M/s Ambuja Cement Ltd vs. ACIT, Large Tax Payer Unit, Mumbai [TS-874-ITAT-2022(Mum)] dated 31st October, 2022

Facts:

- The Assessee was engaged in the business of manufacturing of cement and generation of electricity.
- In AY 2005-06, assesse received sales tax concessions in the nature of exemptions and remissions of Rs.169.93 Cr from different state governments wherein assesse's plants were situated.
- Assessee treated the above stated sales tax exemption/incentives as capital receipts.
- The AO declined assesse's claim and made addition to Assesse's income of the Rs.169.93 Cr CIT(A) partially allowed Assessee's appeal and held the receipts of Rs.130.57 Cr are capital in nature and exempt from tax, however held that the rest of the receipts being Rs.39.36 Cr are Revenue in nature and made addition to that extent.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

Whether the receipts of 39.36 cr will be treated as revenue receipt or capital receipt?

Held:

- ITAT noted that CIT(A) allowed 130.57 cr as the preamble to the said schemes specifically mentioned that the said subsidies are towards achieving dispersal of industries in the underdeveloped and developing areas of the state in order to promote the growth of the industry in the respective state.
- ITAT remarked that CIT(A) simply swayed by the wording of the preamble of the scheme, which was clearly impermissible and the subsidies received by the Assessee were in the nature of sales tax subsidies and the subsidy schemes were materially similar in nature.
- Relying on Gujarat HC ruling in Nirma, co-ordinate bench ruling in Grasim Industries, Special Bench Ruling Reliance Industries and SC ruling in Chaphalkar Brothers, wherein it was held that where the object of respective subsidy schemes of State Governments was to encourage the development of Multiple Theatre Complexes, incentives would be held to be capital in nature and not revenue receipts.
- Thus, ITAT ruled in the favour of the assessee.

M/s MIH India (Mauritius) Ltd. vs. ACIT, Circle -2(2)(1), Int. Taxation, New Delhi [TS-888-ITAT-2022 (DEL)] dated 16th November, 2022

Facts:

- Assessee-Company was a tax-resident of Mauritius holding a valid Tax Residency Certificate to claim benefit of India-Mauritius DTAA.
- Assessee sold shares of Citrus Payments Solutions P. Ltd (Citrus India) to PayU Payments Pvt. Ltd. (PayU India) for Rs.223.35 Cr. that resulted in short term capital gain of Rs.4.77 Cr. which was claimed as exempt under the DTAA.
- AO held that beneficial owner of shares was Dutch holding company of the Assessee i.e. PayU Global B.V and hence the benefits under India-Mauritius DTAA would not enure to the Assessee.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether capital gain of Rs 4.77 cr will be exempt or taxable?

Held:

- ITAT emphasized that the Assessee made substantial investments in India and PayU India to whom the Assessee had sold the shares of Citrus India was a company wherein the Assessee held 82.94% shares and also highlighted that the shares of Citrus India sold to

PayU India are still held by PayU India which clearly establishes that the Assessee was not a fly by night operator or mere conduit company.

- ITAT held that merely borrowing money to invest in the shares of Citrus India, ipso facto, cannot be a reason to treat the Assessee as a conduit company.
- ITAT reiterated that the legal position that as per the CBDT Circular No. 789 dt. Apr 13, 2000 where a Tax Residency Certificate is issued by the Mauritian Tax Authorities, it will constitute sufficient evidence for accepting the status of residence as well as the beneficial ownership for treaty benefits.
- Relying on SC ruling in Azadi Bachao Andolan, it was held that gain derived by the assessee on sale of shares of Citrus India to PayU India is not taxable in India as per pre-amended Article 13(4) of India-Mauritius Tax Treaty.
- Thus, ITAT ruled in the favour of the assessee.

M/s. Spencer Stuart International B.V. vs. ACIT, Circle-14(2)(2), Intl. Taxation, Mumbai [TS-863-ITAT-2022(Mum)] dated 04th November, 2022

Facts:

- The Assessee was a tax resident of Netherlands and was engaged in business of executive search services and related support services to group companies and third-party franchises.
- Assessee had entered into a Shared Service Agreement with its Indian subsidiary and as per the said agreement the assessee was providing services accordingly.
- For AY 2019-20, Revenue passed assessment order holding that the search service fee, management fees and reimbursement of expenses was taxable as FTS in India, which was also confirmed by the DRP.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether executive search service fee, management fees and reimbursement of expenses received by Dutch company from its Indian Subsidiary will be considered as FTS?

Held:

- ITAT opined that the issue of taxability of search service fee was covered in favour of the Assessee, by coordinate bench ruling in Assessee's own case for earlier years, accordingly, directs Revenue to delete addition made with respect to search service fees.
- ITAT opined that Management fees is part of Shared Service Agreement which is an independent agreement and the same cannot be taxable as FTS.
- ITAT observed that the neither the AO nor the learned DRP has independently examined the services rendered by the assesse to Indian subsidiary in respect of which assessee received management service fees.
- ITAT noted that reimbursement of expenses are supported by third party invoice and were reimbursed without any mark up so same is not taxable as FTS.
- Thus, ITAT ruled in the favour of the assessee.