Transocean Offshore International Ventures Ltd. vs. DCIT (International Taxation), Circle –2 Noida [TS-56-ITAT-2022(DEL)] dated 28th January, 2022

Facts:

The assesse company, a tax resident of Unites States of America, received interest on income tax refund in the relevant year.

AO held that since the interest on income tax refund received by the assessee was not covered u/s 44BB, it was chargeable as business income and taxable at 40% applicable to foreign companies.

Aggrieved, the assessee filed an appeal before ITAT.

Issue:

Whether interest on Income Tax refund received by foreign co. is eligible for treaty benefits and not taxable as business profits?

Held:

Referring to section 90(2), ITAT provided that where the provisions of the DTAA apply to an assessee, the provisions of the Act shall apply to the extent they are more beneficial to the assessee.

The assessee submitted that since it was a tax resident of USA, it was entitled to DTAA benefits to claim tax rate of 15% under Article 11 of Indo-US DTAA.

ITAT concluded that interest on income tax refund is not effectively connected with the PE either on the basis of asset test or activity test.

Thus, interest on income tax refund is taxable under Article 11 of Indo-US DTAA.

Accordingly, ITAT ruled in favour of the assessee.

Birla Corporation Ltd. vs. ITO (IT & TP), Bhopal [TS-84-ITAT-2022(Ind)] dated 31st January, 2022

Facts:

The assessee company was engaged in the manufacturing and trading of cement and entered into the transaction for purchase of equipment and other material to be used in the manufacturing process.

AO treated the assessee in default for non- deduction of TDS on payments made to various non-residents for purchase, installation and supervision charges.

CIT(A) confirmed the addition made by the AO.

Aggrieved, the assessee filed an appeal before ITAT.

Issue:

Whether TDS is applicable on supply of plant and machinery from non-resident vendors in absence of PE?

Held:

ITAT noted that the assessee produced sufficient evidence that the remittances were made towards supply of plant and machinery and where supervisory services were availed, assessee had deducted tax under article 12 of respective DTAA.

ITAT observed that the transactions were carried out on principal to principal basis and the Indian entities (Agents) did not have any authority to bind the non-resident vendors or the assessee.

ITAT held that the mere marking of correspondence between the assessee and the foreign suppliers to the local representatives did not lead to the conclusion that the Indian representatives were agents of the foreign companies having authority to conclude sale transactions.

ITAT further held that the foreign supplies have not exceeded the threshold time limit to constitute the PE as specified in the respective DTAA.

Accordingly, ITAT ruled in favour of the assessee.

Google Asia Pacific Pte Ltd. vs. Commissioner of Income Tax & ANR [TS-57-HC-2022(DEL)] dated 3rd February, 2022

Facts:

The assessee, a Singapore based entity was engaged in the business of providing cloud services in India.

The assessee filed a writ petition challenging withholding tax certificate issued u/s 195(2) directing Google Cloud India Pvt. Ltd. (GCI) to deduct tax at source @ 10% on payments made to the assessee.

The assessee sought a direction to permit GCI to make payments to the assessee without deduction of tax for the A.Y 2022-2023.

Revenue proposed that instead of directing GCI to deposit 8%, the court may direct GCI to deposit 98.69 Cr (inclusive of surcharge and cess) after considering the impact of EL @ 2% on the estimated amount of Rs. 1106.41 Cr.

Aggrieved, the assessee filed an appeal before Delhi HC.

Issue:

Whether the petitioner was allowed to receive payment subject to deduction of 8% instead of 10%?

Held:

The assessee submitted that it had already subjected itself to EL of 2% on the payments under consideration from GCI, the withholding certificate issued u/s. 195(2) for 10% TDS created a double jeopardy.

Relying on Epcos Electronic Components and CBDT FAQ dt. Jul 19, 2013, HC clarified that no additional surcharge and cess is to be applied over the 10% rate as prescribed under the DTAA.

HC ruled that as an interim measure, the petitioner would be entitled to receive payment from GCI subject to deduction of 8%.

HC further clarified that the deposit of TDS of 8% would not be treated as non-compliance of the impugned order u/s. 195(2).