Alstom India T & D India Ltd. vs. Assistant Commissioner of Income Tax [TS-79-ITAT-2020 (CHNY)] dated 7th January, 2020

Facts:

The assessee, an Indian company, was engaged in the business of manufacture of heavy electrical equipments and was also engaged in execution of projects involving transmission and distribution of power and other turnkey projects.

The assessee paid testing fees to the Netherland company to test the transformers manufactured by the assessee and did not deduct TDS on these payments.

AO disallowed the payments u/s 40(a)(ia) of Income Tax Act due to non-deduction of TDS.

On appeal before CIT against AO's order, CIT ruled in favour of the revenue.

Aggrieved, the assessee filed an appeal with ITAT.

Issue:

Whether the testing fees paid to foreign company can be considered as Fees for technical services under India-Netherlands DTAA?

Whether TDS u/s 195 of IT Act will be applicable on these payments?

Held:

ITAT observed that the transformers manufactured by the assessee company were sent to Netherlands for testing and the Netherlands company only sent report.

ITAT opined that knowledge of testing was not made available to the assessee and in absence of knowledge made available as per Article 12(4) of India-Netherlands DTAA, it could not be considered as fees for technical services.

ITAT relied on the Tribunal's decision in the case of Romer Labs Singapore Pte. Ltd. and concluded that that payment made to Netherland company was not liable to tax deduction at source u/s. 195

Accordingly, ITAT ruled in favour of the assessee.

Roche Diagnostics India Pvt Ltd vs. Assistant Commissioner of Income Tax [TS-38-ITAT-2020(MUM)] dated 10th January, 2020

Facts:

The assessee company was engaged in distribution of biomedical equipment, reagents and spares for such equipment in India.

The assessee made payments to non-resident entities towards employees' participation fees in conference/seminar held outside India without deduction of TDS.

AO disallowed these expenses under section 40(a)(i) on the ground of non-deduction of TDS u/s 195.

Aggrieved, the assessee filed an appeal before Mumbai ITAT.

Issue:

Whether TDS u/s. 195 is applicable on payment made towards employees' participation fees in conference/seminar held outside India?

Held:

ITAT observed that participation fees paid outside India cannot be characterized as FTS u/s 9(1)(vii) as no services in the nature of consultancy, technical or managerial have been provided.

ITAT further observed that 'make available' condition was not satisfied under Singapore-India DTAA.

ITAT also observed these payments cannot be taxed as business income in case of absence of non-resident entities' PE in India.

Accordingly, the question of TDS on these payments does not arise as these payments were not taxable in India.

Hence, the appeal was concluded in favour of the assessee.

Deputy Director of Income Tax vs. Mitsui & Co. Ltd [TS-24-ITAT-2020 (DEL)] dated 7th January, 2020

Facts:

The assessee, a Japanese company, established a Liaison office in New Delhi and undertakes several projects in connection with big industrial installations and power projects.

The assessee entered into various contracts with NHPC and taxed income from execution of the projects u/s. 44BBB of the Income Tax Act. AO ordered to tax the income from offshore supplies.

CIT ruled in favour of the assessee and deleted the additions made by AO.

Aggrieved, the Revenue filed an appeal with ITAT.

Issue:

Whether Income from offshore supplies shall be liable to tax as per section 44BBB and India- Japan DTAA?

Held:

ITAT observed that the sale of goods was completed outside India and payments were received outside India for offshore supplies.

Relying on the Delhi HC ruling of LG Cables Ltd, ITAT observed that in absence of PE, income in respect of offshore supplies will accrue outside India and will not be taxed u/s. 44BBB of the Income Tax Act as well as article 7 of Japan-India DTAA.

Accordingly, ITAT ruled in favour of the assessee.

Commissioner of Income Tax (IT) vs. Taj TV Limited [TS-126-HC-2020(BOM)] dated 06th February, 2020

Facts:

The assessee, a Mauritian company, engaged in telecasting sports channel, had entered into an agreement with an Indian entity to be appointed as its advertisement sales agent and its distributor to distribute its channels to cable systems for exhibition to subscribers in India.

During the assessment proceedings, AO stated that the assessee carried on business through its PE and therefore the income earned by the assessee was taxable in India.

The assessee, aggrieved, filed an appeal before CIT(A) wherein the CIT(A) ruled in favour the assessee.

Aggrieved, the revenue filed an appeal before ITAT.

Issue:

Whether the advertising revenue earned by the assessee was liable to be taxed in India?

Held:

ITAT observed that the Indian entity was not acting as an agent of the assessee but it had obtained the distribution rights of the channel for itself and was acting independently qua its distribution rights and, accordingly, had entered into contracts with other parties in its own name.

ITAT also noted that the distribution of the revenue between the assessee and the

Indian entity was in the ratio of 60:40 and the entire relationship was on principal to principal basis.

ITAT held that the distribution income earned by the assessee cannot be taxed in India as the Indian entity does not constitute an agency PE under the terms of Article 5(4) of the India-Mauritius DTAA.

Accordingly, ITAT ruled in favour of the assessee.