INTERNATIONAL TAXATION CA. Hinesh Doshi, CA. Pramita Rathi	

Michael Page International Recruitment Pvt Ltd Vs DCIT, International Taxation 3(2)(2), Mumbai [TS-624-ITAT-2022(Mum)] dated 04th July, 2022

Facts:

- The assessee before us is a company incorporated in, and fiscally domiciled in the Republic of Singapore, and is engaged in the business of, inter alia, providing executive search and recruitment services.
- The assesse had received INR 3.06 cr from its Indian associated enterprise by the name of Michael Page International Recruitment Pvt Ltd as a receipts for providing business support services and referral fees.
- The assessee had not offered the fees so received to tax, on ground that as the services rendered by the assessee to the Indian entity, i.e. MP-India, does not amount to „making available" the services so rendered, in terms of Article 12 of the Indo Singapore tax treaty, it cannot be taxed in India.
- Revenue rejected Assessee's claim and concluded that the services rendered by Assessee to its Indian AE satisfied the make available clause and held the entire sum to be FTS under Article 12 of India-Singapore DTAA.
- Aggrieved, the assesse company filed an appeal with ITAT.

Issue:

- Whether Business support fees and referral fees paid to Singapore Company from Indian Associated Enterprise will be treated as FTS?

Held:

- ITAT observed that unless the recipient of the services is enabled to provide the same services without recourse to the service, the services cannot be said to have made available by the service provider.
- ITAT stated that test for services to qualify as FTS is the transfer of technology and a mere incidental advantage to the recipient of service is not enough.
- Relying on the ruling in the case of Shell Global International wherein it was held that,

  "to fit into the terminology "making available", the technical knowledge and skill must remain with the person receiving the services even after the particular contract comes to an end" and "the technical knowledge or skills of the provider should be imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in the future without depending upon the provider".
- Thus, ITAT ruled in the favour of the assessee.

Google India Pvt Ltd Vs DCIT[International Taxation], Bangalore [TS-643-ITAT-2022(Bang)]] dated 10th August, 2022

Facts:

- The assessee is a wholly owned subsidiary of Google International LLC, US. It is engaged in the business of providing Information Technology (IT) and Information Technology and enabled Services [ITeS] to its group companies.
- The assessee has entered into Google Adword Program Distribution Agreement dated 12/12/2005 with Google Ireland Ltd and paid them distribution fees of INR 162.09 crores without deducting TDS in AY 2007-08 and AY 2008-09.
- The AO issued notice on Nov 20,2012 for TDS deafault and proceeded to pass an order dated Feb 22,2013 u/s. 201(1) & 201(1A) of the Act. In the order, the AO held the assessee to be in default for non-deduction of TDS u/s 195 of the Act.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether the Assessing officer has issued notice within the time limit as specified in Section 201(3)?

Held:

- ITAT notes Assessee's submission that TDS proceedings were initiated by issuing notice on Nov 20, 2012 which was beyond the time limit of 4 years specified in Section 201(3).

- Bangalore ITAT held that TDS proceedings against Google India as time-barred since notice was issued beyond four years from the end of the financial year in which amount was paid or credited.
- Relying on the ruling in Mphasis, ITAT held that orders passed under Section 201(1) and 201(1A) to be time barred since the notice itself was issued beyond the period of four years from the end of relevant financial year.
- Thus, ITAT ruled in the favour of the assessee.

DCIT Circle -3(1)(2), [International Taxation], New Delhi Vs M/s. Technip France SAS, [TS-618 -ITAT-2022(DEL)]] dated 26th July, 2022

Facts:

- The assessee is a the assesse is a non-resident corporate entity incorporated under the laws of France engaged in engineering, procurement and construction business for oil production- off-shore and on-shore, refining petrochemicals, fertilizers, chemical fertilizers, non-conventional energy and submarine pipelines etc.
- The Assessee enetered into contract with RIL which involved retrieval of the installed X Mas Tree (XMT), and installation of XMT. The process further involved retrieval of the Jumper, disconnection of umbilicals, re-installation of Jumper and stabbing of umbilicals, once the new XMT is installed.
- The assessee computed its income under section 44BB of the Act on presumptive basis at 10% of the gross receipts and filed Income Tax Return
- The Assessing Officer observed that amount received by the assesse qualifies as FTS under section 9(1)(vii) of the Act and passed assessment order not in favour of the assessee.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether the services provided to RIL will be considered as FTS or under Sec 44BB?

Held:

- ITAT observes that Section 44BB, being a special provision for computing profits and gains 'in connection with the business of exploration of minerals oils'.
- Relying on HC ruling in case of OHM Ltd and AAR ruling in Geofizyka Torun, it was held that sec 44BB(1), includes a variety of services relating to exploration, extraction and production of mineral oils and held that work performed by assesse is linked to exploration/extraction of oil and cannot be treated as FTS.
- Thus, ITAT ruled in the favour of the assessee.