INTERNATIONAL TAXATION

CA. Hinesh Doshi, CA. Pramita Rathi

M/s. Wipro Limited vs. Deputy Commissioner of Income Tax Circle-7(1)(2) Bangalore [TS-72-ITAT-2022(Bang)] dated 9th February, 2022

Facts:

- The assessee, an India company engaged in the business of providing system integration, support and maintenance services and sale of products of its head office.
- AO re-opened the assessment and disallowed Rs. 25.06 lakhs paid to various non-resident companies for non-deduction of TDS u/s. 195 of the Income Tax Act.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the assessee would be liable for TDS on payment made to non-resident companies under Singapore DTAA?

Held:

- ITAT referred to the definition of FTS which stated that the service provider should have made available technical knowledge, experience, skill, know-how etc. to the assessee.
- Relying on Karnataka HC ruling in De Beers India, ITAT accepted the assessee's submission and held that as the payments were made towards installation of Nortel IVRS equipments, AMC charges, purchase of kits etc., the question of make available technical knowledge does not arise.
- ITAT observed that the payment constituted business income and the vendors did not have any PE in India.
- ITAT concluded that these payments would not be taxable in India and would not require deduction of TDS u/s. 195 of the Act.
- Accordingly, ITAT deleted the disallowance u/s. 40(a)(i) and ruled in favour of the assessee.

ACIT (IT)-4(3)(1), Mumbai vs. M/s. Viacom 18 Media Private Limited [TS-66-ITAT-2022(Mum)] dated 20th January, 2022

Facts:

- The assessee, Company incorporated in India, was engaged in broadcasting television channels which included marketing of advertising airtime on different channels and distribution of those channels.
- The assessee paid service fees to non-resident entities for availing satellite signal reception and transmission facilities (i.e. transponder services).
- AO contended that the payment for transponder service fee made to non-residents as "royalty" in terms of DTAA and held the assesse liable for withholding the tax at source.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether assesse would be liable for TDS on transponder fees paid to non-residents?

Held:

- ITAT observed that in assessee's own case in earlier years, ITAT had relied on HC ruling of 'Neo Sports' wherein it was held that transponder charges were not in the nature of royalty despite amendment to section9(1)(vi), was not available.
- Relying on the SC ruling in the case of "GE India", ITAT held that there was no liability to deduct tax at source as no income was chargeable to recipient
- ITAT concluded that assessee was not liable to deduct tax at source on the payments made to non-residents as transponder fees.
- Accordingly, ITAT ruled in favour of the assessee.

M/s. Dow Jones & Company Inc. vs. The A.C.I.T International Taxation, Circle –1 (2) (3) New Delhi [TS-1114-ITAT-2021(DEL)] dated 14th December, 2021

Facts:

- The assessee was engaged in the business of providing information products and services containing global business and financial news to various organizations worldwide via newspapers, newswires, websites, applications, newsletters, magazines, proprietary databases, conferences and radio.
- The assessee appointed an Indian company, DJCIPL, on principal to principal basis for distributing its products in Indian markets.
- Revenue held that the said receipts of Rs.1.31 Cr. from DJCIPL were in the nature of royalty.
- Aggrieved, the assessee filed an appeal before ITAT.

Issue:

- Whether the payment received from Indian Company be treated as royalty and hence be taxable?

Held:

- ITAT perused the definition of Royalty under Article 12 of US DTAA and noted that only those payments that allow a payer to use/acquire a right to use copyright in literary, artistic or scientific work were covered within the definition of 'Royalty'
- ITAT observed there was no transfer of legal title in the copyrighted article as the same was with the assessee and DJCIPL had no authority to reproduce the data in any material form to make any translation in the data or to make adaptation in the data.
- ITAT held that the assessee was only granting access to its database to DJCIPL and the said payments received cannot be termed as royalty.
- Accordingly, ITAT directed Revenue to delete the addition made and ruled in favour of the assessee.