Dynamic Drilling & Services Pvt. Ltd. vs ACIT Circle 7 (2), New Delhi [TS-196-ITAT-2022(DEL)] dated 8th March 2022

Facts:

- The assessee company was engaged in the business of providing offshore drilling services and exploration and production of oils for companies in India.
- It had an overseas JV partner, based in Singapore who entered into a put/call option deed to purchase shares of assessee's sister concern in Singapore.
- The assessee received performance guarantee commission on which the JV partner deducted tax under Singapore Tax Laws.
- Revenue disallowed the foreign tax credit claimed by the assessee stating that the commission was not taxable in Singapore in absence of PE in Singapore and thus no credit would be granted for tax withheld in Singapore.
- Aggrieved, the assesse company filed an appeal with ITAT.

Issue:

- Whether the income received in the form of Performance Guarantee Commission is in the form of Business Income and taxable under Article 7 of DTAA between India and Singapore?
- Whether credit of taxes withheld in Singapore will be allowed?

Held:

- ITAT contended that Revenue cannot change the characteristic of one-time income from performance guarantee commission as business profit to be termed under Article 7 of DTAA since the income received by the assessee company from providing Performance guarantee was not its core business activity as observed from it financial statement.
- ITAT stated that the income received cannot be treated as business income.
- Relying on the ruling in the case "Amarchand Mangaldas and Suresh K Shroff & Co" wherein it was held that DTAA provisions does not require PE to eliminate the double taxation.
- ITAT further directs the revenue to allow tax credit as per the provisions of Section 90(1) since income received was taxable in India and also suffered tax in Singapore.
- Thus, ITAT ruled in the favour of the assessee.

ACIT (Intl. Taxation) Circle-1 vs. Baker Hughes Singapore Pte, Dehradun [TS-158-ITAT-2022(DDN)] dated 8th February, 2022

Facts:

- The assessee was tax resident of United States of America and received interest income on income tax refund in the relevant year under consideration.
- AO held that interest income is not covered under the provisions of Section 44BB and it should be taxed at maximum marginal rate at 40% under the head business income on the basis that the income was effectively connected to its PE in India.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether the interest income received on income tax refund would be taxable under Income Tax Act or as per India-US DTAA and at what rate?

Held:

- ITAT observed that as per provisions of Section 90(2), the assessment of interest for tax under DTAA was more beneficial to the assessee as compared to Income Tax Act.

- ITAT opined that interest income need not necessarily be business income in nature for establishing the effective connection with the PE and thus rejected AO's contention.
- ITAT stated that interest on income tax refund received by the assessee was not effectively connected with the PE either on the basis of asset-test nor activity-test, thus concluded that the interest would be taxed @ 15% as per Article 7 and 11 of India-US DTAA.
- Thus, ITAT ruled in the favour of the assessee.

M/s Salesforce.com Singapore Pte vs. The Dy. D.I.T Circle- 2(2) International Taxation, New Delhi [TS-222-ITAT-2022(DEL)] dated 25th March,2022

Facts:

- The assessee, a tax resident of Singapore, was a leading Customer Relationship Management (CRM) services provider and received subscriber fees from its customers for providing services on its software portal.
- AO observed that services provided by the assessee was as per definition of royalty, both under Section 9(1)(vi) as well as under Article 12 of India-Singapore DTAA and thus contended that the income received would be taxable as royalty.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether subscriber fees received by the assessee from web-based CRM services would be taxable as royalty?

Held:

- ITAT observed that assessee's database provided access for client's own use to generate reports basis the information fed in by the client in the desired format for a limited period for which the subscription fee was being paid by the client.
- ITAT also observed that assessee neither had a place of management in India nor had any equipment or personnel in India.
- ITAT opined that in the absence of granting any control over the equipment belonging to the assessee to its customers, AO's contention that the fees received would constitute as 'Royalty' would not be acceptable.
- ITAT stated the assessee neither shared its own experience, technique or methodology employed in evolving databases with the users nor imparted any information relating to them.
- ITAT ruled that the fees received by the assessee would not be taxed as royalty as per section 9(1)(vi) as well as Article 12(3) of the treaty.
- Thus, ITAT ruled in the favour of the assessee.