INTERNATIONAL TAXATION

CA. Hinesh Doshi, CA. Ronak Soni

OT Africa Line Limited vs. Deputy Director of Income Tax- International Taxation Circle 4(2), Mumbai [TS-275-ITAT-2020(Mum)] dated 27th May, 2020

Facts:

The assessee, a company incorporated in United Kingdom, was engaged in the business of shipping.

During the course of assessment proceedings, the Assessing officer (AO) noticed that the assessee had earned certain freight income which was claimed to be exempt as per article 9 of the Indo-UK DTAA.

AO was not in agreement with this claim by the assessee as he observed that the assessee has a Dependent Agency Permanent Establishment (DAPE) in India and accordingly AO attributed 10% of the freight income as attributable to DAPE.

Aggrieved, the assessee filed an appeal before ITAT.

Issue:

Whether the freight income attributed to DAPE is liable to be taxed in India under India-UK DTAA?

Held:

Relying on the HC ruling of Set Satellite (Singapore) Pte Ltd, ITAT stated that the income as attributable to DAPE cannot be taxed in India if the agent is paid at arm's length price and accordingly the said income is taxable in India.

ITAT rejected AO's view and stated that the existence of DAPE was immaterial as its legal position is wholly tax neutral once the agent is paid remuneration at arm's length price.

ITAT observed that the assessee paid remuneration to the agent at arm's length price and the same was offered to be taxed in India.

Accordingly, ITAT ruled in favour of the assessee.

Air France Vs. Addl. DIT [TS-246-ITAT-2020 (DEL)] dated 22nd May, 2020

Facts:

The assessee, a foreign company, being a tax resident of France was engaged in the operation of aircraft in international traffic.

The assessee earned income from providing 'technical handling' services to other International Airlines Technical Pool (IATP) Pool Members.

AO treated such income as fee for technical services liable to tax @20% u/s 115A r.w. section 44D.

Aggrieved, the assessee filed an appeal with Mumbai ITAT.

Issues:

Whether the branch office of the assessee in India can be considered as its Permanent Establishment ('PE') in India?

Whether the income from technical handling services provided to non-IATP members would be exempt as per Article 8 of India-France DTAA?

Held:

ITAT observed that the assessee is merely a branch office of the foreign company.

The entire receipts collected by the branch office were remitted to the Head office after meeting the local expenditure. The said receipts were collected from the public at large and not from provision of any services to Head office.

ITAT rejected AO's stand that the income was taxable in India and the assessee had a PE in India.

Relying on the HC ruling of Lufthansa German Airlines, ITAT ruled that the assessee would be exempt to pay tax in India under Article 8(2) of India-France DTAA as it provided services which were derived from pool participation.

Accordingly, ITAT ruled in favour of the assessee.

DCIT Vs. Narmil Infosolutions Pvt Ltd [TS-261-ITAT-2020(DEL)] dated 29th May, 2020

Facts:

Vectex Limited, a Cyprus based company, which held 95% shares of Unitech Info Park Ltd (UIPL), an Indian company, sold shares to an assessee, Indian company.

AO observed that the shares held by Cyprus company in UIPL derived its value solely based on the value of the land which was an asset owned by the UIPL.

Therefore, transfer of shares of UIPL from Cyprus company to the Indian company resulted into an effective transfer of the rights over the land.

Hence, the capital gain derived by Cyprus company was from alienation of immovable property - land situated in India was chargeable to tax in India as per article 14(1) of Indo-Cyprus DTAA.

AO held the assessee in default u/s. 201(1) of the Income Tax Act on account on non-deduction of tax and as an agent u/s 163(1) of the Act.

The assessee filed an appeal before CIT(A). CIT(A) ordered in the favour of assessee.

Aggrieved, AO preferred an appeal with ITAT.

Issues:

Whether income derived by the non-resident directly from the land located in India was

taxable in India as per Article 14 of India-Cyprus DTAA?

Whether payment made by the assessee to the non-resident would consider the assessee as representative assessee u/s 163 of the Income Tax Act?

Held:

ITAT rejected AO's view that the transfer was taxable in India as it resulted in an effective transfer of rights over the land by the Indian company.

ITAT rejected the taxability under Article 14(1) as the asset sold by Cyprus Company was shares and not immovable property.

ITAT denied taxation under Article 14(2) as PE was absent in India and under Article 14(3) which was applicable only to ship or aircraft or movable property.

ITAT thus observed that the transaction was taxable under residuary Article 14(4) and will be taxable only in Cyprus i.e. country of residence of transferor.

ITAT also rejected the treatment of assessee as representative assessee of Cyprus company u/s. 163 as income from transfer of shares was not taxable in India.

Accordingly, ITAT ruled in favour of the assessee.