VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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Viacom Case Remanded to CIT(A) for Factual Analysis of Royalty Classification Under Transponder Agreement

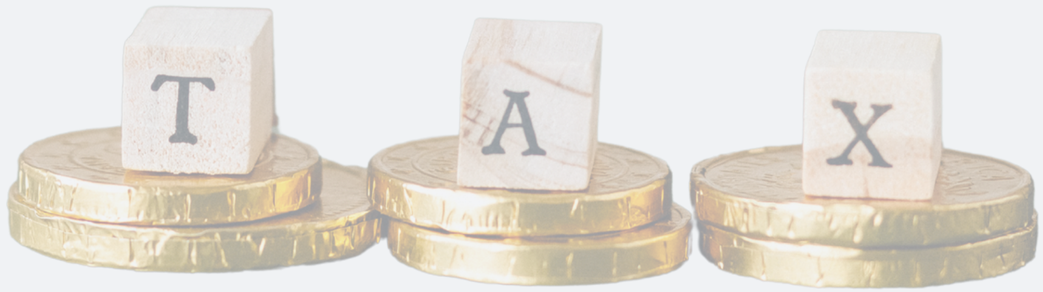
Facts

The assessee Viacom 18 entered into an agreement with Intelsat Corporation for the provision of transponder services, which are essential for broadcasting signals. The payments made under this agreement were for the use of these services. Viacom 18 sought a certificate under Section 195 of the Income Tax Act for NIL deduction of tax at source on these payments, arguing that the payments were not taxable in India. The Assessing Officer (AO) rejected Viacom 18's application, holding that the payments constituted "royalty" under the Act, especially in light of the Explanation added by the Finance Act, 2012, which expanded the definition of "royalty" to include certain types of payments. Viacom 18 appealed the AO's decision. The CIT (A) upheld the AO's order. Subsequently, Viacom 18 appealed to the ITAT, which also dismissed the appeal, relying on previous decisions that categorized similar payments as "royalty". Dissatisfied with the ITAT's decision, Viacom 18 approached the Bombay High Court and the high court admitted the appeal of the assesse.

Rulings

In the present case, The Bombay High Court refrained from delivering a conclusive ruling on whether payments made by Viacom 18 to Intelsat USA for transponder services constituted “royalty” under the Income-tax Act or Article 12 of the India–USA DTAA. Instead, the Court remanded the matter to the CIT(A) to ascertain whether Intelsat was assessed as not liable to tax in India. The Court clarified that if Intelsat was found to be non-taxable, Viacom would have no obligation to withhold tax under Section 195. If the non-taxability of Intelsat is not established, the Court directed that a fresh factual determination on the 'royalty' question must be made, as none of the lower authorities had properly analyzed the terms of the agreement between Viacom and Intelsat or applied them to the statutory definition of “royalty” under domestic law and the treaty. The Court declined Viacom’s request to decide the matter on merits despite the delay, stating that such a step would be inappropriate under Section 260A of the Act, as it would bypass the fact-finding role of the lower authorities. Further, the Court noted the absence of findings on whether Intelsat had a permanent establishment (PE) in India. However, the Court did grant partial relief by holding that for assessment years prior to the insertion of Explanation 6 to Section 9(1)(vi), Viacom could not be held liable for withholding tax on a retrospective basis and the reliance is placed on the decision of the court in case of Reliance Industries limited. Therefore, the appeal of the assesse was disposed.

Source: HC, Bombay in the case of Viacom 18 Media Private Limited Vs DCIT vide [TS-557-HC-2025(BOM)] on May 8, 2025



Cross Charges Not Taxable Under Article 12(3) of India-US DTAA; Court Directs Issuance of 'NIL' Withholding Certificate

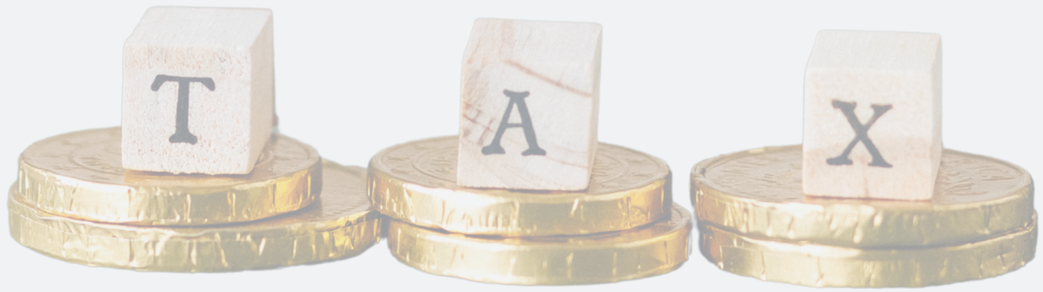
Facts

The petitioner is a company incorporated and tax-resident in the United States. The petitioner is engaged in design and consultancy services, construction management, and infrastructure development. The petitioner had entered into inter-company agreements dated 01.04.2021 with AECOM India Private Ltd. (AIPL) and 01.04.2023 with AECOM India Global Services Pvt. Ltd. (AIGSPL) for the provision of management and governance support services (legal, tax, treasury, HR, IT, etc.). The petitioner received payments on a cost-to-cost basis, categorized into Direct and Indirect Costs and Reimbursable Costs. These were cross-charged as 'Service Fees', in line with arm's length and OECD transfer pricing principles. The petitioner claimed that these cross-charges are pure reimbursements and not Fees for Technical Services (FTS) under Section 9(1)(vii) of the Act and Fees for Included Services (FIS) under Article 12(4) of the India–USA DTAA, as they do not "make available" technical knowledge. The Assessing Officer concluded that the services were technical, managerial, and consultancy in nature, requiring special skills and classified the payments as taxable FTS and FIS, rejecting the NIL withholding request. The petitioner filed appeal against the assessing officer order dated 26.07.2024 under Section 197 of the Income Tax Act, 1961, rejecting the application for a 'NIL' withholding tax certificate.

Rulings

The Delhi High Court allowed the assessee's writ petition, observing that since AIPL and AIGSPL did not acquire any copyright in the software, the cross charges paid by them could not be treated as royalty payments under Article 12(3) of the India-US DTAA, placing reliance on the Supreme Court's decision in case of Engineering Analysis Centre of Excellence Pvt. Ltd. The Court held the impugned order unsustainable and directed the Assessing Officer (AO) to issue a 'NIL' withholding tax certificate in respect of the cross charges received by the assessee from AIPL and AIGSPL. The Court further clarified that this direction does not prevent the Revenue from examining the taxability of these receipts in the regular course of assessment, as the ruling is confined solely to the issuance of the certificate under Section 197. Further, while acknowledging that the assessee provides a wide range of services, the Court concluded that none qualify as 'included services' under Paragraph 4 of Article 12 of the India-US DTAA, since such services are neither ancillary nor subsidiary to the application or enjoyment of the rights or property for which royalty is paid under Article 12(3). Placing reliance on jurisdictional HC decision in case of Relx Inc. and Karnataka HC decision in De Beers India, the Court noted that the assessee maintains network connectivity and ensures optimal functioning and security of AIPL's and AIGSPL's businesses, including software and applications used by their professionals. However, there is no material evidence supporting any transfer of rights in the software or applications to AIPL or AIGSPL. The court held that while the assessee provides software development services, no rights or ownership in these software applications have been acquired by the associated enterprises, thereby reinforcing that the payments do not constitute royalty. Therefore, the petition is allowed.

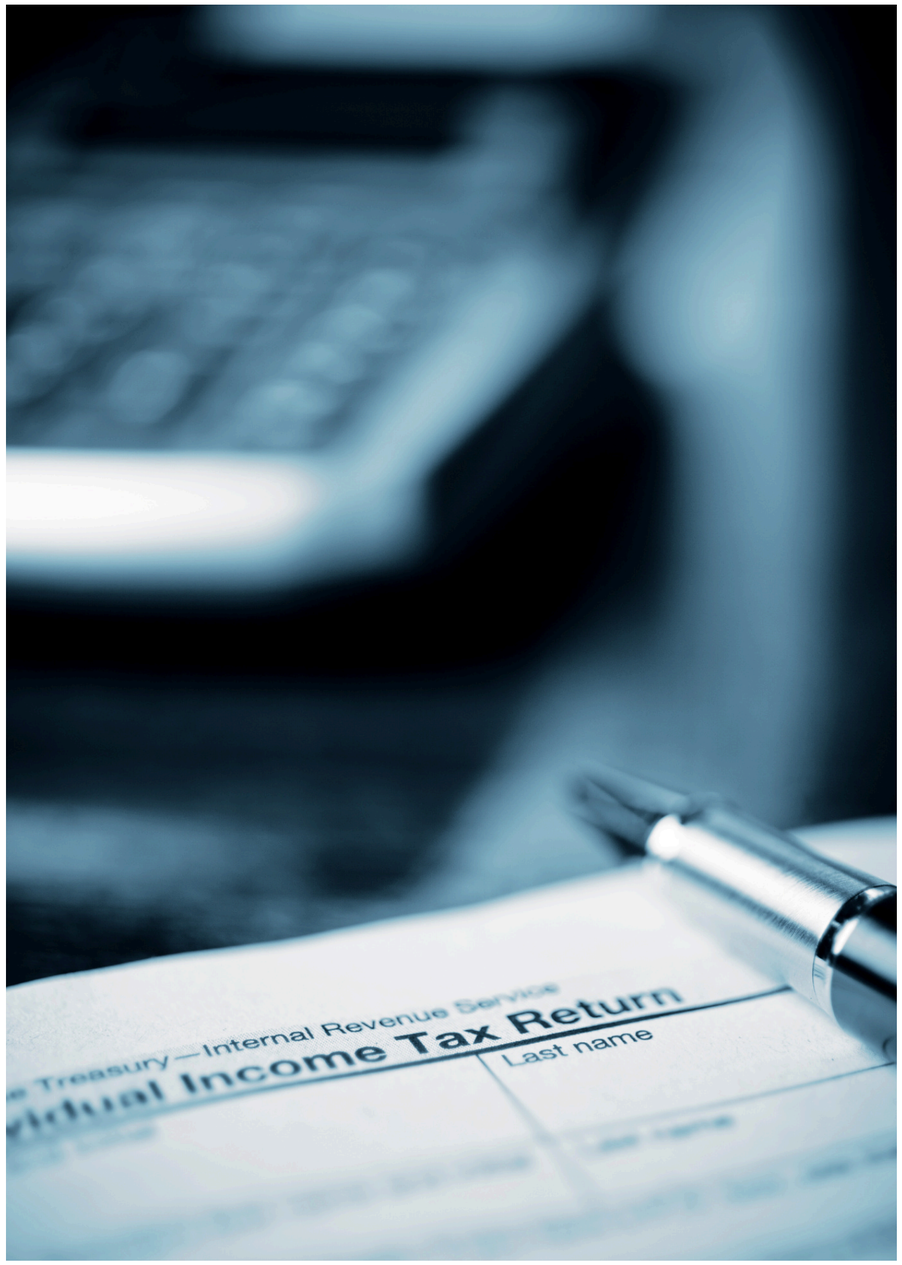
Source: HC, Delhi in the case of Aecom Technical Services Inc vs Income-tax officer ward INT Tax 1(1)(1) Delhi vide [TS-647-HC-2025(DEL)] on May 20, 2025



DTAA Benefits Upheld; AO's Allegations of US Beneficiaries and Treaty Abuse Rejected as Unfounded

Facts

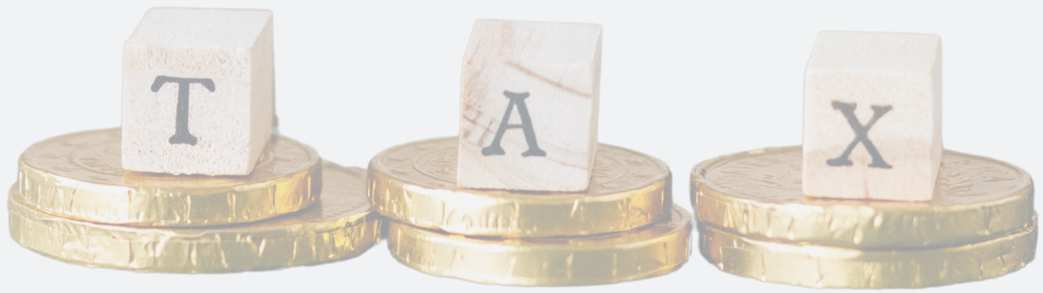
The assessee is a company incorporated in Cyprus, functioning as an investment holding entity and a wholly owned subsidiary of GA Global Investments Ltd., also incorporated in Cyprus. In June 2014, the assessee acquired equity shares of National Stock Exchange of India Ltd. (NSEIL) from its parent company, GA Global, for a consideration of Euro 12,25,10,000, through the issuance of redeemable preference shares. During the relevant AY 2021-22, the assessee sold these shares in five tranches to unrelated third parties and reported Long Term Capital Gains (LTCG) from the sale in its return of income, claiming exemption under Article 13 of the India-Cyprus DTAA. It also earned dividend income from NSEIL and offered it to tax at the concessional rate of 10% as per the treaty. While passing the Draft Assessment Order under Section 144C(1) of the Income Tax Act, the Assessing Officer (AO) denied treaty benefits, concluding that the assessee was a shell entity and the transaction's ultimate beneficiary was General Atlantic Company, USA and therefore the AO denied the benefits of the India-Cyprus DTAA and added the LTCG of INR 9,59,55,30,325 and dividend income of INR 20,62,76,200 to the assessee's income, making a total addition of INR 980,18,06,525. The assessee's objections before the Dispute Resolution Panel (DRP) were also dismissed and upheld the findings of AO. Hence, the assessee has filed the appeal before ITAT tribunal.



Rulings

In the present case, the AO had denied DTAA benefits on the premise that the real control and ultimate beneficiaries of the transaction resided in the USA, rendering the assessee a mere conduit to exploit treaty provisions. The AO also pointed to the commonality of directors between the assessee and the U.S.-based General Atlantic Company as evidence of control from the U.S. However, the ITAT found these observations to be factually incorrect and unsubstantiated. It noted that the source of funds was global including jurisdictions like Bermuda, Germany, and Delaware and not solely from the U.S. The Tribunal further highlighted that entities investing in a stock exchange like NSEIL are subject to rigorous regulatory scrutiny by SEBI, RBI, and FIPB, and approvals granted by such agencies cannot be disregarded as mere formalities. Relying on the co-ordinate bench decision in case of Saif II-Se Investments Mauritius Ltd., the ITAT emphasized that raising unwarranted doubts over approvals granted by Indian regulatory bodies is inappropriate. The Hon'ble Tribunal concluded that since the assessee was carrying out business activities in Cyprus, held a valid TRC, and was not a mere pass-through entity, the allegation of Revenue that it is merely a pass-through entity has no feet to stand. Therefore, the Delhi ITAT held that the assessee is entitled to the benefits under the India-Cyprus DTAA, thereby granting exemption on Long Term Capital Gains (LTCG) arising from the sale of shares as well as on dividend income and the assessee's appeal was partly allowed.

Source: ITAT, Delhi in the case of Gagil FDI Ltd vs ACIT (International Taxation), vide [TS-567-ITAT-2025(DEL)] on May 7, 2025

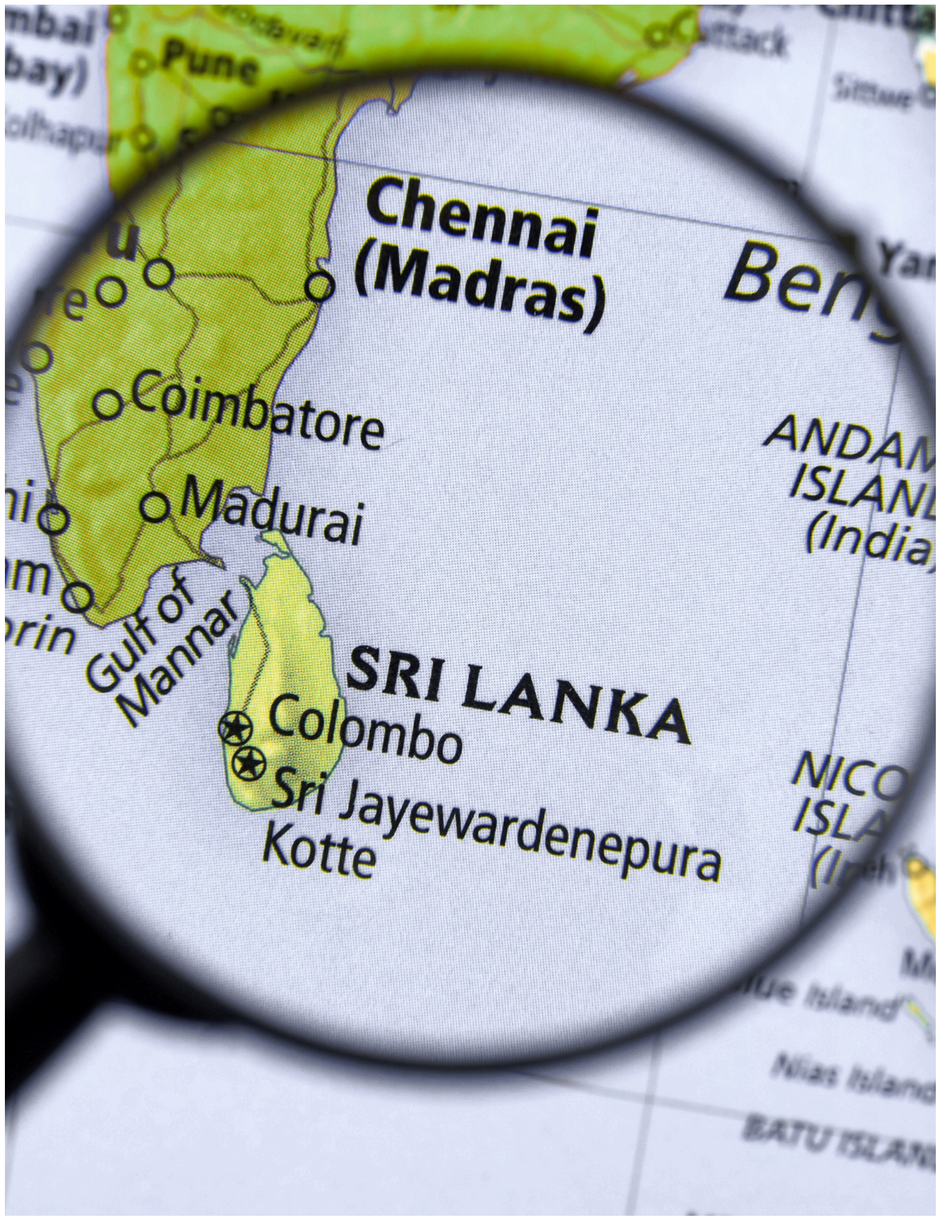


No TDS Liability on Independent Services by Non-Resident under India–Sri Lanka & India–Kenya DTAAs; Not Taxable as FTS

Facts

The brief facts are that the assessee claimed interest expenditure of INR 24,53,696 on inter-corporate deposits. The Assessing Officer observed that interest-free loans were advanced to three associate concerns and disallowed ₹24,36,140, stating the expenditure was not incurred for business purposes. The assessee argued the loans were given to support group entities engaged in the hospitality sector and were based on commercial expediency. While the CIT(A) accepted this explanation for loans to Desert Friendly Camp Pvt. Ltd. and Sujan Art Ltd., it disagreed in the case of Forest Friendly Camp Pvt. Ltd. (FFC), noting its improved financials and increased loan amount despite profitability.

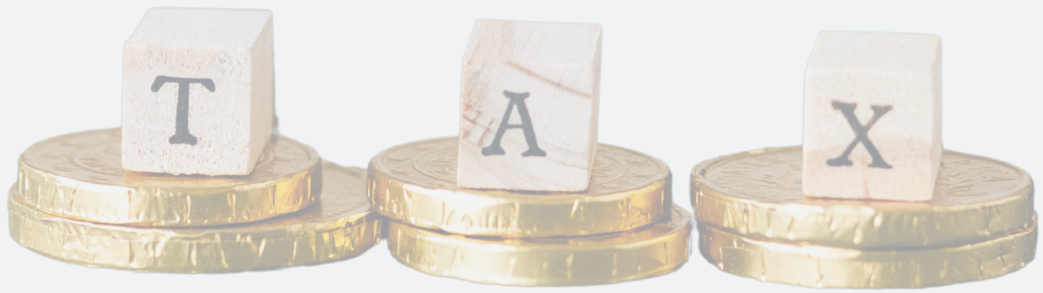
CIT(A) held that interest on funds advanced to FFC was not allowable under Section 36(1)(iii) and directed proportionate disallowance. The assessee has now challenged the order before the Tribunal.



Rulings

The Hon’ble Tribunal held that the services rendered by non-resident individuals fall within the scope of ‘Independent Personal Services’ under Article 14 of the India–Sri Lanka DTAA and Article 16 of the India–Kenya DTAA, and not under 'Fees for Technical Services' (FTS) as defined under Section 9(1)(vii) of the Income Tax Act. Accordingly, the assessee was not liable to deduct tax at source (TDS), and no disallowance of the payments was warranted. The Tribunal rejected the findings of the AO and CIT(A), holding that the services did not qualify as managerial, technical, or consultancy services under Explanation 2 to Section 9(1)(vii). Placing the reliance on the rulings in case of Susanto Purnamo (Ahmedabad ITAT) and Graphite India (Kolkata ITAT), the tribunal clarified that services under Articles 14 and 16 involve a high degree of personal expertise and specialized knowledge, which are not captured within the definition of FTS. Further, the ITAT noted that one of the non-residents had not exceeded the 120-day threshold of physical presence in India during the relevant financial year, and since neither DTAA contained an independent FTS article at the time, the payments were not taxable in India. The Tribunal also dismissed the AO’s argument that the assessee was required to seek a certificate under Section 195(2) for payments to any non-resident. Citing the Supreme Court ruling in case of GE India Technology Centre, the tribunal reiterated that Section 195 applies only when the payment contains an element of income chargeable to tax in India. In result, the appeal of the assesse is partly allowed.

Source: ITAT, Delhi in the case of Sujan Luxury Hospitality Pvt. Ltd vs ACIT vide [TS-518-ITAT-2025(DEL)] on April 25, 2025



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