INTERNATIONAL TAXATION

CA. Hinesh Doshi, CA. Pramita Rathi

M/s. Hemera India Pvt. Ltd vs DCIT,Circle 11(1),New Delhi [TS-489-ITAT-2022DEL] dated 13th June, 2022

Facts:

- The assessee company M/s. Hemera India Pvt. Ltd paid service fee to UK-based company for introduction of client. The same was considered to be in the nature of normal business payment to an intermediary and not Fees for Technical Services (FTS), thus not liable to withholding tax.
- Revenue treated service fee paid by the Assessee to a UK Company as FTS and thus taxable, which was confirmed by the CIT(A).
- Aggrieved, the assesse company filed an appeal with ITAT.

Issue:

- Whether the service fees paid to UK Company income for client-introduction will be treated as FTS or regular business expenditure?

Held:

- ITAT observed that there was no finding of the lower authorities as regards any inquiry made for the nature of agreement between the Assessee and the foreign entity to find out if the foreign entity was extending any technical know-how or expertise in the field of procurement of business or any other purpose, on a permanent basis.
- ITAT stated that the client-introduction will not be treated as FTS.
- Relying on the ruling in the case Grup Ism, Panalfa Autolectrick and the co-ordinate bench ruling in Welspring Universal to hold that the nature of transaction between the Assessee and the foreign entity was not of providing any technical service but was a payment in the nature of a normal business payment to an intermediary.
- Thus, ITAT ruled in the favour of the assessee.

Natasha Chopra vs DCIT, Circle-17(2),New Delhi [TS-535-ITAT-2022DEL] dated 30th June, 2022

Facts:

- The assessee is a Director in N&N Chopra Consultants Private Limited and has derived salary and rental income from this company. During the year under consideration, the assessee had also earned income from house property situated in Australia and United Kingdom and income from other sources being bank interest.
- Revenue made addition of the rental income on property situated outside India, notwithstanding that Assessee declared the said rental income in her return of income filed in respective country. Referring to the CBDT Notification No. 91/ 2008 dated Aug 28, 2008 revenue construed the words 'may be taxed' as 'shall be taxed'.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether the rental income from house property situated in Australia and United Kingdom are taxable in India?

Held:

- ITAT referred to Sections 90(1) and 90(3), CBDT notifications and the impact of MLI.

- ITAT observes that in absence of an express provision, the right of the resident country to tax its residents cannot be taken away under the DTAA; Thus holds that the expression 'may be taxed' cannot be construed to mean 'shall be taxable only in resident state' unless expressly stated. It held that the provisions of Section 90(1)(a)(i) is applicable in the instant case.
- Thus, ITAT ruled in the favour of the assessee.

M/s Flipkart Internet Private Limited vs High Court of Karnataka [TS-503-HC-2022KAR] dated 24th June, 2022

Facts:

- Assessee-Company i.e., Flipkart Internet Private Limited, engaged in the business of providing IT Solutions and Support Services for the e-commerce industry.
- Assessee made payments to Walmart Inc., Delaware USA (Walmart Inc.) as reimbursement of salaries to deputed expatriate employees and asked for NIL TDS deduction Certificate which was rejected by the Revenue.
- Aggrieved, the assessee filed a writ petition against the rejection of Nil deduction certificate

Issue:

- Whether TDS is to be deducted on reimbursement of salaries to deputed expatriate employees?

Held:

- As per Section 195(2) and Article 12(4) of the India-US DTAA, the more beneficial treaty provisions are required to be applied to determine the liability to deduct tax.
- The fact that the employees seconded have the requisite experience, skill or training capable of completing the services contemplated in Secondment by itself is insufficient to treat the payment as FIS,de hors the satisfaction of 'make available'
- The fact that Walmart Inc. has the power to decide on the employee's continuance after the secondment will not make any difference as it relates to a service condition post the period of secondment and does not alter relation between Assessee and the employees.
- HC observes that finding under Section 195 is tentative and even if Revenue orders that no deduction of tax be made, the question of taxability of recipient still remains to be decided.
- This elaborately distinguishes Delhi HC ruling in Centrica India Offshore relied upon by the Revenue and held that the Revenue missed the Karnataka HC Division Bench's dicta in Abbey Services that "secondment agreement constitutes an independent contract of services in respect of employment" and proceeded to decide that secondment falls under Fees for Included Services
- Thus, High court ruled in the favour of the assessee.