able to apply the technical skill used by the assessee on its own.
- Relying on several judicial pronouncements including HC ruling in Guy Carpenter, ITAT contented that since the Indian company was not able to apply the technology on its own and continued to depend on the assessee for the services, the receipts from the Indian company would not qualify as FIS under Article 12(4) of India-US DTAA.
- Accordingly, ITAT ruled in favour of the assessee.

ESPN Star Sports Mauritius SNC et Compagnie. Vs. Dy. CIT, Circle –1(2)(2) New Delhi [TS-982-ITAT-2021(DEL)] dated 11th October, 2021

Facts:

- The assessee was engaged in the business of selling airtime and program sponsorship in connection with programming non-standard television from Mauritius on ESPN, Star Sport etc.
- The assessee entered into an agreement with ESPN Software India Pvt. Ltd. (ESPN India) to sell airtime to Indian advertisers and the remuneration was declared to be at ALP.
- AO held that assessee had business connection under Sec 9(1)(i) of the Act through ESPN India.
- CIT(A) concurred with the AO's stand and further upheld existence of fixed place PE as well as DAPE of the assessee under India-Mauritius DTAA and attributed 50% of the net profits of ESPN Mauritius to it's PE in India.

Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the assessee has PE in India through business connection or fixed place or DAPE in India?
- Whether profits will be attributed to PE in India?

Held:

- Relying on ruling in assessee's own case for previous years and SC ruling in Honda Motors, E-Funds, Formula One, ITAT concluded that the assessee has no PE in India and negates profit attribution.
- ITAT draws support from SC ruling of E-funds and Formula One and opined that in absence of business connection or fixed place or DAPE in India, the question of profit attributions becomes invalid.
- ITAT further highlighted the TPO's acceptance of international transactions at ALP.
- Accordingly, ITAT ruled in the favour of assessee.