INTERNATIONAL TAXATION

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M/s IQVIA AG (previously known as IMS AG) vs Deputy Commissioner of Income Tax, International Taxation Circle 2(2)(2), Mumbai [TS-228-ITAT-2023(Mum)] dated 27th April, 2023

Facts:

- The Assessee is a tax resident of Switzerland and engaged in providing market research reports on pharmaceutical sector to its customers across the globe at a predetermined subscription price.
- The assessee company has entered into an agreement with its customers for providing IQVIA reports who have permitted to get access with applicable fees.
- Assessee received the subscription fee of Rs. 42.17 Cr from its Indian customers during AY 2018-19, on which tax of Rs. 2.68 Cr was withheld by the customers.
- Revenue held that subscription fee of Rs. 42.17 Cr is taxable as royalty which was confirmed by DRP.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

Whether the Subscription fees for providing access to online database is taxable as royalty?

Held:

- ITAT observed that customers were not granted non-exclusive and non-transferrable license to use the IQVIA reports and thereby restricts the use of information by the customer for its own benefit, back-up etc. Thus assessee does not receive any right for reproduction and facilitates but only review reports through online link which cannot be considered as royalty u/s 9(1)(vi).
- ITAT noted that the issue of taxability of subscription fee as royalty is recurring in nature and has been decided in favour of the Assessee by the co-ordinate bench for various preceding AY's i.e. AY 2013-14 to AY 2017-18.
- ITAT opined that subscription fees received by Assessee for providing access to its online database is not taxable as royalty both under Section 9(1)(vi) and under Article 12(3) of the India-Switzerland DTAA. Relying on co-ordinate bench ruling in assessee's own case for AY 2017-18, ITAT deleted the addition of Rs.42.17 Cr.
- Thus, ITAT ruled in the favour of the assessee.

M/s. Bengal Tiger Line Pte. Ltd. vs Deputy Commissioner of Income Tax, International Taxation Circle 1(1), Chennai [TS-232-ITAT-2023(CHNY)] dated 04th May, 2023

Facts:

- The assesse is a Singapore based entity holding TRC and engaged in shipping business.
- Pursuant to survey operations carried out at the premises of assessee's Indian subsidiary (BTIPL), assessee's case was reopened u/s 147 alleging that documentation charges and vessel handling charges collected by BTIPL were on behalf of the Assessee (being the Principal) and thus were taxable in Assessee's hands. Revenue alleged that BTIPL was entitled for agency commission of 2% only and it was collecting document / vessel handling charges in the capacity of an agent only and paying a lesser tax rate of 30% as against tax rate of 40% as applicable to the Assessee.
- Revenue held that shipping income was not exempt under Article 8 of India-Singapore DTAA as claimed by Assessee and accordingly, computed income under Section 44B at Rs.10.89 Cr and also added Rs.1.42 Cr being documentation and vessel handling charges under the head - other sources, which was upheld by DRP.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether shipping income of a resident of Singapore is taxable in India?

Held:

- ITAT opined that the statement recorded during course of survey operations, which formed basis of reassessment clearly show that the documentation and vessel handling charges collected by the subsidiary are not on assessee's behalf as alleged by Revenue, thus Revenue had no jurisdiction to initiate reassessment if there is no reason to believe that income had escaped assessment.
- ITAT opined that Article 8 is not an exemption provision but merely allocates taxation rights to contracting states and since the shipping income is taxable on accrual basis in Singapore, Article 24- Limitation of Benefit clause would not be applicable.
- Relying on Gujarat HC ruling in M.T. Maresk Mikage and also coordinate bench ruling in Assessee's own case for AY 2015-16 wherein it was held that Article 8 of India-Singapore DTAA is applicable and shipping income of a resident of Singapore is taxable only in Singapore but not in India.
- Thus, ITAT ruled in the favour of the assessee.

M/s. Juniper Networks Inc. vs. Income Tax Officer (International Taxation)-1(2),Bangalore [TS-242-ITAT-2023(Bang)] dated 8th May, 2023

Facts:

- Assessee, a US-based company, entered into secondment agreement with its Indian counterpart and accordingly two of the Assessee's employees were seconded to Juniper India as Engineering Services Managers.
- Revenue held that the salary reimbursement received by assessee from Jupiter India in respect of the seconded employees was taxable as FTS and accordingly made the addition, which was upheld by CIT(A).
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether salary reimbursement of seconded employees will be considered as FTS?

Held:

- ITAT noted that i) the reimbursement of salary of the seconded employees was received on cost-to-cost basis without any profit element, (ii) appropriate taxes with respect to the salary paid to the seconded employees are withheld by Jupiter India under section 192, thus bringing the same amount to tax as FTS would amount to double taxation and (iii) the reimbursement receipt for salary of seconded employees does not qualify as FTS under the India-USA DTAA.
- Relying on HC rulings in Abbey Business Services India and Flipkart Internet Pvt. Ltd., it was held that reimbursement of salary of seconded employees are not taxable as FTS, Highlights that the aforementioned Jurisdictional HC rulings are consistently followed by the coordinate bench and also relying on co-ordinate bench ruling in Tesco Bengaluru, wherein it was held that rendering of service by the seconded personnel shall not constitute as fees for technical services, in the absence of making available any technical knowledge or skill to the Indian entity.
- Thus deletes the addition made by the Revenue by holding the reimbursement of salary payment of seconded employees as FTS.
- Thus, ITAT ruled in the favour of the assessee.

1. **Linklaters LLP, Mumbai vs. Deputy Commissioner Of Income Tax, International Taxation Circle 3(1)(2), Mumbai (ITA no. 7307/Mum. /2017) dated 11 May 2023**

Facts:

- The Assessee is a Limited Liability Partnership incorporated under the laws of United Kingdom ("UK"), a fiscally transparent entity (an entity which is not taxable in its own hand).
- In AY 2014-15, the assessee provided legal advisory services (professional services) to its clients worldwide including India and earn income from such services. Its personnel visited in India only for 13 days to render services in India.
- Revenue denied the following claim of the assessee:
  - assessee is a tax resident of the UK within the meaning of Article 4(1) of India-UK DTAA
  - no permanent establishment in India as number of days furnishing services in India do not exceed 90 days

- professional services are not in the nature of technical services as it cannot be utilised by client in future without aid of assesee and could not said to have "made available" technical-knowledge, skill, experience, know-how or process, etc to recipient of services.

• Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

• Whether assessee is eligible to claim benefit under India-UK treaty being a fiscal transparent entity as per Article 1 and Article 4 of tax treaty.

• Whether income received by assessee are in the nature "fees for technical services" as per Article 13 of India-UK treaty.

• Whether assessee employees stayed in India for 13 days can create a permanent establishment in India.

Held:

• Benefit under India-UK tax treaty

  - ITAT rejected revenue's contention of not entitled to treaty relief relying on its own earlier year orders.
  - In earlier years, Tribunal had held that assessee is eligible to claim Treaty benefit so long as entire profits of the partnership firm are taxed in UK, either by the said firm or by its partners in UK.

• Treatment and taxability of income received

  - ITAT had noted that services provided were of the nature of advisory or due diligence for different kind of projects which includes mergers, acquisitions, restructuring, financing etc.
  - None of these services it can be said that technical knowledge, skill, experience, know-how or process remained with the clients to whom services were rendered by the assessee, even after the rendition of services was completed and agreement came to an end.
  - These services were of purely legal advisory nature; it cannot be said that recipient of the services was in a position to duplicate similar skill or technology or techniques in future without the aid or assistance of the assessee for carrying out similar assignments.
  - These services have been indeed used by the clients for their benefit but the re-application or repetition of the same benefit for future requirements of these clients without involvement of the assessee was not committed by the assessee, as per the facts brought before us. Thus, it cannot be said that by way of rendition of these services, the assessee 'made available' to its clients the technical knowledge, skill, experience, know-how or process, etc.
  - Hence, ruled in favour of assessee income of the assessee would not fall within the ambit of "Fees for technical services" as envisaged in Article 13 of India-UK DTAA.

• Permanent Establishment

  - ITAT held that as assessee neither had a fixed place of business in India nor any of its employees stayed in India for more than 90 days as they were present in India for period of aggregating to only 13 days.
  - Assessee could not be said to be taxable under provisions of article 5 read with article 7 of India-UK tax treaty.

  Thus, ITAT ruled in the favour of assessee.

2. World Tax News – Sight of tax trends in the world

a. UAE Tax system – Ministry of Finance announces UAE Cabinet Decision on treatment of natural persons (resident or non-resident) in business activities (Cabinet Decision no. (49) of 2023 (8 May 2023))

  - *individual conducting business or business activities will only be required to register and pay corporate tax if their combined turnover exceeds AED 1 million in a calendar year*
  - *Personal income, earnings from employment, investments, and real estate without licensing requirements, will not be subject to corporate tax*

  The same shall come into effect from 1 June 2023

(Source: Cabinet-Decision-No.-49-of-2023.pdf (mof.gov.ae))

b. Australia announces tax incentives to increase the supply of housing in the country by

- ***Reduced withholding tax***

  Tax withholding reduced from 30% to 15% for eligible fund payments from managed investment trusts (MIT) attributable to residential build-to-rent projects

  The aforesaid relief will apply from 1 July 2024 for income attributable to newly build-to-rent projects.

- Increased depreciation rate

  Increasing the capital works tax deduction depreciation rate for eligible new build-to-rent projects from 2.5% to 4% per year. This measure will apply to projects where construction commences after the Budget (9 May 2023) and will shorten the period that construction costs of eligible buildings are depreciated from 40 to 25 years.

(Source: Incentives to increase the supply of housing | Australian Taxation Office (ato.gov.au))