

M/s Springer Nature Customer Services Center GMBH vs Commissioner of Income Tax, International Taxation, Circle- 3, Delhi [TS-380-HC-2023(DEL)]dated 12th July, 2023

Facts:

- The Assessee Company, incorporated in Germany, is part of Springer Group which was engaged in the business of publishing books, and academic journals, in the field of natural sciences, technology and medicine.
- Assessee functioned as non-exclusive sales representative globally of the Springer Group's affiliated publisher entities, which included Springer India Pvt. Ltd. (SIPL).
- Commissionaire Agreement was executed between the Assessee and SIPL as per which it promoted, sold and distributed, print and electronic books and journals published by SIPL.
- Assessee collected subscription and other fees from sale of electronic books and journals to third-party customers, which was ultimately paid to SIPL after retaining its fees as commission.
- Revenue held this payment to be royalty, however, the CIT(A) held it Fees for Technical Services (FTS).
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

Whether the Commission in publication business will considered as FTS or Royalty?

Held:

- Delhi High Court observed that no special skills or knowledge were required to render such services, nor was any professional advice or specialised service rendered which could be categorised as a technical service.
- Delhi HC held that promotion, sale, distribution of publications, or rendering support services contemplated in Commissionaire Agreement involving human intervention do not fall in the category of technical and/or consultancy services.
- Thus, held that the commission income does constitute fee for technical services (FTS).
- Regarding subscription fee of e-journal, HC opines that it cannot be considered royalty as there is nothing on record to suggest that assessee granted the right in respect of copyright to the concerned subscribers, all that the assessee did was to sell the copyrighted publication to the concerned entities, without conferring any copyright in the said material.
- Relying on SC judgment in Engineering Analysis, upheld the ITAT ruling by holding that subscription fee is not royalty.
- Thus, ITAT ruled in the favour of the assessee.

M/s. Infobip Limited vs Assistant Commissioner of Income Tax, International Taxation, Circle- 2(1)(1), Delhi [TS-384-ITAT-2023(DEL)]dated 26th May, 2023

Facts:

- Assessee, a UK based company engaged in provision of SMS messaging solutions by cloud-based technology, entered into business cooperation agreement with its AE, Bsmart Tech Pvt. Ltd.(BTPL), for provision of centralised services in the nature of financial Support, technical support, sales support and legal support services.
- For AY 2017-18, Revenue held that the services provided by the Assessee to BTPL, makes available technical knowledge, skill, experience, know-how, etc., thus it falls within the ambit fees for technical services (FTS) under Article 13(4)(c) of the India-UK DTAA and accordingly made addition of the consideration of Rs.83.04 Lacs received from BTPL.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether the services provided by the assessee to BTPL will be considered as FTS?

Held:

- ITAT noticed the services provided by the Assessee including administrative services, accounting services, legal services and other support services that are essentially in the nature of managerial services are outside the scope of the meaning of FTS under Article 13(4) of the India-UK DTAA.
- ITAT opined that even if the aforementioned services are considered to be FTS under Section 9(1)(vii), the same will not fall within the meaning of FTS under Article 13(4) of India-UK DTAA as the services does not make available any technical knowledge, experience, skill, know-how or processes or consist of the development and transfer of technical plan or technical design enabling BTPL to apply the technology.
- Relying on coordinate bench ruling Outotec India, Mumbai ITAT Special Bench ruling in Mahindra and Mahindra, wherein it was held that mere rendering of services is not considered as 'make available' unless the person utilising the services is able to make use of technical knowledge etc. by himself in his business or for his own benefit and without recourse to the performer of services in future.
- ITAT held that the consideration received by the assessee from BTPL cannot be taxed as FTS and accordingly deletes the addition.
- Thus, ITAT ruled in the favour of the assessee.

M/s SPI Global US, Inc vs Assistant Commissioner of Income Tax, International Taxation, Circle-3(1)(2), Delhi [TS-386-ITAT-2023(DEL)] dated 07th June, 2023

Facts:

- Assessee is a tax resident of USA and it assists its Associated Enterprise ("AE") in India i.e. SPi Technologies India Private Ltd. ("SPi India") in provision of e-publishing services.
- Assessee for AY 2019-20, received Rs.5.27 Cr from its Indian AE for provision of e-publishing work, which was sub-contracted to the assessee.
- AO held sub-contracting charges to be Other Income under Article 23 of the India-US DTAA and accordingly made the addition. DRP held that the said sub-contracting fees, constituted as FIS under Article 12(4)(b) of India-USA.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether the services provided by the assessee will be classified as FTS/FIS?

Held:

- ITAT observed that in order to for services to fall under FIS, the services rendered must make available technical knowledge, experience, skill, know-how or processes to the person availing such services.
- ITAT explained that the 'make available' clause is satisfied when the person acquiring the services is enabled to apply the technology independently in the future without the assistance of the service provider.
- ITAT observed that editorial services provided by the assessee comprises of page composition, language polishing, indexing, correcting faulty grammar and punctuation etc., which even though involves technical expertise, the same is not transferred by the assessee which can be independently applied by the Indian AE in future on its own without recourse to the assessee.
- Relying on Mumbai ITAT Special Bench ruling in Mahindra and Mahindra and co-ordinate bench ruling in Outotec India wherein it was held that the expression "make available" in the context of 'fees for technical services' contemplates that the technical services should be of such a nature, that the payer comes to possess the technical knowledge so provided which enables it to utilize the same hence forward.
- Thus, ITAT ruled in the favour of the assessee.