INTERNATIONAL TAXATION

CA. Hinesh Doshi, CA. Jhankhana Thakkar

M/s Toyoda Gosei Company vs Deputy Commissioner of Income Tax, International Taxation Circle 2(2), Bengaluru [TS-993-ITAT-2022(Bang)]dated 16th December, 2022

Facts:

- The Assessee company was quartered in Japan. The company had entered into an agreement of secondment with two of its Indian entities whereby 18 of its employees were seconded to these Indian entities who were functioning as administrative heads.
- Revenue held that the services provided by such seconded employees were managerial in nature and also in the nature of consultancy covered within the definition of FTS both under section 9(1)(vii) as well as Article 12 of India-Japan DTAA.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

Whether the reimbursement of salary to seconded employees are taxable as FTS?

Held:

- ITAT observed that the Assessee paid salary to seconded employees as a means of administrative convenience and also deducted necessary tax under section 192.
- Relying on HC ruling in Abbey Business Services and Flipkart Internet service as well as co-ordinate bench ruling in Toyota Boshuku and Pune ITAT ruling in Faurecia Automotive Holding it was held that reimbursement paid to the assesse were on cost to cost basis and no profit element was involved.
- ITAT held that "The amount paid by the assessee company was only the reimbursement, which was part of the salary of expatriate employees, which is covered by the Article 12 of DTAA provisions between India and Japan following the judgment of Hon'ble jurisdictional High Court of Karnataka ", the issue is covered in favour of the assessee.
- Thus, ITAT ruled in the favour of the assessee.

M/s Wipro Ltd vs CIT, International Taxation, Bengaluru [TS-1016-HC-2022(KAR)] dated 29th November, 2022

Facts:

- Assessee company made payments towards technical services on various recipients in different countries and deducted TDS @ 10% as per DTAA.
- Revenue held that the assessee was liable to deduct at 20% as per provision of Sec 206AA and raised a demand under Section 200A for the remaining 10%.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether DTAA will override Sec 206AA TDS rate?

Held:

- ITAT held that the TDS provisions in the Act has to be read along with the relevant DTAA s for computing the tax liability and when the recipient is eligible for benefit of DTAA then there is no scope for deduction at 20% under section 206AA.
- Relying on Delhi HC ruling in Danisco India, it was held that DTAA has overriding effect and Section 206AA cannot override charging section 4 and 5. Provision of Section 206AA has to be read down to mean that where the recipient who is a foreign resident conducting operation from a country that has entered into a DTAA with India, the rate of taxation would be as dictated by the DTAA.
- Hence, it was held that maximum deduction of TDS cannot exceed 10% as per DTAA.
- Thus, ITAT ruled in the favour of the assessee.

Mr Sameer Malhotra vs ACIT, Circle 80(1), New Delhi [TS-1010-ITAT-2022(DEL)] dated 28th December, 2022

Facts:

- Assessee is employed with DBOI Global Services Pvt Ltd (India) from 01/04/14 to 25/11/14 and with JP Morgan Chase & Co (Singapore) from 15/12/15 to 31/03/15.
- He declared a total income of Rs 1.59,36,999/- in original return and restricted his total income to Rs 47,82,630/- in revised return by claiming relief u/s 90 of the Act as only salary earned in India is taxable.
- Revenue, on the basis of tie-breaker questionnaire as per Article 4 of India-Singapore DTAA, held that the Assessee was actually a resident of India for the purpose of taxation of global income as he stayed in India for more than 182 days.
- Revenue, thus, rejected the revised return and concluded the scrutiny assessment as per the original return.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether income earned from Singapore will be taxable in India?

Held:

- ITAT noted that the Assessee: (i) held Singapore Driving License and Overseas Bank Account, (ii) held tax residency certificate issued by Singapore authorities which was not doubted by the Revenue or CIT(A), (iii) showed both India and Singapore as country of residence on various official forms and documents for the period of employment, (iv) paid taxes in Singapore while working there, and (v) submitted that all income which will be paid in future for the work period in Singapore, will be taxable in Singapore.
- ITAT observed that the Assessee had a house in India which was let out, thus, was not available during his employment in Singapore, therefore, decides the permanent home test in Assessee's favour.
- ITAT held that the centre of vital interest also layed in Singapore because the Assessee: (i)shifted to Singapore with his wife and daughters, (ii) shift was for the employment, (iii) earned and saved in Singapore; ITAT observed, "Habitual abode does not mean the place of permanent residence, but in fact it means the place where one normally resides."
- Thus, ITAT ruled in the favour of the assessee.