INTERNATIONAL TAXATION

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M/s Maersk Tankers Singapore PTE Ltd vs. ACIT, International Taxation, AC/DC (Int. Txn.) Rajkot [TS-929-ITAT-2022(Rjt)] dated 30th November, 2022

Facts:

- The Assessee was engaged in the business of ship owning & operating, chartering and related business.
- During AY 2017-18, Assessee earned freight income from such shipping operations in India. Assessee's agent filed provisional return under Section 172(3) in respect of two voyages undertaken by the Assessee, declaring freight income, against which NOC was granted under Section 172(6).
- After Assessee filed the final return, the Revenue observed that the Assessee had remitted freight income to its agent in Denmark and accordingly held that Assessee was not eligible to claim exemption under Article 8 of India-Singapore DTAA, by invocation of Article 24.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

Whether the Article u/s 24(1) is applicable to Singapore shipping companies?

Held:

- ITAT referred to the letter from Inland Revenue Authority of Singapore (IRAS) furnished by the Assessee, whereby IRAS stated that: (i) Assessee derived shipping income from export voyages from Indian ports, (ii) such income is reported by Assessee in its Singapore Tax Return for AYs 2017 and 2018, (iii) Article 24(1) of India-Singapore DTAA is not applicable to the chartered income derived by the Assessee on the voyages from Indian ports, as the income is sourced in Singapore and assessable to tax in Singapore on accrual and not on remittance basis.
- ITAT opined that "Since Article 24(1) is not applicable, the provisions of Article 8(1) should apply without any limitation. As such the shipping profits derived by a Singapore resident shipping enterprise from the operation of ships in international traffic shall be taxable only in Singapore in accordance with Article 8(1) and the same does not confer the Indian Authorities to the right to tax such profits."
- Relying on Chennai ITAT ruling in Bengal Tiger Line, coordinate bench in Alabra Shipping, Mumbai ITAT in APL Co. and Hyderabad ITAT in Far Shipping; held that that Revenue was not justified in denying benefit of Article 8 by invoking Article 24(1) following jurisdictional HC ruling in M.T. Maersk Mikage.
- Thus, ITAT ruled in the favour of the assessee.

M/s ESS Distribution (Mauritius) vs. DDIT,Circle-1(2), International Taxation, New Delhi [TS-913-ITAT-2022(DEL)] dated 21st November, 2022

Facts:

- Assessee was engaged in business of sports and sports related television program broadcast by ESPN Star Sports, Singapore, appointed ESPN India as distributor for distribution of ESPN and Star Sports channels through the network of Indian cable operators under a distribution agreement whereby assessee received 60% of gross revenue earned by ESPN India.

- Revenue for AY 2003-04 held that subscription/distribution revenue earned by the Assessee from ESPN India is in the nature of business income and, since, the Assessee had a PE in India, through which it has earned the distribution revenue, it is attributable to the PE. However for other AYs, it was held that the revenue was taxable as royalty.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether distribution revenue received by a Mauritian firm from ESPN India is taxable in India?

Held:

- ITAT observed that as per the agreement between the Assessee and ESPN India, only the right to distribute ESPN and Star Sports channels in India is granted to ESPN India and no right to use of any copyright is transferred to ESPN India.
- Relying on Bombay HC ruling in Set Satellite (Singapore), MSM Satellite (Singapore) Pte., and NGC Network Asia and coordinate bench ruling in Turner Broadcasting herein the Courts/ITAT have held that the right granted to the Indian entity is a commercial right and not copyright and stated that when the Assessee itself does not have ownership over the copyright, it could not have transferred such right to any other person, accordingly held that the distribution revenue is not taxable as royalty.
- Relying on bench ruling in Taj TV, it was held that ESPN India cannot be held to constitute DAPE or Fixed Place PE of Assessee as per Article 5(4) of India – Mauritius Tax Treaty, ESPN India habitually exercises authority to conclude contracts on behalf of the assesse. So the same is not taxable as business profits.
- Thus, ITAT ruled in the favour of the assessee.

M/s. BBC World Distribution Ltd vs. ADIT,Circle-1(1), Intl. Taxation,New [TS-924-ITAT-2022(DEL)] dated 21st November, 2022

Facts:

- BBC World News Ltd (BBCWN), a UK based company, granted a non-exclusive global right to the Assessee i.e. BBC World Distribution Limited who in-turn entered into agreement with BBC India to distribute the channel to cable operators in India.
- Revenue held that the distribution income received by Assessee is taxable as royalty in India as the Assessee had transferred right to use copyright to BBC India and accordingly addition was made to Assessee's income, which was upheld by CIT(A).
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether distribution revenue received by BBC world from BBC India will be termed as royalty?

Held:

- ITAT observed that neither the Assessee nor BBC India are owners of the BBC World News Channel.
- ITAT noted that while granting non-exclusive global right for distribution of BBC World News Channel to the Assessee, BBCWN, which holds the copyright over the content of the BBC World News channel, has not parted with any of such right and in fact makes it clear that while exercising the distribution right, the Assessee cannot modify, alter, or make any change in the contents of BBC World News Channel.
- ITAT opined that "In view of such explicit condition imposed under the distribution agreement, it cannot be said that the assessee had any right over the copyright of the contents of the channel. When the assessee itself had no right over the copyright of the content of BBC World News Channel, it is beyond comprehension, how the assessee can transfer such non-existent right and the same cannot be termed as royalty u/s 9(1)(vi) of the Act or under the India-UK DTAA.
- Thus, ITAT ruled in the favour of the assessee.