INTERNATIONAL TAXATION

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Cable News Network Inc vs Deputy Commissioner of Income Tax, International Taxation Circle 1(2)(1), New Delhi [TS-1013-ITAT-2022(DEL)]dated 26th December, 2022

Facts:

- The Assessee is an non-resident corporate entity, incorporated in the State of Delaware, United States of America(USA).
- The Assessee derived income in India from sale of various advertisements and distribution of products through its distributor and exclusive advertising sale representative Turner International India Private Ltd.
- Assessee filed return of income declaring income of Rs.11.10 Cr wherein revenue arising from distribution of products were offered to tax as business income.
- Revenue treated advertisement revenue as business income and distribution revenue as Royalty under Sec 9(1)(vi).
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

Whether the distribution revenue will be treated as Business income or Royalty?

Held:

- ITAT noted that with outcome of Mutual Agreement Procedure(MAP) proceedings between competent authorities of India and the US in AY 2003-04 and thereafter, the assesse had consistently offered 10% of the advertising and subscription revenue received from Indian sources as business income, however, AO continued to treat it as Royalty year after year.
- Relying on Turner Broadcasting ruling (group company) , it was held that the distribution revenue earned by the assesse cannot be taxed as "royalty" vis-a-vis business income as the said business income was offered to tax as per MAP.
- Relying on co-ordinated bench ruling in assesse's own case it was held that distribution revenue cannot be treated as "royalty".
- Thus, ITAT ruled in the favour of the assessee.

Wolter's Kluwer Financial Services Belgium NV vs Deputy Commissioner of Income Tax, International Taxation Circle 3(1)(1), New Delhi [TS-1034-ITAT-2022(DEL)] dated 28th December, 2022

Facts:

- Assessee, a Belgium based company engaged in providing management support services including administration, management, marketing and sale etc.
- Assessee received Rs 1.53 cr for AY 2016-17 from its Indian subsidiary for said services and assesse filed NIL return in view of that management support services are not taxable in India as per India-Belgium treaty.
- Revenue held that the receipts are taxable as FTS under the provision of Section 9(1)(vii) and India-Belgium DTAA read with India-UK DTAA and accordingly to be taxed at 15% on gross basis.
- CIT(A) partly accepted assessee's claim by attributing 50% of the amount received to FTS, holding the 50% of the services provided to be in the nature of consultancy services.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether management support services of Belgium based company will be taxable as FTS?

Held:

- ITAT observed that as per India-Belgium DTAA ,taxation of receipts for managerial services will be allowed as FTS, however the Protocol to India-Belgium DTAA under the MFN Clause provided that if India has entered into a DTAA with a member of OECD

countries as where the taxation is limited to a rate lower or a more restricted scope then the restrictive rate or scope of the other DTAA shall be applicable to India-Belgium DTAA.

- ITAT opined that "the scope of services to be rendered by the assessee does not indicate that they are anything other than managerial services as it aids and assists the Indian subsidiary for performing its day to day business activity."
- ITAT explained that "Once the assessee was able to demonstrate that the amount received was in the nature of managerial services, it cannot be treated as FTS in view of the restrictive meaning of FTS under Article 13(4) of India-UK tax treaty, which specifically excludes managerial services."
- Thus, ITAT ruled in the favour of the assessee.

TSYS Card Tech Ltd vs Deputy Commissioner of Income Tax, International Taxation Circle 3(1)(1), New Delhi [[TS-36-ITAT-2023(DEL)] dated 24th January, 2023

Facts:

- Assessee is engaged in business of providing information technology related services to financial payments industry.
- The Assessee had earned revenue from Indian Customer primarily for rendition of software license (referred to as PRIME) and provision of software related services including implementation services, enhancement services, annual maintenance services and consultancy services as per the request of the Customers.
- Revenue held that the above mentioned services are taxable in India as per Article 13 of India-UK DTAA as FTS holding it to be intricately and inextricably associated with utilisation of software.
- Aggrieved, the assessee filed an appeal with the ITAT.

Issue:

- Whether fees received for providing services to software license is taxable in India?

Held:

- ITAT observed that the services were in respect of training programme and updations in connection with utilization of the software. It was stated that "simply latching on to use of words "Make Available" in the agreement, it cannot be said that conditions of Article 13(4)(c) are satisfied."
- ITAT observed that "when software itself is not taxable, the training and the related activities concerned with utilization and installation cannot be held to be FTS."
- Accordingly, it was held that the fees received for provision of other related services are not taxable.
- Thus, ITAT ruled in the favour of the assessee.