INTERNATIONAL TAXATION

CA. Hinesh Doshi, CA. Pramita Rathi

M/s. American Chemical Society vs. ACIT (IT) Circle- 1(3)(2) [TS-995-ITAT-2021(Mum)] dtd. 22nd September, 2021

Facts:

- The assessee, US based non-resident entity, was engaged in the promotion and development of knowledge in the field of chemistry.
- The assessee received payments for provision of product/ services from outside India to Indian customers and considered these receipts not taxable as royalty or fees for included services under the India-US DTAA.
- AO contented that the revenue of the assessee should be treated as royalty.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the revenue earned by the assessee from web based database services and subscription of e-journal was taxable as royalty under India-US DTAA?

Held:

- ITAT observed that the issues were covered in assessee's favour which were passed in the earlier years and also noted that the business model as well as the stream of revenue of the assessee remained unchanged.
- ITAT noted that in the earlier orders passed stated that "No 'use or right to use' in any copyright or any other intellectual property of any kind was provided by the assessee to its customers. Further, the information resided on servers outside India, to which the customers had no right or access, nor did they possess control or dominion over the servers in any way.
- ITAT followed the earlier ruling and stated that the revenue should not be considered as royalty and hence not taxable in the hands of the assessee.
- Accordingly, ITAT ruled in favour of the assessee.

Dow Jones and Company Inc. vs. The ACIT, International Taxation, Circle –1 (2) (3) New Delhi [TS-1114-ITAT-2021(DEL)] dtd. 14th December, 2021

Facts:

- The assessee was engaged in the business of providing information products and services containing global business and financial news to various organizations worldwide.
- AO wanted to tax the receipts from DJCIPL as Royalty under India – USA DTAA.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the payment received from Indian Company be taxed as royalty under India – USA DTAA?

Held:

- ITAT peruses the definition of Royalty under Article 12 of the DTAA, notes that only those payments that allow a payer to use/acquire a right to use copyright in literary, artistic or scientific work are covered within the definition of 'Royalty'

- ITAT observed that in the present case, there is no transfer of legal title in the copyrighted article as the same rests with the Assessee and DJCIPL has no authority to reproduce the data in any material form to make any translation in the data or to make adaptation in the data.
- Thus, ITAT opined that the user of the database has no right to exploit the copyright in the database and it is merely just a product usage in the normal course of business which cannot be termed as 'Royalty'.
- Accordingly, ITAT ruled in favour of assessee.

M/s. Faber Castell Aktiengesellschaft Numberger vs. The A.C.I.T International Taxation Circle-1(3)(1), New Delhi [TS-1112-ITAT-2021(DEL)]dtd. 9th December, 2021

Facts:

- The assessee, a tax resident of Germany, entered into a royalty agreement with an Indian company for use of its trademark for the purpose of marketing and sale of products procured by the Indian company.
- The assessee was liable to earn royalty and interest income and followed cash basis of accounting for the Indian source of income to claim benefits of DTAA.
- The assessee contended that the royalty should not be taxed as the royalty payment was not received and waived off and the agreement was terminated owing to the liquidity crisis faced by the Indian company.
- AO contended that the royalty income should be taxed as the Indian company had already used the brand name and income had already accrued and no deduction of bad debts would be allowed.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether royalty would be liable to taxed under India – Germany DTAA?

Held:

- ITAT observed that the assessee had inadvertently filed return including royalty income which was not received and also entered into a termination agreement with the Indian company since it was facing liquidity crises and waived off the liability from FY 2011-12 to 2015-16.
- Relying on Supreme court decision of 'CSC Technologies' wherein on the similar issue it was held that royalty income would not be taxed until the amount had been received by the foreign company.
- ITAT contented that since the assessee had not received the royalty income the same would not be taxable.
- Accordingly, ITAT ruled in favour of the assessee company.