M/s ThyssenKrupp Electrical Steel India Pvt. Ltd. vs. Deputy Commissioner of Income Tax, Circle – 1 Nashik [TS-475-ITAT-2021(PUN)] dated 21st June, 2021

Facts:

The assessee company was engaged in producing and offering entire range of non-ageing, energy conserving Power Core Electrical Steel Products in fully processed varieties as well as in production of special quality carbon steel products of Automotive, White Goods and Engineering applications.

During the assessment proceedings, AO observed that the assessee made payment to its AE, towards Corporate Mark Fees.

AO opined that there were no benefits that were accrued to the assessee against these payments and further, considered the ALP as Nil and accordingly made an adjustment of the aforementioned payment.

Aggrieved, the assessee filed an appeal before ITAT.

Issue:

Whether the payment made towards Corporate Mark Fee accrued in the year prior to entering the agreement, would be allowed as a deduction in the previous year?

Held:

ITAT observed that the agreement for such trademark/ corporate mark was entered into between the AE and the assessee as Licensor and Licensee respectively.

ITAT observed that the Corporate Mark Fee paid was in relation to a period prior to entering into the agreement, where no consideration was charged by the AE.

ITAT noted that the assessee had been using trademark or corporate mark from the initial years of set up of its business.

ITAT held that the liability incurred in year one, would be allowed as deduction in year one only, even if the amount was actually paid in the second year.

ITAT stated that payments made would be allowed as a deduction in the previous year under consideration, as the liability stood crystallized as per the Agreement.

Relying on the Delhi HC ruling in the case of Exxon Mobil Lubricants, ITAT ruled in favour of the assessee.

M/s. McCANN Erickson (India) Private Limited vs. ACIT, Range - 6(1), New Delhi [TS-504-ITAT-2021(DEL)] dated 02nd July, 2021

Facts:

The assessee company was engaged in the business of advertising industry.

The assessee made payment towards Global Account Co-ordination Cost in the nature of Fees for technical services.

During the re-assessment proceedings u/s. 147, AO opined that TDS u/s. 195 of the Act was not deducted on these payments as per sec 9(1) (vii) r/w Article 12 of Indo-US DTAA. Accordingly, AO made an addition on account of non-deduction of tax u/s. 195 of the Act.

Aggrieved, the assessee filed an appeal before ITAT.

Issue:

Whether tax was required to be withheld on payment made towards Global Account Co-ordination Cost?

Held:

ITAT observed that the law amended was undoubtedly retrospective in nature but so far as tax withholding liability was concerned, it depended on the law as it existed at the point of time when payments, from which taxes ought to be withheld, were made.

ITAT held that the tax deductor could not be expected to have clairvoyance of knowing how the law would change in the future.

Relying on Mumbai ITAT ruling of Ashapura Minichem, ITAT noted that a retrospective law amendment changes the tax liability in respect of an income, with retrospective effect, but it does not change the tax withholding liability, with retrospective effect.

ITAT held that the disallowance u/s 40(a) (i) would not apply as the Revenue was not justified in fastening the TDS liability by relying on retrospective amendment.

Accordingly, ITAT ruled in favour of the assessee.

M/s GlaxoSmithKline Asia Pvt. Ltd. vs. Deputy Commissioner of Income Tax, Circle 4(1), Chandigarh [TS-635-ITAT-2021(CHANDI)] dated 30th July, 2021

Facts:

The assessee company was engaged in the business of manufacturing and trading of drugs and oral health care products.

The assessee made payment to a company in Belgium for purchase of vaccine.

AO observed that no tax was deducted u/s 195 of the Income Tax Act, 1961 ("Act").

AO opined that the Belgium based entity had a Permanent Establishment ("PE") in India as per Article 5 of DTAA and therefore the profits attributable to the purchases made by the assessee from the said entity were liable to tax in India.

Aggrieved, the assessee filed an appeal before ITAT.

Issue:

Whether the payment made to Belgium company was liable to tax in India?

Held:

ITAT observed that the assessee was responsible for undertaking clinical trials as well as research and development activities on behalf of Belgium Company in India.

ITAT noted that in terms of the DTAA with Belgium, there was no fixed place, PE, of Belgium company in India as it had no such place at its disposal.

ITAT also observed that conducting clinical trials would not constitute the core activity of the Belgium company, which was engaged in manufacturing vaccines.

ITAT stated that the assessee was not an agent of Belgium Company and that in terms of DTAA, PE would not include maintaining premises for research and development.

ITAT also observed that even if there was a PE, no purchases made by the assessee of vaccines were attributable to the PE and therefore no profits on account of the said purchases were taxable in India.

ITAT noted that there was no requirement for taxes to be deducted at source.

Accordingly, ITAT ruled in favour of the assessee for statistical purposes.

M/s Asia Today Limited vs. Assistant Director of Income Tax International Taxation 1(1), Mumbai [TS-620-ITAT-2021(Mum)] dated 30th July, 2021

Facts:

The assessee company, was originally registered as an 'international business company' in British Virgin Islands ("BVI").

The assessee company was later re-domiciled in Mauritius and it was discontinued by the Registrar of Companies in BVI, and was in accordance issued a tax residency certificate ("TRC") in Mauritius after its incorporation.

AO stated that the assessee originally being BVI company was not entitled to treaty benefits under the India-Mauritius DTAA.

Aggrieved, the assessee filed an appeal before ITAT.

Issue:

Whether the assessee was entitled to treaty benefits under the India-Mauritius DTAA?

Held:

ITAT observed that this was a case of corporate re-domiciliation, whereby assessee had moved its 'domicile' from one jurisdiction to another by changing the country under whose laws it was registered or incorporated, while maintaining the same legal identity.

ITAT stated that for re-domiciliation, the existing jurisdiction and the target jurisdiction needed to be on the list of countries where re-domiciliation was possible and not all the countries allowed such re-domiciliation.

ITAT noted that BVI and Mauritius were such jurisdictions.

ITAT observed that TRC was effective from a date prior to the completion of the re-domiciliation process.

ITAT noted that Revenue had granted the treaty benefits to the assessee all along and therefore, it would not be opened for the Revenue to revisit the foundational aspect given the ground realities where re-naming, re-structuring and even re-domiciliation of offshore companies were facts of life.

ITAT held that there was nothing more than a doubt lurking in the mind of the Revenue which would not be reason enough to reject the treaty entitlement to the assessee.

Accordingly, ITAT ruled in favour of the assessee.