The Director of Income Tax, International Taxation vs. M/s. Autodesk Asia Pvt. Ltd. [TS-507-HC-2020(KAR)] dated 15th September, 2020

Facts:

- The assessee, a Singapore based company, sold software licences and provided certain ancillary services to Indian customers through its authorised distributors.
- AO held that the software supplied to the authorised distributors was chargeable to tax as royalty and technical services at 15% as per Article 12 of the India – Singapore DTAA.
- However, the assessee stated that the above-mentioned paragraph was deleted and substituted by the paragraph which provided for levy of tax at the rate not exceeding 10%.
- Accordingly, the assessee filed an appeal before ITAT wherein the ruling was in assessee's favour.
- Aggrieved, the revenue filed an appeal before Karnataka High Court.

Issue:

- Whether the assessee was liable to be taxed at 15% instead of 10% as per Article 12 of India-Singapore DTAA?

Held:

- HC noted that the issue in this matter was with regards to the tax rate under DTAA for the relevant Assessment Year.
- HC observed that ITAT had relied on the decision of "Government of India And Others vs. Indian Tobacco Association' and stated that the new provision in existence was applicable for the entire fiscal year as defined in DTAA.

- Relying on the case of "U.P. Sugar Mills Assn. vs. State of U.P" and "West Up Sugar Mills Association vs. State of UP", HC stated that substitution has the effect of repealing earlier provision and its replacement by new provision.
- HC held that ITAT had rightly determined the tax rate as substituted in Article 12 of DTAA as applicable for the entire fiscal year as defined in DTAA and was liable to be taxed at 10%.
- Accordingly, HC ruled in favour of the assessee.

ACIT (International Taxation) vs. M/s. Mitsui & Co. Ltd [TS-545-ITAT-2020(Delhi)] dated 20th October, 2020

Facts:

- The assessee company, incorporated in Japan, was one of the biggest trading houses of the world. The assessee has three project offices in India.
- AO held that Mitsui India Pvt Ltd (MIPL) a subsidiary of Mitsui & Co. Ltd is Dependent Agent Permanent Establishment (DAPE) in India of the assessee company and 50% of the gross trading profit out of the operations in India is attributable to DAPE.
- Aggrieved, the assesse filed an appeal before ITAT.

Issue:

- Whether MIPL can be considered as DAPE in India of an assessee Company?

Held:

- Relying on the assessee's own case for previous years, ITAT held that MIPL is not a DAPE of the assessee noting that MIPL did not fulfil any of the three conditions set forth in Article 5(7) of India- Japan DTAA.
- Condition A in relation to habitually exercising authority to conclude the contract and condition B in relation to habitually maintaining a stock of goods or merchandise are not questioned by AO.
- ITAT further held that the contention of AO that MIPL habitually secures order for Assessee as per condition C of article 5(7) of India-Japan DTAA was wrong because commission was not paid to secure orders but for other activities as listed in the agreement.
- ITAT held that MIPL is not DAPE of Mitsui and Co. Ltd and hence no attribution of income should be made to MIPL.
- Accordingly, ITAT ruled in favour of the assessee.

Snap Computer Systems Pvt. Ltd vs. ITO (IT & TP), Bhopal [TS-479-ITAT-2020(Ind)] dated 16th September, 2020

Facts:

- The assessee company was engaged in the business of export of software services.
- The assessee made payments to a non-resident company for services provided without deduction of TDS.
- AO, on review of Form 15 CB, stated that the payments were made towards "consultancy services" and on perusal of the invoices, concluded that the payments were in the nature of "fees for technical services".
- AO treated the assessee in default u/s 9 and computed the default of TDS along with interest u/s 201(1A) r.w.s. 195 of the Income Tax Act, 1961.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the payments made by the assessee company for services provided by non-resident company were in the nature of technical services liable for deduction of tax at source u/s 195 of the Act?

Held:

- ITAT noted that the non-resident company had no permanent establishment or business connection in India.
- ITAT observed that the non-resident company worked only as an interface to procure orders and the same was then handed over to the assessee.
- ITAT further noted that apart from the work of procurement of orders for the assessee no other services were rendered by the non-resident company and that it only acted as a Liaison and procurement agent between the assessee and clients abroad.

- ITAT stated that although the payment was nomenclated as consulting services in the agreement, it was only paid as a commission for procuring orders from the customer.
- ITAT held that the non-resident company had not rendered any technical or managerial services to the assessee but was merely project work procurement agent and therefore the payment made was not made for fee for technical services.
- ITAT noted that the payment was only towards charges for procurement of orders and reimbursement of incidental charges incurred.
- Accordingly, ITAT ruled in favour of the assessee.

ESPN Star Sports Mauritius S.N.C. et Compagnie vs. ACIT Circle 1(2)(2), New Delhi [TS-550-ITAT-2020(DEL)] dated 22nd October, 2020

Facts:

- The assessee, a Mauritius based partnership firm, was engaged in the business of selling airtime and program sponsorship.
- The assessee entered into an agreement with its Indian subsidiary (ESPN India) to sell airtime to Indian advertisers and the remuneration was declared to be at ALP.
- AO concluded that ESPN India is assessee's DAPE in India under Article 5(4) of India-Mauritius DTAA and attributed 30% of gross revenue from India to it.
- CIT(A) attributed 50% of net profits from ESPN India to DAPE based on earlier years' ITAT order in assessee's own case.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether there can be any attribution of profits, even if, assessee has PE in India once the transactions are demonstrated to be in accordance with arm's length principle?

Held:

- ITAT noted that ESPN India has been remunerated at ALP and observed that nothing further remains attributable to DAPE once the remuneration is paid at the arm's length.
- Relying on SC ruling in the case of Honda Motors Co. Ltd and Morgan Stanley and Co., ITAT held that no profit was attributable on a transaction at arm's length price.
- ITAT concluded that no further profit attribution was to be made in the hands of the assessee.
- Accordingly, ITAT ruled in favour of the assessee.