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Payment for Performance and Career Management Training Services Held Not to be FTS under India–Singapore DTAA

Facts

The Assessee, engaged in software development services, filed its return for AY 2017-18 declaring income of ₹40.11 crore. The case was scrutinized, and the AO passed an order u/s 143(3) on 19.05.2021 determining income at ₹44.81 crore by making two additions: INR 1.44 crore towards value of computer equipment provided free of cost by overseas AEs, treated by AO as income u/s 28(iv) and INR 9.59 lakh disallowed u/s 40(a)(i) in respect of training fees paid to a Singapore resident without TDS, treated by AO as FTS. The Assessee contended that the equipment were prototypes given only for testing, capital in nature, and not income u/s 28(iv). It also argued that the training fees were exempt under Article 14 of the India–Singapore DTAA as independent personal services. On appeal, CIT(A) deleted the addition of INR 1.44 crore relying on APA/ITAT rulings, and also held that training fees were not FTS u/s 9(1)(vii). The Revenue appealed deletion of disallowance u/s 40(a)(i), while the Assessee filed cross-objections reiterating that equipment was for testing and training payments were covered by DTAA. The ITAT upheld CIT(A)'s deletion of INR 1.44 crore addition and held that disallowance of INR 9.59 lakh did not arise from the assessment order.

Rulings

In the present case, The Hon'ble Court held that training workshops on performance and career management conducted for employees of Sony India Software Centre are general training programs and do not involve transfer of technical knowledge, know-how, or processes. Therefore, such payments cannot be treated as "fees for technical services" (FTS) under Article 12 of the India–Singapore DTAA. In this case, the AO had disallowed professional fees paid to a Singapore resident under Section 40(a)(i), treating the same as FTS liable for TDS. The Revenue challenged the CIT(A)'s deletion of this disallowance before the ITAT, arguing that reimbursements to "seconded employees" were FTS. However, the ITAT found that such grounds did not arise from the assessment order. The High Court agreed, noting that the AO had never found any seconded employees or raised related issues. Referring to the Supreme Court's ruling in Engineering Analysis, the Court reiterated that definitions in a DTAA prevail over those in the Act. Since the workshops did not "make available" technical knowledge, they could not be categorized as FTS. Accordingly, the Court upheld the CIT(A) and ITAT orders and dismissed the Revenue's appeal.

Source: HC, Karnataka in the case of Sony India Software Centre Pvt. Ltd. Vs ADIT/CIT vide [TS-1044-HC-2025(KAR)] on August 12, 2025

FTC Allowed Despite Delay in Filing Form 67; CBDT Procedure Notified After ITR Filing

Facts

The assessee filed its return of income on 01.08.2017 declaring income of INR 3,83,49,150 and claimed foreign tax credit (FTC) of INR 27,39,914 under section 90/90A of the Act. Subsequently, a revised return was filed on 17.09.2018 declaring the same income but claiming FTC of INR 24,86,890. The return was processed, and the case was selected for scrutiny under CASS. During assessment, the AO observed that FTC can be allowed only if the assessee complies with Rule 128/129 of the Income-tax Rules, 1962. The assessee had furnished Form 67 on 17.09.2018. However, CBDT had notified Form 67 in September 2019, after the filing of the return. The AO, therefore, denied FTC. On appeal, the CIT(A) upheld the denial, despite considering the assessee's submissions. Aggrieved, the assessee appealed before the Tribunal. It was argued that at the time of filing the original return, filing Form 67 was not mandatory as the CBDT notification came later (17.09.2017). Once notified, the assessee revised the return and duly furnished Form 67. Hence, the claim of FTC should not have been denied.

Rulings

The Hon'ble bench held that Form 67 was notified by the CBDT only on 19.09.2017, whereas the assessee had filed its original return of income on 01.08.2017. A revised return was later filed on 17.09.2018 claiming FTC of INR 24,86,890 under section 90/90A. Since no notification prescribing Form 67 existed at the time of filing the original return, and there was no dispute regarding the quantum of the FTC claim, the assessee could not be denied the benefit. Relying on the case law cited and considering the facts, the Tribunal allowed the appeal.

Source: ITAT, Bangalore in the case of Grandhi Buchi Sanyasi Raju vs DCIT vide [TS-1023-ITAT-2025(Bang)] on July 31, 2025

Salary Received in India for Services Rendered in Malaysia Held Exempt under DTAA

Facts

The assessee, Arumugam Rajasekar, was employed with TCS Malaysia on an employment visa and was a tax resident of Malaysia. Part of his salary i.e., INR 32.88 lakhs for services rendered in Malaysia was for administrative convenience, paid in India by TCS India, on which TDS of INR 7.61 lakhs was deducted. The assessee filed his ITR in India declaring nil income, claiming exemption under Article 16 of the India–Malaysia DTAA, since the salary was earned in Malaysia and taxed there. The AO rejected the exemption, holding that since the salary was received in India, it was taxable under section 5(2) of the Income-tax Act, relying on an earlier ITAT ruling in case of Dennis Victor Rozario. CIT(A) upheld the AO's view, holding that receipt in India makes the salary taxable under section 5(2). Aggrieved, the appellant has filed the present appeal.

Rulings

In the present case, the ITAT noted that the assessee was a tax resident of Malaysia and his salary income related to services rendered there and had already been offered to tax in Malaysia. The court held that mere receipt of salary in India does not make it taxable in India; the place of accrual is where the services are rendered. The bench placed reliance on various judicial precedents in support. The ITAT concluded that under Article 16(1) of the India–Malaysia DTAA, the assessee's salary was taxable only in Malaysia, not in India. Salary received in India for services rendered in Malaysia is exempt under the DTAA. The appeal of the assesse was partly allowed.

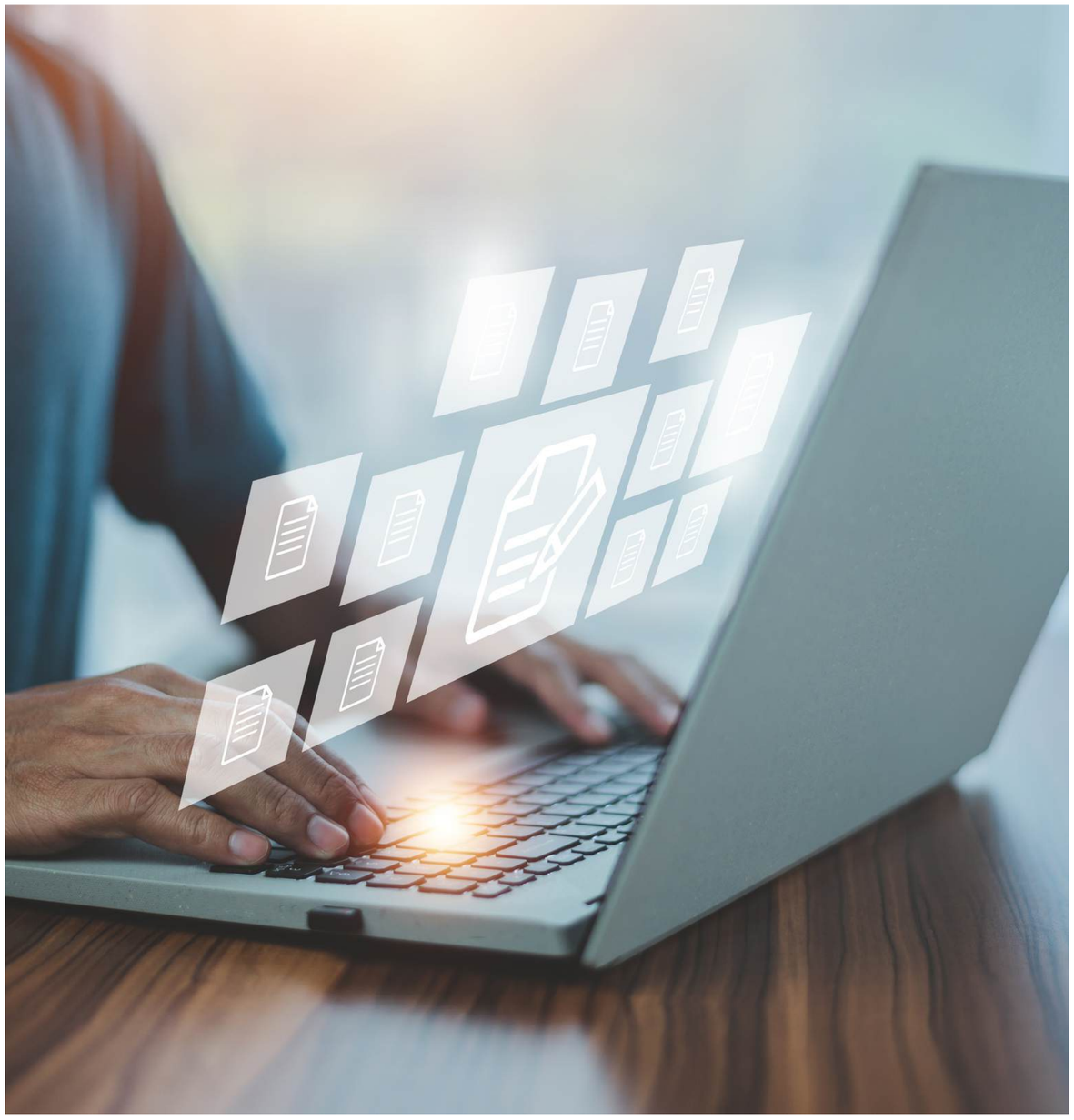
Source: ITAT, Chennai in the case of Arumugam Rajasekar vs ITO, vide [TS-1041-ITAT-2025(CHNY)] on July 31, 2025

Management and Consultancy Services Not FTS under India–Singapore DTAA Absent Satisfaction of ‘Make Available’ Clause

Facts

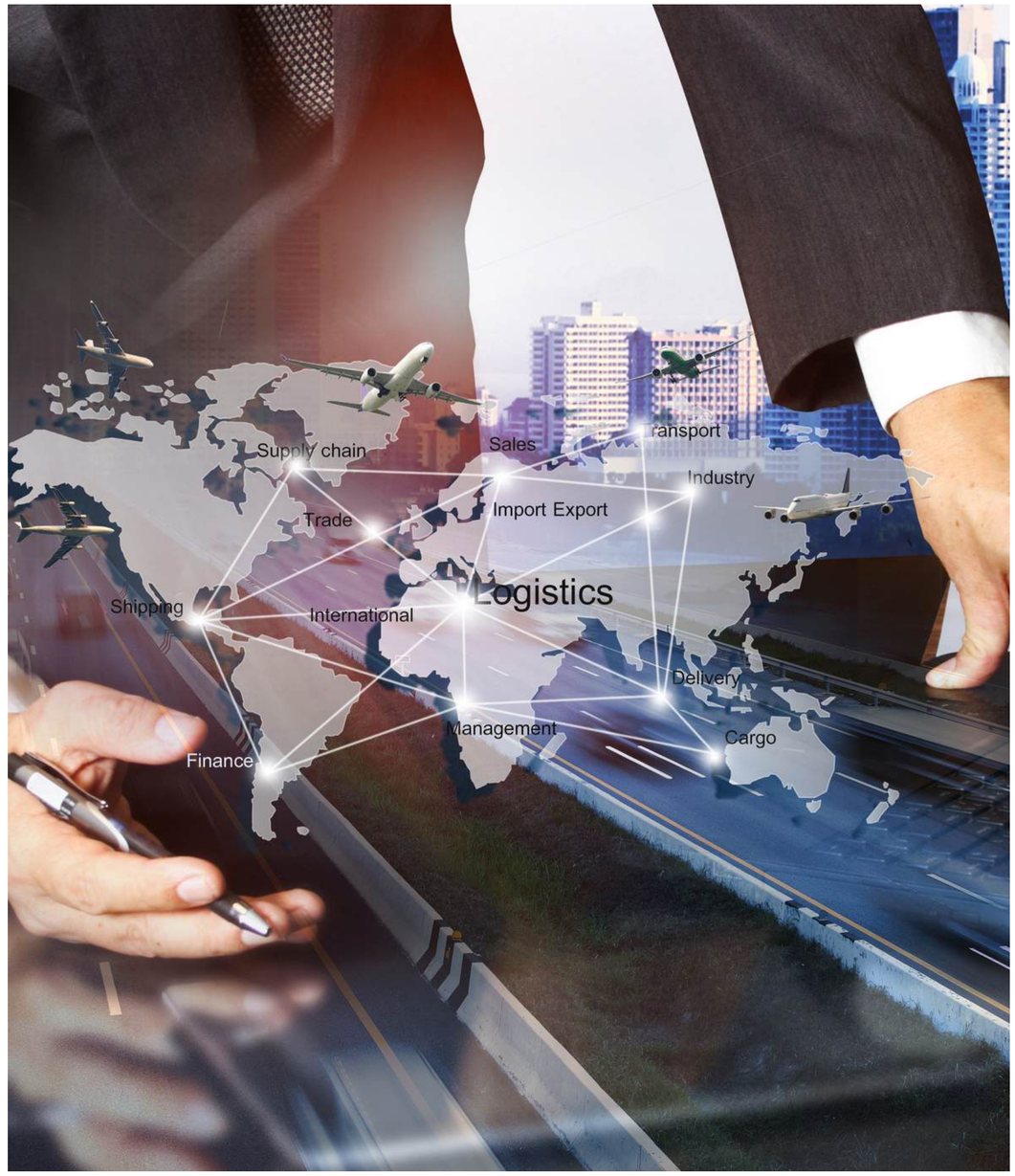
The brief facts are that the assessee, is a Singapore-based company and a tax resident of Singapore. It entered into a Management Services Agreement with Keller Ground Engineering India Pvt. Ltd. (Keller India) dated 01.01.2016, under which it provided various services such as strategic management consultancy, legal services, engineering and technical advice, marketing and advertising support, human resources, procurement, and IT services. In return, it received a management fee from Keller India. The assessee offered receipts relating to IT services to tax but contended that other services were not taxable in India as “fees for technical services” (FTS) under Article 12 of the India–Singapore DTAA, since they did not satisfy the “make available” condition. The AO, however, treated the entire management fee as FTS, holding that technical knowledge and skills were being transferred to Keller India. The DRP upheld the AO’s order. The assessee argued before the Tribunal that it merely provided advisory/consultancy support through emails and periodic discussions, without transferring any know-how or enabling Keller India to perform such services independently.

Aggrieved, the assessee filed an appeal before the ITAT.



Rulings

The Hon'ble Tribunal held that the services provided by the assessee were advisory, managerial, and consultancy in nature, offered on a recurring basis year after year. It noted that the Management Services Agreement was of a continuing nature with no fixed term, indicating that no one-time transfer of technical know-how had taken place. It further held that the Revenue had brought no evidence on record to show that technical knowledge, processes, or skills were "made available" to Keller India. Placing reliance on decisions such as Bio-Rad Laboratories Inc., Criteo Singapore Pte. Ltd., and Crocs Inc., the Tribunal emphasized that incidental benefits to the service recipient cannot be equated with transfer of technology. Since the "make available" condition under Article 12(4)(b) of the DTAA was not satisfied, the payments could not be taxed as FTS. Accordingly, the addition made by the AO was deleted. On other issues, the Tribunal held that interest under section 234A was not leviable as the return was filed within the extended due date; interest under section 234B was mandatory; and the AO was directed to verify the assessee's claim regarding erroneous adjustment of refund in demand computation. Therefore, the bench held that Payments for management and consultancy services not taxable as FTS under India–Singapore DTAA. Accordingly, the appeal of the assesse was partly allowed.



Source: ITAT, Delhi in the case of Keller Asia Pacific Ltd vs ACIT vide [TS-1128-ITAT-2025(DEL)] on August 26, 2025

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