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Facts

The assessee filed a Return of Income on 26.11.2014 declaring its income for the year to be INR 26.6 crores which was selected for scrutiny assessment and notices under section 143(2) were issued to the assessee. During the assessment proceedings, the Assessing Officer (AO) found an international transaction between the assessee and its Associate Enterprises and subsequently referred the matter to the Transfer Pricing Officer (TPO) who determined the Arm's Length Price (ALP). Subsequently, on 22.12.2017, a draft assessment order was framed by the AO holding income as shown to be liable to tax at the rate of 20% in accordance with section 115A of the Act. The AO rejected the assessee's claim to benefit under Article 11 of the India-Cyprus Double Taxation Avoidance Agreement (DTAA).

No objections were filed by the assessee before the Dispute Resolution Panel (DRP) and as such the final assessment order was passed on 09.02.2018 wherein the tax was levied at 20% on the total income of the assessee. Consequently, the assessee appealed to the CIT(A) who allowed the claim of the DTAA benefit to the assessee.

Aggrieved, the Revenue preferred an appeal before the ITAT where the assessee also filed cross objections which were accepted by the ITAT and the order passed in favor of the assessee.

Hence the matter reached the Hon'ble High Court for adjudication.

Ruling

The Hon'ble Court upheld the order of the ITAT and ruled in favor of the assessee. It held that as observed before the ITAT it was uncontested fact that there was no variation in the income of the assessee as returned. Furthermore, the only point of disputation was whether the assessee was entitled to claim the benefit under Article 11 of the DTAA. As such, it was clear that while the income offered became subject to tax at the rate of 20%, the total income remained unvaried. Therefore, the Hon'ble Court opined that a reading of section 144C as it stood at the relevant time, the AO was only empowered to frame a draft assessment order only when there was a variation in the return. As the same was clearly not the issue in the case of the assessee, the Hon'ble Court dismissed the Revenue's appeal.

Source: High Court, Delhi in The Commissioner of Income Tax vs. S.A. Chitra Ventures Ltd. vide ITA 607 of 2023 dated February 16, 2024.

HC Holds Lexis Nexis Subscription Fee Received by Assessee not Royalty or FTS under DTAA

Facts

The assessee filed a Return of Income on 30.11.2018 declaring Nil income as no part of it was taxable under the Act. Subsequently, the case was selected for scrutiny assessment wherein in was found that the assessee had received a subscription fee of INR 18.65 crores from Indian subscribers for the use of its legal database, Lexis Nexis. Through this database, Indian subscribers gain access to judgements, articles, legislations and other research material relevant to the legal field.

The assessee contended that the income earned from subscription fee was in the nature of business income and as there was no existence of a PE in India, it would be exempt under Article 7 of the DTAA. Furthermore, the assessee asserted it would not be considered as Royalty or Fees for Technical Services (FTS).

However, the AO, by virtue of section 144C of the Act held that the income was in the nature of technical consultancy and framed the draft assessment order. The assessee raised objection against the same before the DRP which dismissed them and upheld the findings of the AO. Thereafter, a final assessment order was passed on 22.06.2022 confirming the addition of INR 18.65 crores as royalty.

Aggrieved, the assessee preferred an appeal before the Tribunal which allowed the same. As such the matter has reached the Hon'ble High Court for adjudication.

Ruling

The Hon'ble High Court ruled in favor of the assessee and found no need to interfere with the order passed by the Tribunal. It opined that in order for the income to fall within the ambit of 'Fees for included services', it was imperative for the Department to establish that the assessee was rendering technical or consultancy services and which included making available technical knowledge, experience, skill, know-how or processes. The Hon'ble court observed that as found by the Tribunal, the access to the database did not constitute the rendering of any technical or consultancy services and in any case did not amount to technical knowledge, experience, skill, know-how or processes being made available.

The Hon'ble Court concluded by holding that "As we examine the nature of the transaction between an Indian subscriber and the assessee, it becomes manifest and apparent that it neither comprises of a transfer of copyright nor does it include a transfer of a right to apply technology and other related aspects which are spoken of in Article 12(4)(b) of the DTAA."

Accordingly, the addition was deleted.

Source: High Court, Delhi in The Commissioner of Income Tax, Int. tax 3 vide ITA 630/2023 dated February 07, 2024.

ITAT Holds Salary Earned in UK Not Taxable in India; Assessee Entitled to DTAA Benefits by Reason of UK-TRC

Facts

The assessee was a non-resident Indian and a tax resident in United Kingdom, receiving salary from IBM India Pvt. Ltd. (IBM) while working in the United Kingdom. For the AY 2014-15 the assessee had electronically furnished his return of income declaring income at INR NIL. Subsequently, the case was selected for scrutiny through CASS and notice was issued under section 143(2) and 143(1) of the Act.

During the proceedings, the AO found that the assessee had received salary of INR 50.5 lakhs from IBM for a short term foreign assignment attended in the United Kingdom. The assessee had not offered his salary income of INR 50.5 lakh and his interest income of INR 22,576 to tax in India on the ground that the assessee was a non-resident Indian and would be entitled to be taxed on his total income in his country of residence.

However, such claim was denied by the AO as the assessee had failed to furnish his Tax Residency Certificate (TRC) required for claiming the benefit under the DTAA. Subsequently, the matter was produced before the Commissioner of Tax (Appeals) [CIT(A)] where the assessee produced the copy of the TRC as issued to him by HM Revenue and Customs, UK. Resultantly the matter was remanded back to the AO who allowed the income as exempt in India. However, the CIT(A) still did not allow the ground of appeal.

Accordingly, the matter reached the Tribunal for adjudication.

Ruling

The Tribunal ruled in favor of the assessee. After analysing the facts of the case and the remand report issued by the AO, it held that the assessee was unquestionably in possession of the TRC for the period in which the relevant income in contention pertained was earned by him. It deleted the addition and opined that since the assessee had offered such income to tax for the year in United Kingdom, he was well within his right to receive the benefit under section 90 of the DTAA.

Source: Tribunal, Kolkata in Debarghya Chattopadhaya vs. DCIT, International Taxation, Kolkata vide ITA No.24/Kol/2023 dated February 9, 2024.

ITAT Holds Receipt for Incorporation of Software in MG Cars not in the Nature of Royalty; Follows Supreme Court's Engineering Analysis

Facts

The assessee was a company incorporated under the laws of China as well as a tax resident of China. It was engaged in the business of supply/licensing of automobile related software and had opted to follow the provisions of the India-China DTAA. Additionally, it did not have a Permanent Establishment (PE) in India.

For AY 2020-21, the assessee e-filed its return of income declaring income of INR 18.79 crores, however, subsequently, the assessee filed its revised return of income declaring income as NIL and claimed a refund of INR 18.70 crores. Following this, the case of the assessee was selected for complete scrutiny through CASS and due notices issued to it. It was found that during this AY, the assessee had entered into a license agreement with MG Motor India Pvt. Ltd. (MG India) for grant of license to incorporate the "intelligent connected vehicle system" into the head unit which was supplied from outside India and have it fitted into MG India's car. For this, the assessee received INR 18.79 crores which was claimed as non-taxable under the India-China DTAA.

The AO dismissed the submissions of the assessee and proceeded to pass a draft assessment order on 29.09.2022 holding that information imparted by the assessee coded in the form of map, navigation, weather etc. amounted to royalty under the Act as well as under the provisions of India-China DTAA and accordingly assessed the receipts of INR 18.79 crores as royalty in the hands of the assessee.

Consequently, the assessee filed objections before the DRP which upheld the finding of the AO. Accordingly, the final assessment order was passed with an addition of the above receipts as royalty.

Aggrieved, the assessee preferred an appeal before the Tribunal for relief.

Ruling

The Tribunal ruled in favor of the assessee. It observed that the assessee had merely granted a non-transferable, non-exclusive, non-assignable license to incorporate the Software into the vehicles manufactured/sold by MG India to the end customers. The assessee itself was responsible for any claims of patent infringement and as such no transfer of intellectual property rights (IPR) had taken place as all IPR in the licensed products shall belong to the assessee and its licensors only. The Tribunal relied on the decision of the Hon'ble Supreme Court in the case of Engineering Analysis Centre of Excellence Pvt. Ltd. vs. CIT 432 ITR 471, wherein it was held that, *"payer who gets non-exclusive, non-transferrable and restricted right to a copy of the software makes payment for the supply of copyrighted article and not for the use of the copyright of the owner, is in the nature of business income and not royalty."*

Accordingly, the Tribunal concluded by holding that in the present case, the ratio of the Hon'ble Apex Court would squarely apply to the assessee's case in hand.

Source: Tribunal, Delhi in M/s SAIC Motor Overseas Intelligent Mobility Technology Co. Ltd. vs. ACIT, In. tax, Gurgaon vide ITA No. 2194/Del/2023 dated February 23, 2024.

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