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High Court Rulings

No Equalization Levy on Reimbursement of Online Advertising Expenses Incurred by Foreign Subsidiaries

Facts

The petitioner, an Indian software product company, carries out its overseas business through subsidiaries, including Zoho Corporation, USA (Zoho USA), which acts as a reseller of its products in the United States. For marketing the products in the USA, Zoho USA availed online advertising services through Google AdWords, for which Google raised invoices on and received payments from Zoho USA. The petitioner subsequently reimbursed Zoho USA marketing expenses amounting to Rs. 332 crore in FY 2016–17 and Rs. 550 crore in FY 2017–18. After the introduction of the Equalization Levy under Chapter VIII of the Finance Act, 2016 with effect from 01.07.2016, the petitioner paid Rs. 20.17 crore towards Equalization Levy for FY 2016-17 but later claimed that the levy was not applicable and sought a refund of Rs. 20.12 crore. For FY 2017-18, the petitioner initially did not pay the levy, contending that reimbursements made to its subsidiary for advertising services were not liable to Equalization Levy. Following a survey conducted by the Revenue under Section 133A of the Income-tax Act on 19.03.2019, the petitioner, under protest, deposited Rs. 36.94 crore towards Equalization Levy for FY 2017–18 and subsequently filed a refund claim. The refund applications for both years were rejected by order dated 12.10.2021. Aggrieved by the rejection, the petitioner filed the present writ petition challenging the said order.

Ruling

In the present case, The Court held that Equalization Levy was not applicable because the online advertising services were provided by Google USA to Zoho USA, both being non-resident entities. The petitioner merely reimbursed Zoho USA for the advertising expenses incurred by it, and such reimbursement did not constitute consideration for a specified service under Sections 164 and 165 of the Finance Act, 2016. The Court further observed that the levy could be imposed only if the corporate veil of Zoho USA were pierced. However, there was no evidence that Zoho USA was a sham entity or had been created to evade tax. Mere control or involvement of the Indian parent company in the subsidiary's affairs was insufficient to disregard its separate legal identity. The Court also noted that although the E-Commerce Taxation Committee had considered taxation of such reimbursement arrangements, Parliament did not incorporate those recommendations into the Finance Act. Accordingly, the reimbursement of advertising expenses to Zoho USA could not be subjected to Equalization Levy.

Source : HC, Madras in the case of Zoho Corporation Private Limited, Vs DCIT vide [TS-802-HC-2026(MAD)] on June 03, 2026





ITAT Rulings

One-Time Settlement Payments to Contractors Allowable Under Section 37; 1/5th Amortization Disallowed; DTAA–DDT Issue Remanded

Facts

The assessee, a company engaged in the business of manufacturing welding electrodes and components, filed its return of income for Assessment Year 2017-18 declaring a total income of Rs. 32,64,25,800. The return was selected for scrutiny and statutory notices were duly issued and complied with. In the course of assessment proceedings, the Assessing Officer made, inter alia, a disallowance of Rs. 5,43,00,000 in respect of expenditure claimed towards one-time settlement payments made to contractors and a further disallowance of Rs. 1,45,02,961 under Section 14A read with Rule 8D of the Income-tax Rules. Aggrieved by the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)]. The CIT(A) granted partial relief by deleting the disallowance relating to one-time settlement payments to the extent of Rs. 1,08,60,000, while sustaining the balance additions. Being dissatisfied with the order of the CIT(A), both the assessee and the Revenue have preferred cross-appeals.

Ruling

The Hon'ble bench held that the one-time settlement payments made by the assessee to its contractors were allowable as a deduction under Section 37(1), as they were incurred wholly and exclusively for the purposes of business. The Tribunal noted that the payments were made to avoid disruption of business operations and to maintain industrial peace. Since the payments were made to contractors, after deduction of tax under Section 194C, and did not fall within the ambit of Section 35DDA, the CIT(A) was not justified in allowing only 1/5th of the expenditure on an amortization basis. Accordingly, the Tribunal directed deletion of the disallowance representing the remaining 4/5th of the expenditure. On the issue of Dividend Distribution Tax (DDT) vis-a-vis DTAA benefits, the Tribunal observed that the assessee's contention that dividends paid to shareholders in the UK and the Netherlands should be subject to the lower treaty rates had not been adequately examined by the lower authorities. Considering the pendency of the issue before the Supreme Court in the *Colorcon Asia Pvt. Ltd.* matter, the Tribunal restored the issue to the Assessing Officer for fresh adjudication in accordance with the final decision of the Supreme Court.

Source : ITAT, Chennai in the case of ESAB India Ltd. vs DCIT vide [TS-801-ITAT-2026(CHNY)] on June 3, 2026



Legal Services Rendered by Law Firm Not Taxable as FTS; Addition on Non-UK Partners' Profit Share Deleted

Facts

The assessee, a UK-based firm of solicitors providing legal services globally, is a fiscally transparent entity whose income is taxed in the hands of its partners according to their profit-sharing ratios. For the relevant assessment year, the assessee filed its return of income declaring total income of Rs. 91.37 lakh and claimed a refund of Rs. 9.12 crore. The assessee earned revenue from legal services rendered in connection with Indian engagements and claimed exemption under the India–UK DTAA. In respect of income attributable to non-UK resident partners, it claimed treaty benefits under the respective DTAs between India and the countries of residence of such partners, namely Australia, France, Belgium, China, Japan, and Germany. During assessment proceedings, the Assessing Officer accepted the assessee's claim regarding the profit share attributable to UK-resident partners (82.121%) and the German partners' share (3.627%), which had been offered to tax by the assessee. However, the Assessing Officer held that the income attributable to non-UK resident partners (14.253%) was taxable in India as Fees for Technical Services (FTS) under Section 9(1)(vii) of the Income-tax Act, 1961, and denied the benefit of the relevant DTAs. Accordingly, an addition of Rs. 3.59 crore was made. The CIT(A) upheld the addition, aggrieving which the assessee preferred the present appeal before the Tribunal.

Ruling

In the present case, The Tribunal held that legal and professional services rendered by the assessee, a firm of solicitors, cannot be characterized as “Fees for Technical Services” (FTS) under Section 9(1)(vii) of the Income-tax Act, 1961. Relying on judicial precedents and the provisions of the India–UK DTAA, the Tribunal observed that professional services rendered by lawyers are distinct from technical consultancy services and are specifically excluded from the scope of FTS under Article 13 of the DTAA. Accordingly, the Tribunal ruled that the receipts earned by the assessee from Indian engagements were not taxable as FTS. Since the assessee is a fiscally transparent partnership, the taxability of income attributable to each partner must be examined with reference to the DTAA applicable to the partner's country of residence. The matter was therefore remanded to the Assessing Officer to determine the tax liability of the non-UK resident partners under the relevant tax treaties. Consequently, the addition Rs. 3.59 made under Section 9(1)(vii) was held to be unsustainable and was deleted. Similar relief was granted for the subsequent assessment years, with corresponding directions to the Assessing Officer.

Source : *ITAT, Delhi in the case of Herbert Smith Freehills LLP vs CIT(A), vide [TS-920-ITAT-2026(DEL)] on June 22, 2026*



ITAT Holds Five-Day Site Visit Falls Short of PE Threshold; No Taxable Presence in India

Facts

The brief facts are that the assessee, a company incorporated and tax resident in Canada, is engaged in the business of developing, selling, and leasing large-format theatre systems worldwide. In connection with its business, the assessee also provides installation, training, and related support services and grants licences to use the “IMAX” trademark. Pursuant to agreements entered into with Indian customers, the assessee supplied theatre systems, rendered installation and theatre design services, and provided trademark licensing rights.

During the assessment proceedings, the Assessing Officer alleged the existence of a fixed place Permanent Establishment (PE) and an installation PE of the assessee in India. Accordingly, income arising from the sale of theatre systems, sale of glasses and other accessories, installation services, and theatre design services was proposed to be taxed in India. After considering the directions of the Dispute Resolution Panel (DRP), the Assessing Officer, in the final assessment order, made additions in respect of receipts from the sale of glasses and other accessories amounting to Rs. 34.95 lakh, installation services amounting to Rs. 57.51 lakh, and theatre design services amounting to Rs. 38.34 lakh. Aggrieved by these additions, the assessee preferred an appeal before the Income Tax Appellate Tribunal.

Ruling

The Hon’ble bench held that no income could be attributed to the Canada-based assessee, IMAX Corporation, in India as it did not have a Permanent Establishment (PE) in India under the India–Canada DTAA. The Tribunal observed that none of the conditions necessary for constituting a fixed place PE were satisfied and, therefore, no fixed place PE existed in India. With respect to the alleged installation/supervisory PE, the Tribunal noted that during the relevant assessment year, the only activity undertaken in India was a five-day visit by an employee of the assessee for inspection of the customer’s premises. Even considering the subsequent installation activities, the duration of presence in India was only 17 days, which was substantially below the 120-day threshold prescribed under the India–Canada DTAA for constituting an installation PE.

Accordingly, the Tribunal held that the assessee had neither a fixed place PE nor an installation/supervisory PE in India. Consequently, in the absence of a PE, no income could be attributed or taxed in India, and the additions made by the Assessing Officer were deleted.

Source : ITAT, Delhi in the case of IMAX Corporation vs ACIT, vide [TS-817-ITAT-2026(DEL)] on June 4, 2026



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