

## INTERNATIONAL TAXATION

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### **Vinodkumar Lakshmiopathi vs CIT (A) NFAC, Delhi [TS-719-ITAT-2022(Bang)] dated 06th Sep, 2022**

#### **Facts:**

- The assessee filed Form 67 along with ITR after the extended due date for AY 2018-19
- The AO disallowed the Foreign Tax Credit claimed by the assessee u/s 90/90A of the Act.
- The Ld. CIT(A) observed that as per Rule 128(9) of the IT Rules, the assessee is required to furnish Form 67 within the due date of filing ITR and accordingly confirmed the Assessment order.
- Aggrieved, the assessee filed an appeal with ITAT.

#### **Issue:**

- Whether Foreign Tax Credit (FTC) as per Form 67 will be allowed as deduction if ITR and Form 67 is filed after due date?

#### **Held:**

- ITAT observed that assessee had offered Foreign Income on which tax has been paid and levying of additional tax by not allowing FTC will amount to double taxation.
- Relying on co-ordinate bench ruling *Brinda Rama Krishna*, ITAT held that Form No.67 is not mandatory but a directory requirement and Rule 128(9) does not provide for disallowance of FTC in case of delay in filing Form No. 67.
- It was also held that the DTAA overrides the provisions of the Act and the Rules cannot be contrary to the Act, thus, non-furnishing of Form No.67 before the due date under Section 139(1) is not fatal to the claim for FTC.
- Thus, ITAT ruled in the favour of the assessee.

### **M/s. Koninklijke Philips N.V vs DCIT-(IT), Circle-1(2), Kolkata [TS-699-ITAT-2022 (Kol)] dated 02nd September, 2022**

#### **Facts:**

- The assessee, a Foreign company incorporated in Netherland (parent of Philips Group) filed its ITR in which refund was received.
- The AO passed the assessment order, issuing refund and deducted TDS on Refund Interest.
- CIT (A) confirmed the order passed by the AO.
- Aggrieved, the assessee filed an appeal with the ITAT.

#### **Issue:**

- Whether TDS is applicable on Refund Interest for Netherland based companies?

#### **Held:**

- ITAT observed that interest on income-tax refund is a "debt claim" under India-Italy DTAA as interpreted by Madras HC in case of *Ansaldo Energio*.
- ITAT relied upon Delhi HC rulings in *Steria India* and *Concentrix Services* and Karnataka HC ruling in *Apollo Tyres* apart from the coordinate bench ruling in *ITC* to extend benefit of DTAA with Italy which was entered into after India entered into the DTAA with the Netherland.
- ITAT observed that the beneficial provisions available to the assessee under India-Italy treaty is also available to India-Netherlands DTAA by virtue of MFN clause.
- It was held that interest on income tax refund would be a non-taxable sum by virtue of being a 'debt claim' from the Government of India.
- Thus, ITAT ruled in the favour of the assessee.

**M/s Springer Verlag GmbH vs DCIT, International Taxation, Circle-3 (1)(2), New Delhi [TS-674-ITAT-2022(DEL)] dated 23rd August, 2022**

**Facts:**

- The assessee is Germany based company engaged in the business of publishing of books and journals in the field of research, education, and professional business.
- The assessee entered into a Commissionaire Agreement with its Indian arm Springer Nature India Pvt. Ltd. (SIPL) as a non-exclusive sales representative on a global basis to promote, grant and distribute the products of SIPL.
- Revenue held that that the entire receipt claimed as commission income is nothing but royalty taxable under Section 9(1)(vi) and under India-Germany DTAA at 10%.
- CIT(A) changed the colour of assessment by holding that the commission so received is not royalty but FTS since the Assessee was involved in rendition of managerial services to SIPL;
- Aggrieved, the assessee filed an appeal with the ITAT.

**Issue:**

- Whether the services provided to SIPL to be considered as Commission or FTS?

**Held:**

- ITAT observed that assessee had received commission which is nothing but export commission/sales commission and to construe any payment as FTS, such payment should be a consideration for rendering of any managerial services, whereas services provided by assessee were in respect of customer and sale support.
- Relying on jurisdictional HC ruling in *Panalfa Autoelektrik*, Mumbai ITAT ruling in *Endemol South Africa* and *UPS SCS*, ITAT observed that managerial services entail the element of management of the business of the service recipient in a substantial manner.
- ITAT was of the opinion that mere provision of support services cannot be labelled as managerial services and hiring an outside party for provision of support in respect of the operational aspects of a business cannot qualify as managerial services unless the service provider lays down policies or executes such policies by managing the personnel of the service recipient.
- Relying on Delhi HC ruling in *Hero Motocorp* and Madras HC ruling in *Farida Leather Company*, wherein it was held that since no patents, invention, model, design or secret formula were transferred or permitted to use and the services rendered were not managerial, technical or consultancy services, the commission payment towards them does not fall into the category of fees of technical services.
- Thus, ITAT ruled in the favour of the assessee.