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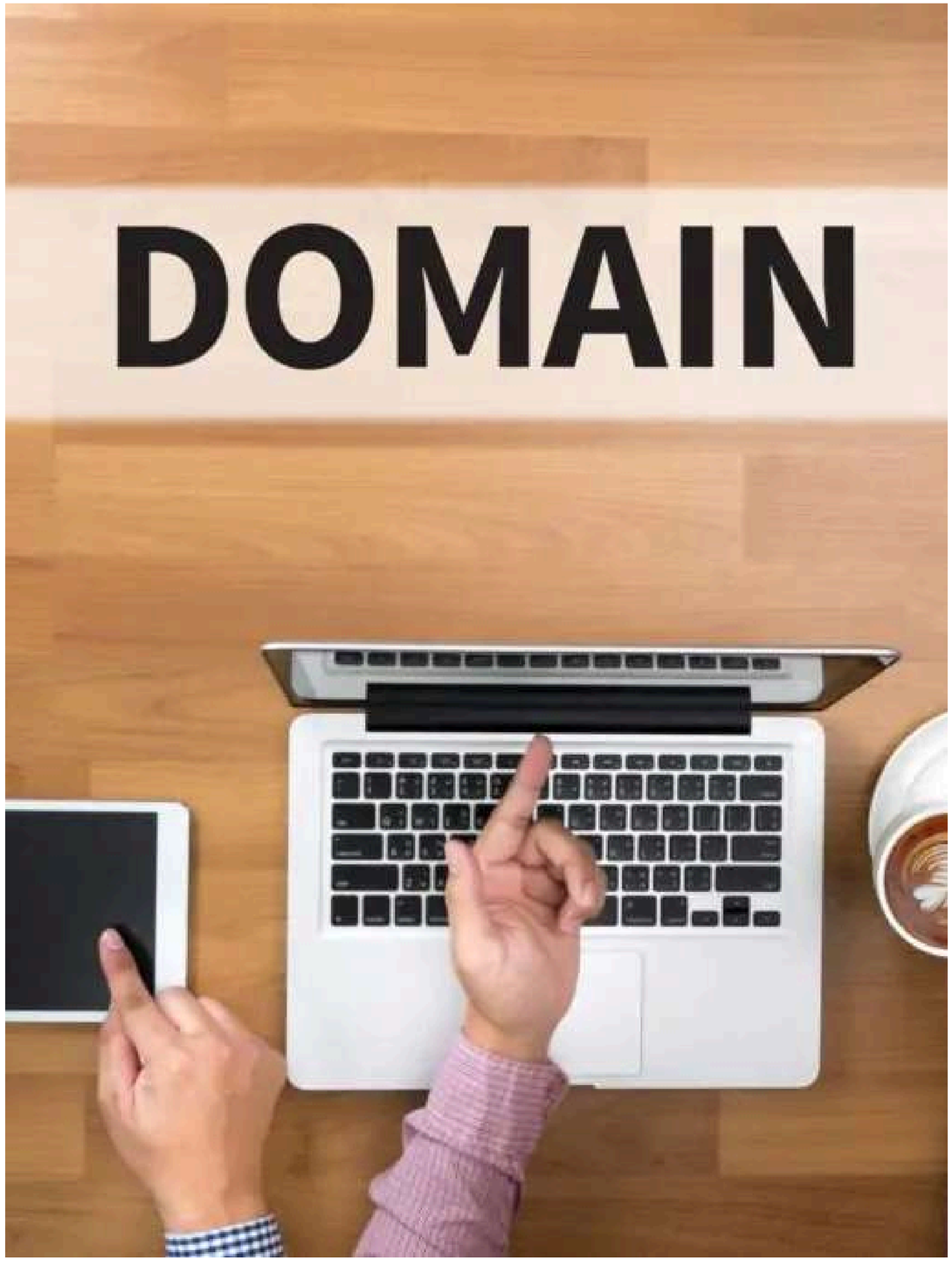
Domain name registration services not royalty; Web hosting & other non-domain services, not FTS

Facts

Godaddy.com, LLC, a Delaware limited liability company, is one of the world's largest Internet Corporation for assigned Names and Numbers ("ICANN") accredited domain name registrars and provides other web services to its customers across the world. The Appellant, through its website (Godaddy.com) is engaged in the business of providing facilitation of domain name registration, web hosting, web designing, SSL certification and other services. During the years under consideration, the Appellant had rendered the aforementioned services to its Indian customers from outside India. For the year under consideration, the assessee had filed its return of income under section 139(1) of the Act on September 29, 2016, offering its income from web hosting, web designing, SSL certification and sale of on demand products amounting to Rs.93,23,40,477/- to tax as fee for technical services" ("FTS") under the provisions of section 9(1)(vi) read with section 115A of the Act. The return of income filed by the assessee was not picked up for scrutiny assessment by the Ld. AO. However, subsequently, reassessment proceedings under section 147 of the Act were initiated vide notice section 148 of the Act dated April 9, 2019. In compliance with the said notice, the assessee furnished its return of income under section 148 of the Act on May 6, 2019, declaring the same total income (i.e. Rs. 93,23,40,477/-) that was initially offered to tax in the



original return of income filed under section 139(1) of the Act.

Ruling

In the present case, the Hon'ble Tribunal analyzed that ld. AO has erred in giving a findings that being a LLP the assessee is not eligible for treaty benefits. The law in this regard is quite settled as it is now settled that the term, 'liability to taxation' has to be distinguished from actual payment of taxation. 'Liability to taxation' indicates the powers of taxing an income though the incidence of taxation and actual payment may be different. The reliance of the ld. counsel on the decision of the coordinate bench in the case of Wild West Domains, LLC (supra) certainly takes care of the issue wherein relying the decision of the Mumbai Bench of the Tribunal in the case Linklaters LLP vs. ITO (Int. Taxation) 40 SOT 51 and Herbert Smith Freebills LLP vs. ACIT (TS 822-ITAT-202 (Del Trib.) the coordinate bench has given benefit of DTAA, irrespective of the fact that the assessee in that case was fiscally transparent entity in USA, like the present assessee. So, the ld. AO has erred in concluding that for web hosting and domain same server of assessee is used and that makes it integrated services. While the fact is that they are entirely different set of services with different set of technical aspects involved in making a web site come live. A person may buy domain and hosting from different providers. It even has benefits like buying domains and hosting from different providers can give you more flexibility and control over your website, as such person is able to choose

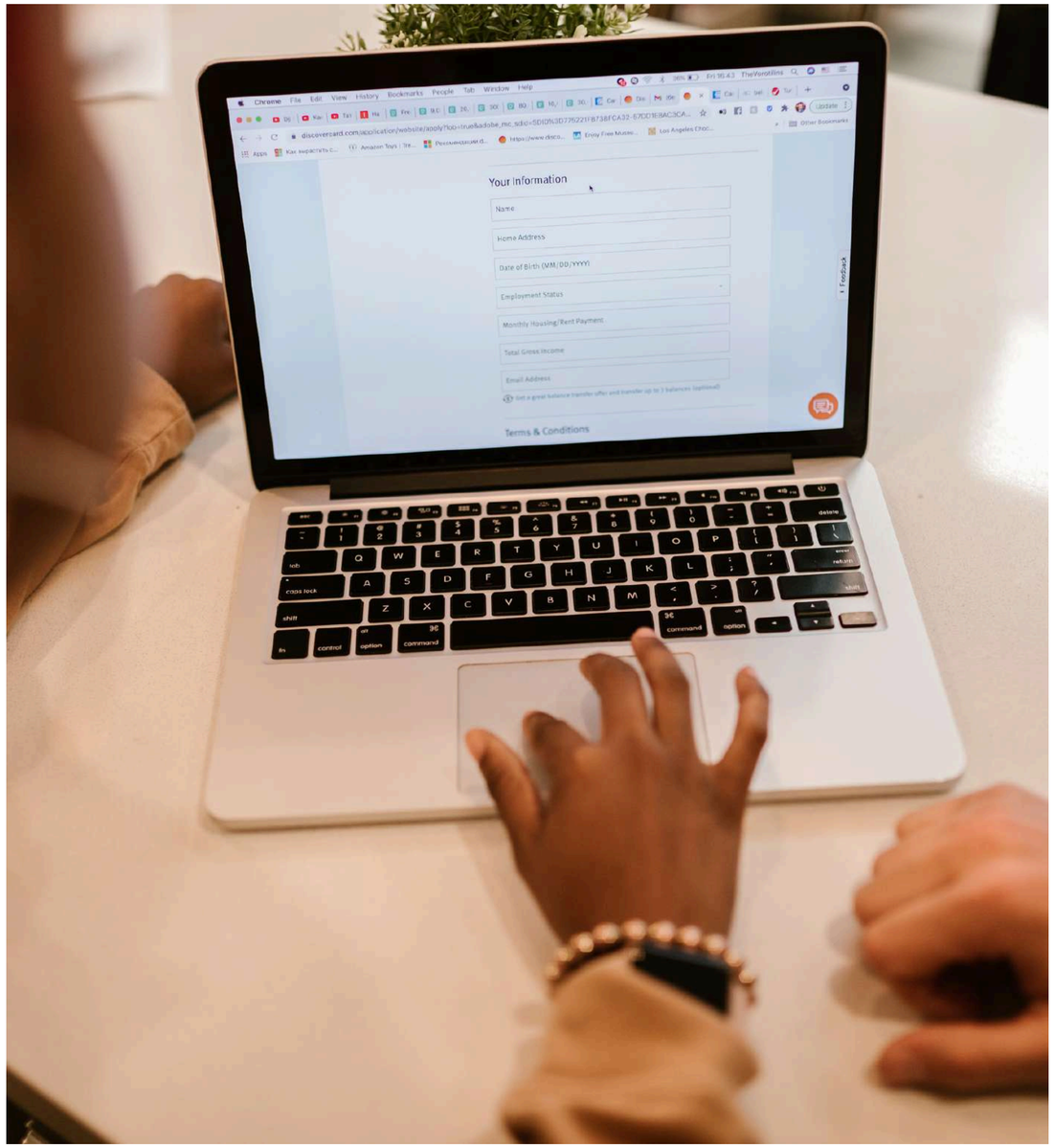
the best provider for each service. It is sometimes more cost-effective, as one may find better deals on either domain or hosting by shopping around. Thus ld. AO has fallen in error to consider web hosting charges and other non-domain services charges as FTS, being ancillary and subsidiary to the application or enjoyment of domain name registration. Therefore, the appeal of the assessee is allowed.

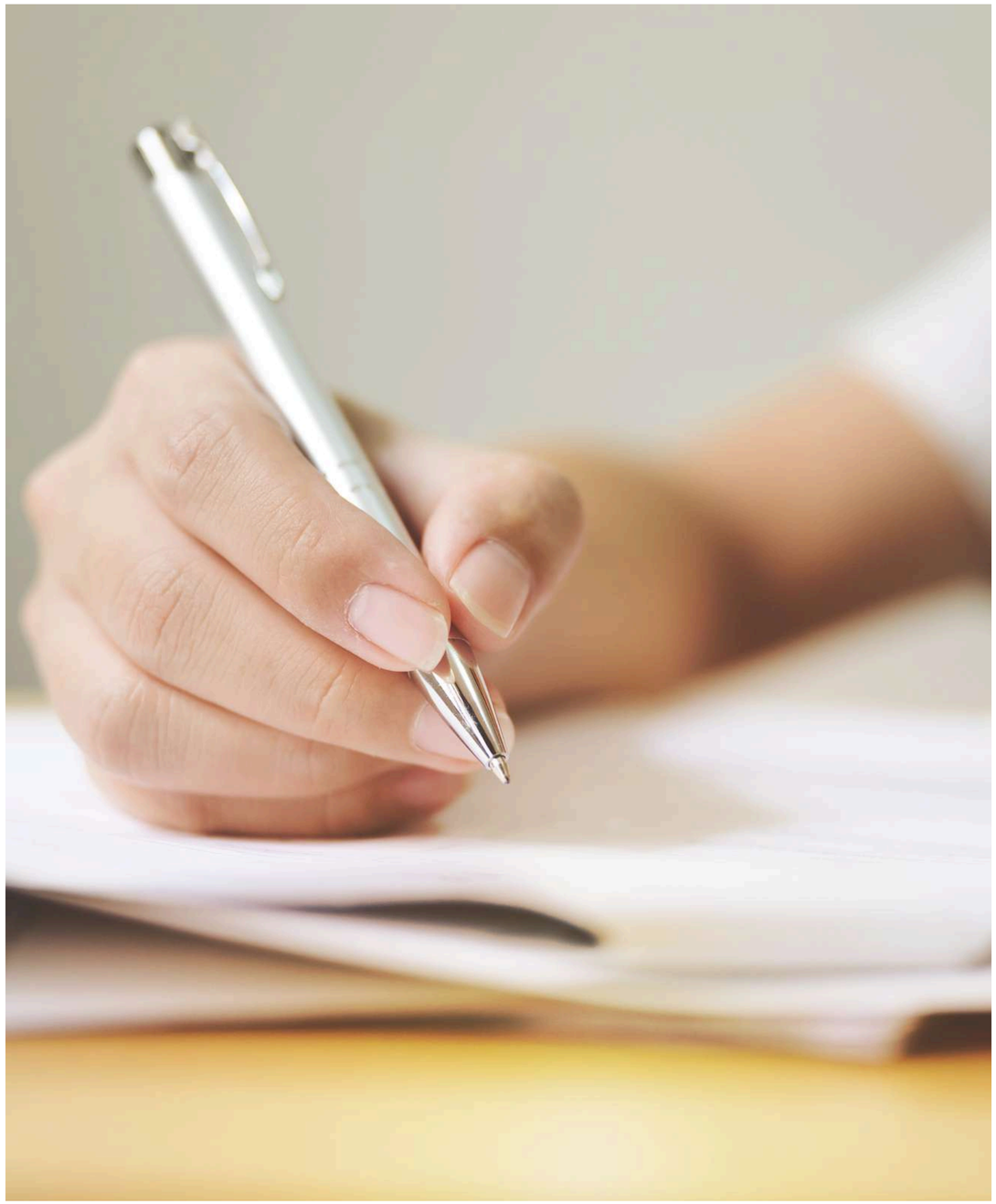
Source: ITAT, New Delhi in the case of GoDaddy.com, LLC VS ACIT vide [TS-02-ITAT-2025(DEL)] on January 01, 2025

Requirement of filing form 67 with return not mandatory, but directory in nature; Allows FTC

Facts

The assessee is an individual and he had claimed the foreign tax credit while filing the return. The AO had denied the foreign tax credit paid by the assessee in a country outside India, on the ground that the assessee had not filed the form 67 along with the return of income filed by the assessee. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that he had claimed the foreign tax credit in his return of income and also submitted that the foreign income received by him has been offered to tax in India and tax dues were also paid by him and therefore he is entitled for the tax paid in the foreign country while making the assessment. The Ld.CIT(A) had dismissed the appeal for the reason that the assessee should have filed form 67 along with the return of income form 67 along with the return of income but in this case, no such form 67 was filed along with the return and therefore held that the assessee is not entitled for deduction of tax paid in a foreign country.





Source: ITAT, Bangalore in the case of Vivek Singhal vs DCIT vide [TS-13-ITAT-2025(Bang)] on January 06, 2025

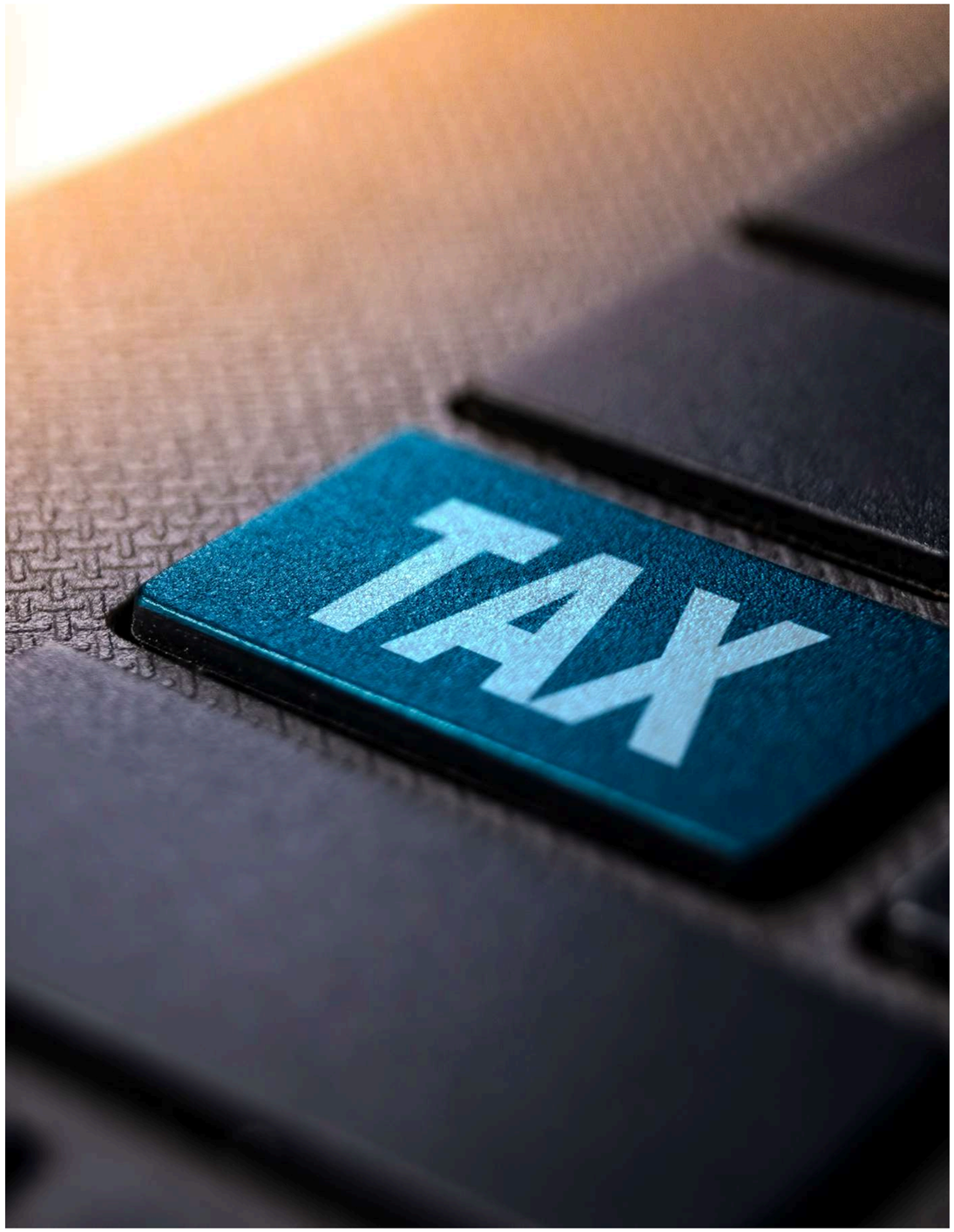
Ruling

The Hon'ble Tribunal noted that the assessee had claimed the credit for the foreign tax paid by him on the income earned by him in other countries which was also reported to the department while filing the return of income and on that basis, he has also remitted the tax dues to the department. The only mistake committed by the assessee is that the form 67 was not filed along with the return of income filed by the assessee. Therefore, both the authorities have held that the assessee is not entitled for deduction on the payment of foreign tax. Before that the assessee tried his level best to get the relief before the authorities but not able to get the relief. Thereafter he approached the Appellate authority but not got the relief. The court were not in agreement with the view expressed by the authorities since admittedly assessee was remitted the tax in the foreign country and also reported the said income in the return of income filed by him in India and claimed the deduction on the foreign tax paid by him. Therefore, the filing of form 67 along with the return could be treated as a directory and not a mandatory one when the facts are not in dispute. Further the allowance of foreign tax credit is based on the DTAA signed between the countries. The Rule 128 also does not bar the claim of FTC when the assessee had not filed the Form 67 along with the return of income. In the facts and circumstances of the case, the disallowance of the foreign tax paid by the assessee is not correct. Therefore, the bench have no hesitation to grant relief as prayed for by the assesse and the appeal of the assessee is allowed.

No profit attribution on offshore sale of equipment, rejects force of attraction application, deletes addition

Facts

The assessee is a Singapore-incorporated entity and tax resident under the India-Singapore Double Taxation Avoidance Agreement (DTAA), is a part of the UK's Smiths Group. It established an Indian branch in the year 2002 for security equipment installation and maintenance. The assessee has a wholly owned subsidiary M/s Smiths Detection System Pvt Ltd (SDS) incorporated in India in the year 2010. SDS is mainly engaged in the business of trading, installation and maintenance of security equipment and related spare parts.M/s Smiths Detection Asia Pacific Pte Limited filed its return of income for Assessment Year 2020-21 on 14.02.2021 declaring total income of Rs. 5,24,25,080/-. During the year under consideration, the assessee received receipts from India payers. The assessee has offered for tax the receipts on account of maintenance services provided to Cochin International Airport Ltd. as business receipts, it has reported interest income on receipts from Canara Bank and FTS Income on the receipts from SDS India. However, receipts from Mangalore Port Trust, Airport Authority of India and Cochin International Airport Ltd. amounting to Rs. 97,43,51,252/- have been claimed to be exempt. Additional receipts from Glidepath Ltd., CIAL, Kerala Industrial and Tech Consultancy Organization Ltd. (KITCOL), and Tirumala Tirupati Devasthanams (TTD) were added to the Appellant's income by the Ld. Assessing Officer. All



these receipts, totaling to INR 102,70,33,721/-, are subject matter of the current dispute. The assessee has contended that it does not have a PE in India.

Ruling

The Hon’ble Tribunal are of the considered view that the assessee has fully explained that Glidepath had originally contracted with CIAL for a baggage handling system which subcontracted its maintenance to the assessee, who in turn subcontracted it to SDVS. The bench also found that the AO has not disputed the fact that the compensation paid to SDVS was provided on a cost-plus arm's length markup. The issue of artificial splitting of contract has been dealt elsewhere in the order where the ITAT has given a finding that the work orders, splitting the scope of work between the assessee and its subsidiary in India, have been dully approved/agreed upon by the clients of the assessee and therefore we find the AO’s allegation of splitting the contract has no legs to stand. The court also find force in the assessee argument that the maintenance receipts from Glidepath cannot be taxed in the hands of the assessee as the SDVS has been remunerated on a cost-plus basis and that where there is an international transaction under which a non-resident compensates another enterprise at arm's length price taking into account all the risk-taking functions of the enterprise, nothing further would be left to be attributed to the enterprise in India. SDVS was adequately remunerated on which it has

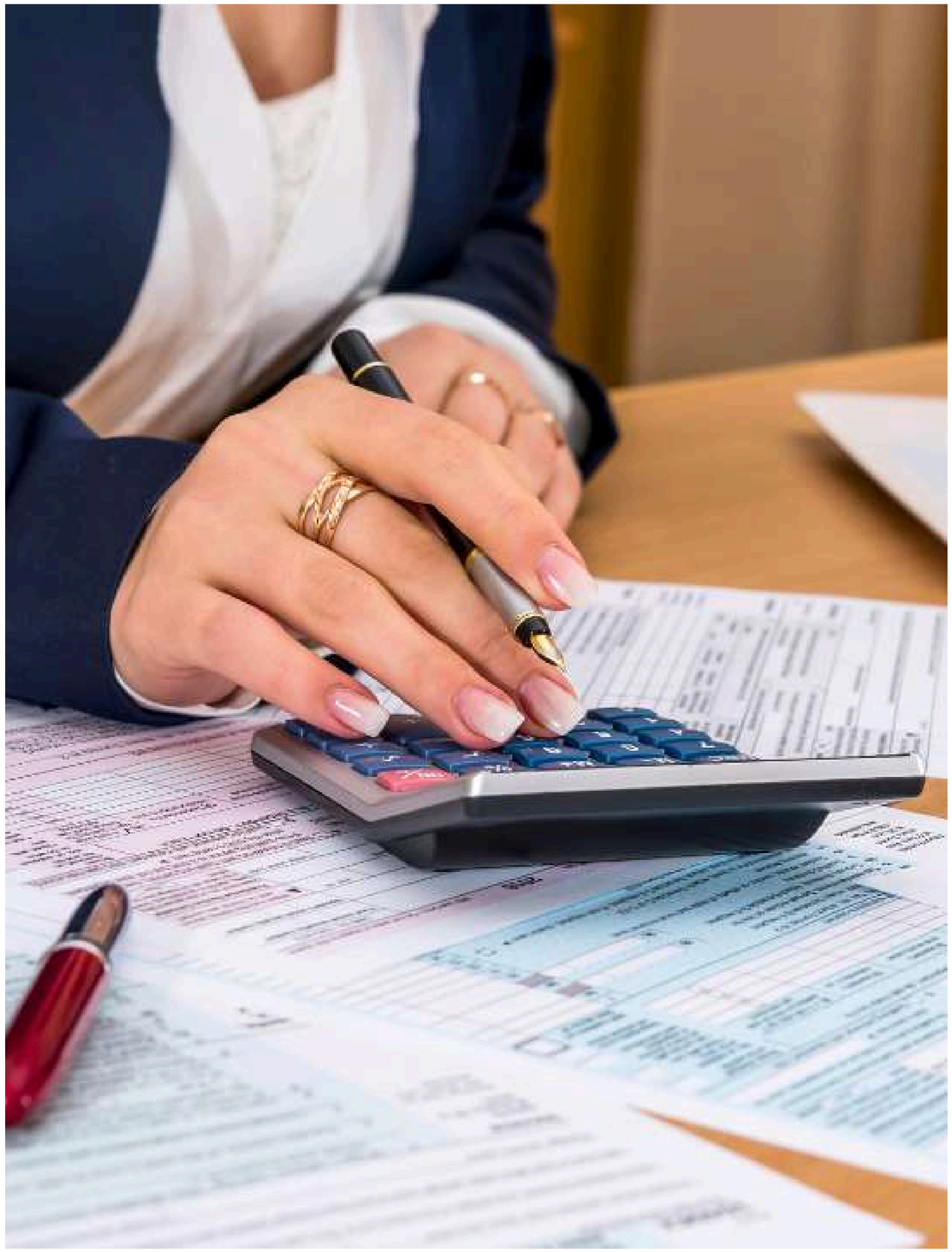
already paid its due tax in India and there is no reason for further attribution. The assessee has correctly placed reliance on the decision of the Hon'ble Supreme Court ruling in Morgan Stanley & Co. [2007] 162 taxman 165 (SC). In view of the above discussion The Hon’ble Tribunal hold that the receipt from Glidepath cannot be subjected to tax in the hands of the Assessee and direct the AO to delete the addition. The tribunal find that the assessee claims that receipts from KITCOL, TTD and maintenance receipts from CIAL has already been offered to tax in other AYs and taxing the same will amount to double-taxation. In the result, appeal filed by the appellant is partly allowed.

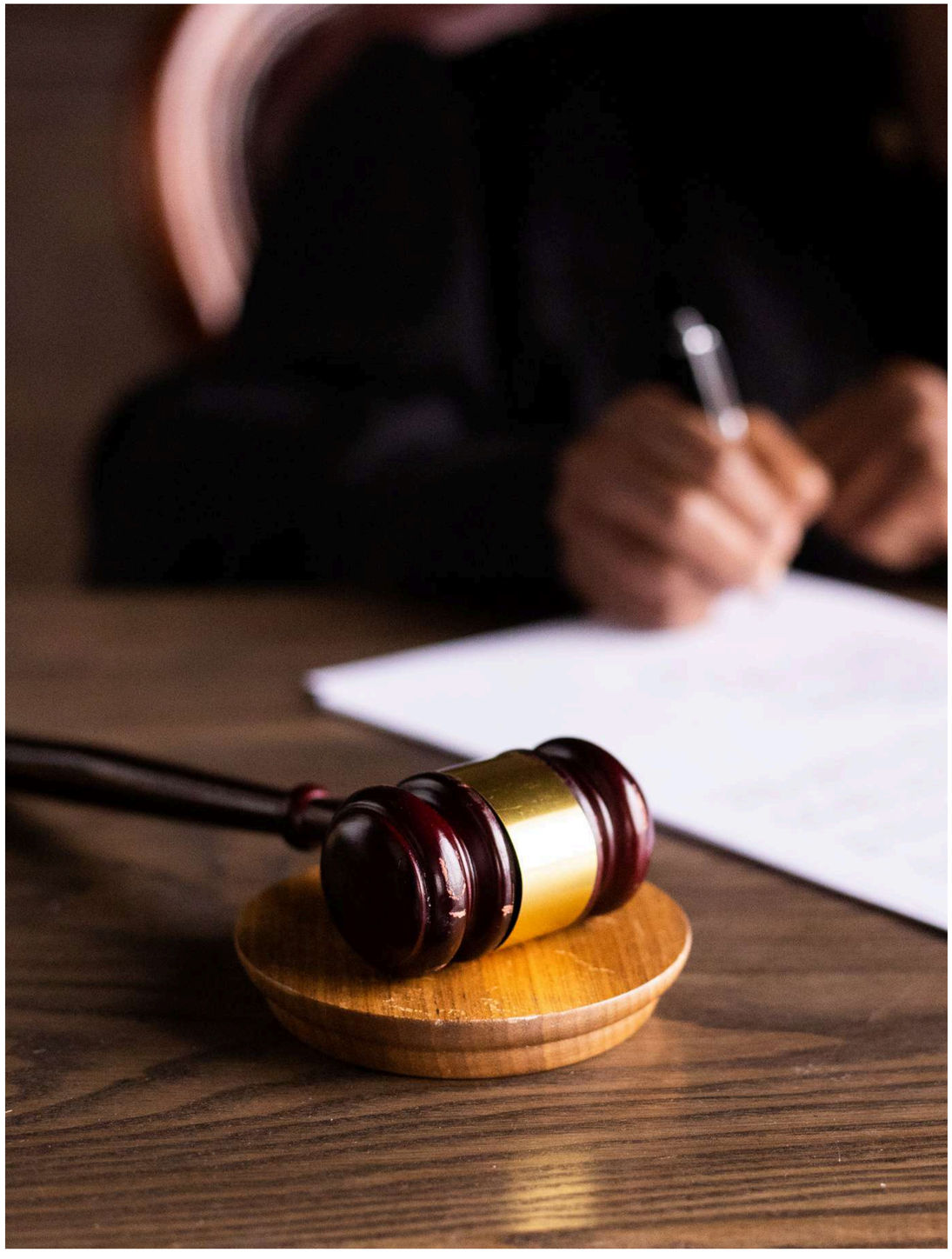
Source: ITAT, New Delhi in the case of Smiths Detection Asia Pacific Pte. Ltd. vs DCIT vide [TS-19-ITAT-2025(DEL)] on January 10, 2025

Receipts for maintenance, support & additional services not FTS under Article 12(4)(b) India-Singapore DTAA

Facts

The assessee is a non-resident corporate entity incorporated under the laws of Singapore and is a tax resident of Singapore. For the assessment year under dispute, assessee filed its return of income on 11.10.2019 declaring income of Rs.56,81,95,010/- and claiming refund of Rs.6,29,61,021/-. As stated by the Assessing Officer, the assessee is engaged in the business of providing/sublicensing software to entities in the Financial Service Sector and rovides maintenance and support services and training services. Whereas, assessee has claimed exemption in respect of these income





stating that in absence of a permanent establishment (PE), the receipts in the nature of business income cannot be taxed. As far as receipts of Rs.10,80,65,944/- from sublicensing of software is concerned, the Assessing Officer accepted the contention of the assessee that in view of the decision of the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Pvt. Ltd., cannot be treated as royalty income. However, in so far as receipts from maintenance and support services and additional services are concerned, the Assessing Officer issued a show cause notice to the assessee to explain why such receipts should not be treated as FTS under Article 12(4) of the India-Singapore Double Taxation Avoidence Agreement ("DTAA"). In response to the show cause notice, the assessee furnished a detailed reply stating that the receipts cannot be treated as FTS under Article 12(4)(a) of the Treaty as the services are not relating to any income in the nature of royalty. Further, the assessee submitted that the receipts cannot be treated as FTS even under Article 12(4)(b) of the Treaty as the make available condition is not satisfied. The Assessing Officer, however, did not agree with the contentions of the assessee.

Ruling

The Hon'ble Tribunal have considered rival submissions and perused the material on record. Facts on record reveal that the additional services rendered by the assessee are only to the extent of migration of software from old version to new version. The Assessing Officer has not brought on

on record any material/ evidence to demonstrate that in course of rendition of such services, the assessee has transferred or made available any technical knowledge, know-how, skill etc. to its clients in India so as to enable them to perform such services independently without requiring the aid and assistance of the assessee. If the Department seeks to invoke Article 12(4)(b) of the treaty the burden is entirely on the department to demonstrate the fulfillment of make available condition through cogent evidence. Unfortunately, the Department has failed to do so. The other allegation of the Assessing Officer that the assessee has offered similar income to tax in A.Y. 2018-19 does not stand to reason in view of the fact that in A.Y. 2018-19, the assessee offered it as business income in view of the fact that it had a service PE in India. Whereas, it is the assertion of the assessee that in the impugned assessment year there was no PE in India. Even, in the assessment order, there is no allegation by the Assessing Officer regarding existence of PE in India. In that view of the matter, once the receipts are not in the nature of FTS under Article 12(4) of the Treaty, they have to be treated as business receipts and in absence of PE in India, cannot be made taxable. In view of the aforesaid, the tribunal hold that receipts in dispute are not taxable in India. Therefore, the appeal of the assesse is partly allowed.

Source: ITAT, Mumbai in the case of Murex Southeast Asia Pvt. Ltd vs DCIT vide [(TS-26-ITAT-2025(Mum)] on January 13, 2025

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