# INTERNATIONAL TAXATION

CA. Hinesh Doshi, CA. Ronak Soni

## Lahmeyer International GmbH vs Assistant Commissioner of Income Tax [TS–630–ITAT–2019(DEL)] dated 09th October, 2019

### Facts:

The assessee, a non-resident company, incorporated in Germany, engaged in engineering consulting services such as planning, designing and consulting in relation to complex infrastructure projects in India.

The assessee earned revenues as FTS which was partially taxed at 20% on a gross basis u/s 115A, in respect of the contracts where a Permanent Establishment ("PE") was formed in India and the remaining portion was taxed at 10% on gross basis under Article 12 of the India-Germany DTAA, in respect of contracts, where no PE was formed in India.

AO contended that entire receipts should be taxed at 20% by applying principle of 'Force of Attraction [FOA]' as it constituted a PE in India.

Aggrieved, the assessee filed an appeal before ITAT.

### Issue:

Whether revenue from FTS should be taxed at 20% on gross basis u/s 115A?

Whether the principle of Force of Attraction ["FOA"] was applicable in the instant case?

### Held:

ITAT enunciated that for applying 'FOA', there should be some common link to each of the contracts/projects such as common expats, nature of the contract/projects, the commonality of the location, contracting parties etc. which was absent in this case.

ITAT held that the assessee constituted PE in India only w.r.t Phase II of the contract with Jammu and Kashmir State Power Development Corporation ("JKSPDC") ["Baglihar Project PE"] and w.r.t other non PE contracts assessee's personnel either performed service at the client's location or at its home office in Germany.

ITAT rejected Revenue's plea that the FTS received by the assessee from rendering of technical services and other contracts was directly or indirectly to the PE constituted in India under the contract with JKSPDC and hence it was formed for the purpose of deliberate avoidance of tax.

ITAT accepted the treatment given by assessee for offering tax at 20%in one project and 10% in rest of the projects.

Thus, the appeal was allowed in favour of the assessee.

## Tata Consultancy Service Ltd, vs Assistant Commissioner of Income Tax [TS–665–ITAT–2019(Mum)] dated 30th October, 2019

### Facts:

The assessee, an Indian company, is engaged in the business of export of computer software, providing e–Solutions, Business Process Outsourcing (BPO) activities and other management consultancy activities.

The assessee claimed in its return of income, deduction of Foreign Tax Credit ("FTC") in respect of State Taxes paid in overseas countries like US, Denmark, Norway, Canada, etc.

CIT(A) had bifurcated the FTC into three parts i.e., taxes paid in USA, other DTAA countries and non-DTAA countries and allowed credit only in respect of tax paid in USA.

Aggrieved, the assessee filed an appeal before ITAT.

### Issue:

Whether foreign tax credit is available in respect of taxes paid overseas in all countries?

### Held:

ITAT observed that where the respective treaty provides for benefit of foreign tax paid even in respect of income on which the assessee had not paid tax in India, it would still be eligible for tax credit u/s. 90 of the IT Act.

The DTAA's of Canada and Finland does not provide for such benefit unless the income was subjected to tax in both the countries.

Relying on the HC decision of Reliance Infrastructure Ltd, ITAT held that FTC is granted for all overseas countries except in case of Canada and Finland.

Thus, the appeal was allowed in favour of the assessee.