INTERNATIONAL TAXATION

CA. Hinesh Doshi, CA. Pramita Rathi

Husco International Inc. v/s ACIT (IT), Circle-1, Pune [TS-908-ITAT-2021(PUN)] dated 27th September, 2021

Facts:

- The assessee company, incorporated in USA was engaged in the development and manufacture of hydraulic and electrohydraulic and electro-hydraulic controls for off-highway and automotive applications, purchased different software products and transferred them to the Indian entity at cost.
- AO held that these receipts from software licence should be taxed as Royalty and Fees for technical services and offered to tax at the rate of 15% under Article 12 of India-USA DTAA.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the receipts from software license was required to be taxed as royalty or business income under India – USA DTAA?

Held:

- Relying on SC ruling in Engineering Analysis, ITAT observed that assessee was given access to only use software and hence receipts cannot be taxed as Royalty.
- ITAT held that if the receipts cannot be taxed as Royalty, it can be taxed as business income as per Article 7 of India – USA DTAA in case the assessee has PE in India.
- ITAT accepted the assessee's contention and stated that the assessee can opt to tax royalty at lower rate of tax at 10% in terms of Section 115AA.
- Accordingly, ITAT ruled in favour of the assessee.

Trigo SAS v/s. The Deputy Commissioner of Income Tax, (IT) - 2, Pune [TS-855-ITAT-2021(PUN)] dated 14th September, 2021

Facts:

- The assessee company, entered into Software License agreement which grants Trigo India the right to use of software.
- The assessee also received management service fees in the nature of managerial, technical or consultancy services to the Indian Entity.
- AO held that the consideration received for sale of software licenses was taxable as Royalty under Article 13 (2) of India-France DTAA and the management service fees as Fee for Technical Services (FTS) u/s. 9 (1) (vii) of the Income Tax Act.
- Further, AO levied education cess on the tax charged as per DTAA as above.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether consideration received towards right to use software will be taxed as royalty as per India-France DTAA?
- Whether management service fees will be taxed as FTS as per Income Tax Act?
- Whether education cess is leviable on tax liability computed as per DTAA?

Held:

- ITAT observed that the assessee entered into a software license agreement with Trigo India whereby Trigo India was granted a right to use a software, which could not be modified, copied, duplicated, reproduced, licensed etc. without Assessee's prior consent.
- Relying on SC ruling in Engineering Analysis which was factually similar to the present case, ITAT held that consideration received from Trigo India for use of the software did not fall within definition of copyright and thus was not royalty.

- ITAT observed that no technical knowledge was made available for services provided by Assessee to Trigo India, rather it was a case of providing a service involving technical knowledge, which got immediately consumed at the time of delivery.
- Relying on the case of Faurecia Automotive Holding and Karnataka HC ruling in De Beers India Minerals, ITAT held the amount was not taxable as FTS.
- With respect to levy of education cess on tax liability computed as per DTAA, ITAT relied on Mumbai ITAT's ruling in Sunil Motwani, and held that tax payable under DTAA was inclusive of surcharge and cess.
- Accordingly, ITAT ruled in favour of the assessee.

ACIT Circle-10(2) New Delhi V/s. M/s. Groz Engineering Tools Pvt. Ltd [TS-878-ITAT-2021 (DEL)] dated13th September, 2021

Facts:

- The assessee was engaged in the business of manufacturing and sale of engineering tools.
- The assessee made royalty payments for use of trademark and claimed revenue expenditure and also made commission payments to non-residents.
- AO disallowed royalty payments and commission payments for non-deduction of TDS.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the royalty paid for use of trademark was allowed as revenue expenditure?
- Whether export commission paid to non-residents was taxable as FTS?

Held:

- Relying on HC ruling in assessee's own case in previous years, ITAT held that royalty was paid for use of trademark correct deduction and payment of taxes.
- With regards to disallowance of commission to non-residents without tax deduction, ITAT held that the non-residents do not have any PE or business connection in India.
- Relying on HC ruling in Maruti Suzuki India Ltd. and Eon Technology P. Ltd. wherein it was held that no tax is required to be deducted on the commission paid to an overseas agent.
- ITAT further deleted the disallowanceor non-deduction of tax on commission payment made to foreign company.
- Accordingly, ITAT ruled in favour of assessee.