

DCIT, Circle -1(2), New Delhi vs Converteam Group [TS-779-ITAT-2022DEL] dated 08th October, 2022

Facts:

- The assessee, a France based company was engaged in the electrification business and had received management support service charge of Rs 5.57 crore from Indian entities, namely GE Power Conversion India Pvt Ltd and Converteam EDC Pvt Ltd.
- Assessee had not offered the management charges to tax in India as per Article 13 of India-France DTAA read with the protocol and Article 13 of India-UK DTAA that prescribes the most favoured nation (MFN) clause that restricts the scope of taxation of fees for technical services (FTS).
- The AO opined that support services provided by the assessee are in nature of FTS and accordingly made the addition.
- Aggrieved, the assessee filed an appeal with ITAT.

Issue:

- Whether management support services provided by France based company will be taxable as FTS?

Held:

- ITAT observed that the Protocol to a DTAA is an indispensable part of a DTAA with the same binding force as the main clauses of the DTAA.
- Relying on jurisdictional HC ruling in Steria (India), wherein it was held that MFN clause of the Protocol to India-France DTAA forms an integral part of the DTAA and applies automatically without any further notification.
- ITAT opined that the provisions of the tax treaty are required to be read with the Protocol and are subject to the provisions contained in such protocol without there being a need of a separate notification for enforcing the provisions of the protocol.
- Thus, ITAT ruled in the favour of the assessee.

M/s. Anand NVH Products Inc. Vs ACIT, Circle-1(1)(1), Intl. Taxation, Delhi [TS-796-ITAT-2022(DEL)] dated 15th October,2022

Facts:

- The Assessee is a US-based company and a wholly owned subsidiary of the Indian entity - Anand NVH Products Pvt. Ltd., engaged in providing marketing support services to its parent company.
- Assessee received Rs.5.91 Cr towards provision of marketing support services from the said Indian entity, for AY 2017-18 which was held to be taxable in the nature of FIS under Article 12(4)(b) of India-USA DTAA.
- The AO considered the marketing support services in the nature of FIS under Article 12(4)(b) of the Tax Treaty and made addition to the total income.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether marketing support services will be considered as FIS?

Held:

- ITAT observed that the services are in the nature of market survey and market research for the products of the parent company and getting information regarding the regulatory measures in USA.
- ITAT held that consideration received cannot be treated as FIS under Article 12(4) of India-USA DTAA since the services provided by the Assessee are neither in the nature of technical or consultancy services nor do they fulfil the “make available” condition provided under the DTAA
- Thus, ITAT ruled in the favour of the assessee.

Ms Sonakshi Sinha vs Commissioner of Income-tax (Appeals), NFAC, Delhi [TS-742-ITAT-2022(Mum)] dated 20th September, 2022

Facts:

- The Assessee-Individual, a movie actor & brand promoter, was subjected to limited scrutiny for the issue of relief against double taxation under Section 90/91.
- Revenue disallowed FTC of Rs.29.21 Lacs, for taxes paid in the UK on the ground that Assessee filed Form No.67 for claiming foreign tax credit almost two years after filing of return of income, which was required to be filed on or before the date of filing of the return under Rule 128(9).
- CIT(A) confirmed the disallowance of FTC credit made by Revenue.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

Whether the assessee can file Form 67 after due date of filing return?

Held:

- ITAT observed Section 90 or 91 does not prescribe timeline for filing of such declaration on or before due date of filing of Return of Income and Rule 128(4) provides the condition where the foreign tax credit would not be allowed, which does not include non-filing of prescribed form within the prescribed limit.
- Relying on jurisdictional HC ruling in co-ordinate bench ruling in Vinod kumar Lakshmi pathi and Bangalore ITAT ruling in 42-Hertz Software India and Brinda Kumar Krishna, wherein it was held that the requirement under rule 128(9) for filing Form 67 before or on the due date of filing of return of income, is directory in nature and cannot be treated as mandatory.
- ITAT also observed that legislature in its own wisdom has extended the due date for filing Form No. 67 on or before the end of the AY vide amendment to the Rule 128 with effect from April 1, 2022.
- Thus, ITAT ruled in the favour of the assessee.