Larsen & Toubro Limited. vs. Girish Dave, Director of Income-tax (International Taxation)

Vinay Sinha, Deputy Income-tax (International Taxation) and Union of India [TS-124-HC-2022 (BOM)] dated 28th February, 2022

Facts:

- The assessee was a public limited company and an engineering conglomerate and carried out varied business activities through independent divisions.
- The assessee entered into a contract with ONGC for survey, design engineering etc. at an offshore site.
- To execute the contractual obligations, the assessee hired barges and tugs non-resident assessees for transport of equipment from the assessee's yard to offshore site.
- The assessee deducted TDS as the charter payments were assessable u/s. 44BB of the Income Tax Act.
- Revenue rejected the assessee's application u/s. 195 and taxed it at 10% as Royalty for commercial equipment. The revised application u/s. 264 filed by the assessee was rejected.
- Aggrieved, the assessee filed a writ petition before the Mumbai HC.

Issue:

- Whether the consideration paid towards hire of tugs and barges are taxable as Royalty and covered u/s. 44BB of the IT Act?

Held:

- HC held that the requirement of the provision is the connection of the service or facility with or the use of plant or machinery on hire for 'exploration, extraction or production of mineral oils.
- Relying on SC ruling in ONGC, HC observed that in the present case there in no doubt that the assessee entered into contract with ONGC for enhancing the exploration / production capacity.
- HC opined that the authorities were not justified in arriving at the conclusion that the use of tugs and barges were in the nature of mere transportation.
- HC held that the payments made the assessee were to be assessable u/s. 44BB and thus ruled in favour of the assessee.

Renaissance Services BV. vs. Deputy Director of Income Tax (International Taxation) [TS-132-ITAT-2022(Mum)] dated 24th February, 2022

Facts:

- The assesse company, tax resident of Netherlands was engaged in conducting training programmes.
- The assessee provided access to centralized reservation systems, property management systems and other systems to Marriott chain of hotels located worldwide.
- The assesse had received Rs.92.34 lakh as fees from provision of services in the nature of re-imbursement of expenses.
- Revenue held the fee received as taxable as FTS and made addition which was further enhanced by CIT(A).
- Aggrieved, the assessee filed an appeal before Mumbai ITAT.

Issue:

- Whether the amount received by assesse taxable as fees for technical service (FTS) or Royalty?

Held:

- ITAT noted that the access to systems provided to the assessee were common facilities provided to the members of the Marriott chain of hotels.
- ITAT further noted that these systems were not customized to suit the specific requirements of the members and cannot be construed as 'technical services'

- ITAT observed that such standard services to the Hotel owners does not give rise to any royalty income, but would be in the nature of business income.
- ITAT held that the receipts of the assessee would not be chargeable to tax both under Income Tax Act as well as under DTAA.
- Accordingly, ITAT ruled in favour of the assessee.

Perfetti Van Melle ICT & BV vs. ACIT, International Taxation, Gurgaon [TS-145-ITAT-2022(DEL)] dated 28th February, 2022

Facts:

- The assessee company, incorporated in Netherlands was engaged in the business of rendering services in confectionery industry.
- The assesse company received Information & Communication Technology ICT service charge and Regional support office cross charges from its Indian subsidiary.
- AO held that ICT services and Regional support services to be taxable as FTS under article 12 of the India-Netherland DTAA.
- Further, DRP confirmed the stand taken by Revenue.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether receipts from Subsidiary in India for ICT services to be considered as FTS?

Held:

- ITAT noted that the ICT does not relate to transfer of any technical knowledge, experience skill, know-how or processes or transfer of technical plan or design.
- ITAT further noted that the assessee invoked MFN clause in India-Netherlands DTAA and the scope of FTS is restricted in India-Portugal DTAA as it requires that the services should enable the person acquiring the services to apply the technology.
- ITAT construed that the routine advisory and consultancy services could not be construed as FTS.
- Relying on Mumbai ITAT ruling in SCA Hygiene Products wherein it was held that payment received by the Swedish company for providing Information Technology services was held not taxable as FTS.
- Accordingly, ITAT ruled in favour of the assessee.