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CHARTERED ACCOUNTANTS

Communiqué

International Taxation

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ITAT Rulings

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Deletes Demand under Section 201(1A); Holds Payment Not Taxable as FTS in Absence of Transfer of Technical Know-how

Facts

The assessee, engaged in real estate development, was constructing a residential tower known as “The 42” at Kolkata. In connection with the project, it entered into a Technical Consultancy Agreement dated 01.05.2016 with Arabian Construction Co. WLL, UAE (ACCWLL) for obtaining advisory support in relation to construction review, safety, scaffolding, and quality aspects of the project. During FY 2017-18, the assessee remitted certain amounts to ACCWLL without deduction of tax at source, treating the same as business profits under Article 7 of the India-UAE DTAA, on the ground that ACCWLL, being a tax resident of UAE, had no Permanent Establishment in India. However, the Assessing Officer held the remittances to be taxable in India as Fees for Technical Services under section 9(1)(vii) of the Act, and consequently treated the assessee as an assessee in default under section 201(1)/201(1A), raising a demand of INR 35,57,540 by order dated 28.11.2019. The said demand was thereafter confirmed by the CIT(A) by way of an ex parte order, without adjudicating the matter on merits.

Ruling

In the present case, The Hon’ble bench held that the assessee could not be treated as an assessee in default under section 201(1), and therefore the related interest demand under section 201(1A) was also not sustainable. The Tribunal found that the UAE company had only rendered supervisory and consultancy services and had not transferred any technical know-how, skill, process, or methodology to the assessee. Since the assessee was not enabled to use any such technical knowledge on its own in future, the services could not be treated as Fees for Technical Services (FTS) under the India-UAE DTAA. The Tribunal further noted that the UAE company had no Permanent Establishment in India, and as the treaty does not contain a separate article taxing FTS, such payments could not be taxed in India by applying section 9(1)(vii) of the Act. Accordingly, the demand raised by the department was deleted

Source : ITAT, Kolkata in the case of Chowringhee Residency Pvt. ltd., Vs ITO vide [TS-735-ITAT-2026(Kol)] on May 20, 2026

No Fixed Place PE or Service PE of IMAX in India in Absence of Fulfilment of 90-Day Threshold under India–Canada DTAA

Facts

The assessee is a tax resident of Canada and holds a valid Tax Residency Certificate under the India–Canada DTAA. It is engaged in the business of providing maintenance services for IMAX theatre systems worldwide, including in India, and had also entered into a separate arrangement with an Australian vendor for rendering such services to customers in India and other countries. The dispute arose because the Assessing Officer alleged that the assessee had a Fixed Place PE as well as a Service/Supervisory PE in India, and on that basis proposed to tax income from maintenance services and sale of glasses and other items. Applying Rule 10, the AO attributed profit at 25% and made an addition of Rs. 1,52,51,462. On objections, the DRP upheld the finding regarding existence of PE but reduced the profit rate to 12.5%, resulting in an addition of Rs. 76,25,731. Aggrieved by this, the assessee filed an appeal before the ITAT.

Ruling

The Hon'ble bench held that the assessee, IMAX Theatre Services, did not have a fixed place PE in India under Article 5(1) of the India–Canada DTAA, because the basic conditions required for such a PE—such as a fixed place of business, control or disposal over that place, permanence, and carrying on business through it—were not satisfied. The Tribunal also held that there was no service or supervisory PE in India under Article 5(2)(l), since the total number of days spent at the sites was only 67 days, which was below the 90-day threshold prescribed under the treaty. It further observed that services rendered remotely cannot by themselves create a PE in India. The ITAT also accepted the assessee's explanation regarding the status of the vendor's employee and held that a LinkedIn profile alone cannot be relied upon to determine employment status. Accordingly, the Tribunal concluded that no PE existed in India and the addition made by the tax authorities was not sustainable.

Source : ITAT, Delhi in the case of IMAX Theatre Services Ltd vs ACIT vide [TS-688-ITAT-2026(DEL)] on May 13, 2026

Addition Deleted in Respect of Per Diem Received in the UK During Non-Resident Period

Facts

The assessee originally filed his return showing income of Rs. 23.94 lakh from salary and house property, but later filed a revised return declaring a loss of Rs. 1.63 lakh and claiming exemption of salary income under Article 16 of the India–UK DTAA. His case was that he had been sent on an international assignment to the UK, had exercised employment there, and was therefore a UK tax resident, making his salary taxable only in the UK. However, the Assessing Officer was not satisfied with this explanation, especially because the salary was received in India and there was a difference between the income shown in the Indian return and the UK return. The AO therefore disallowed the reduction in salary income of Rs. 17.25 lakh and added it back to the assessee's income. The CIT(A) also dismissed the assessee's appeal, following which the assessee approached the Tribunal.

Ruling

In the present case, The Delhi ITAT held that the addition made by the Assessing Officer on account of per-diem allowance was not justified. It found that the assessee had received Rs. 16.17 lakh during his assignment with Ernst & Young UK in the financial year 2016–17, when he was a non-resident in India. The Tribunal noted that the assessee had supported his claim with documents such as his passport and UK Tax Residency Certificate. It held that under Article 16(1) of the India–UK DTAA read with section 90, this amount was taxable, if at all, only in the UK and not in India. The Tribunal also noted that only the per-diem amount was claimed as exempt, while the balance salary of Rs. 35,506 had already been offered to tax in India. Accordingly, the ITAT deleted the addition of Rs. 17.25 lakh.

Source : ITAT, Delhi in the case of Sachin Saxena vs DCIT, vide [TS-782-ITAT-2026(DEL)] on May 29, 2026

Britannia Dividend Taxability Case Sent Back for Examination of Non-Resident TRCs and PE Status Declarations

Facts

The brief facts are that the assessee had written off Rs. 16 crore being the value of investment made in its wholly owned subsidiary, Ganges Valley Foods Pvt. Ltd., and had already added this amount back while filing its return of income. Later, during the assessment proceedings, the assessee made a fresh claim that this write-off should be allowed as a business loss. However, the Assessing Officer again added the same amount to income, which resulted in a case of double disallowance. The assessee also raised another issue relating to interest of Rs. 3.76 crore on debentures, which had been accounted for as accrued interest though it had not actually become due. Since the debentures were later sold before the interest became payable, the assessee contended that taxing this amount in the year under appeal would lead to double taxation, as it was already reflected in the capital gains offered in the subsequent year. The CIT(A) allowed the claim relating to the investment write-off, but the matter regarding proper relief and the interest issue remained in dispute.

Ruling

The Hon'ble Tribunal sent the matter back to the Assessing Officer because Britannia had not provided enough details to support its claim that dividend paid to non-resident shareholders should be taxed at the lower treaty rates under the India–Singapore DTAA. The Tribunal noted that important documents such as Tax Residency Certificates (TRCs), Permanent Establishment (PE) declarations, financial details, and tax filing records of the non-resident shareholders were not placed on record. Without these facts, it was not possible to verify whether the treaty benefit was actually available. The ITAT also observed that it must be examined how the dividend income was treated by the non-resident shareholders in their own countries and who would be entitled to any refund, if allowed. Accordingly, the issue was restored to the AO for fresh examination and verification.

Source : ITAT, Kolkata in the case of Britannia Industries Ltd vs DCIT, vide [TS-715-ITAT-2026(Kol)] on May 18, 2026

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