VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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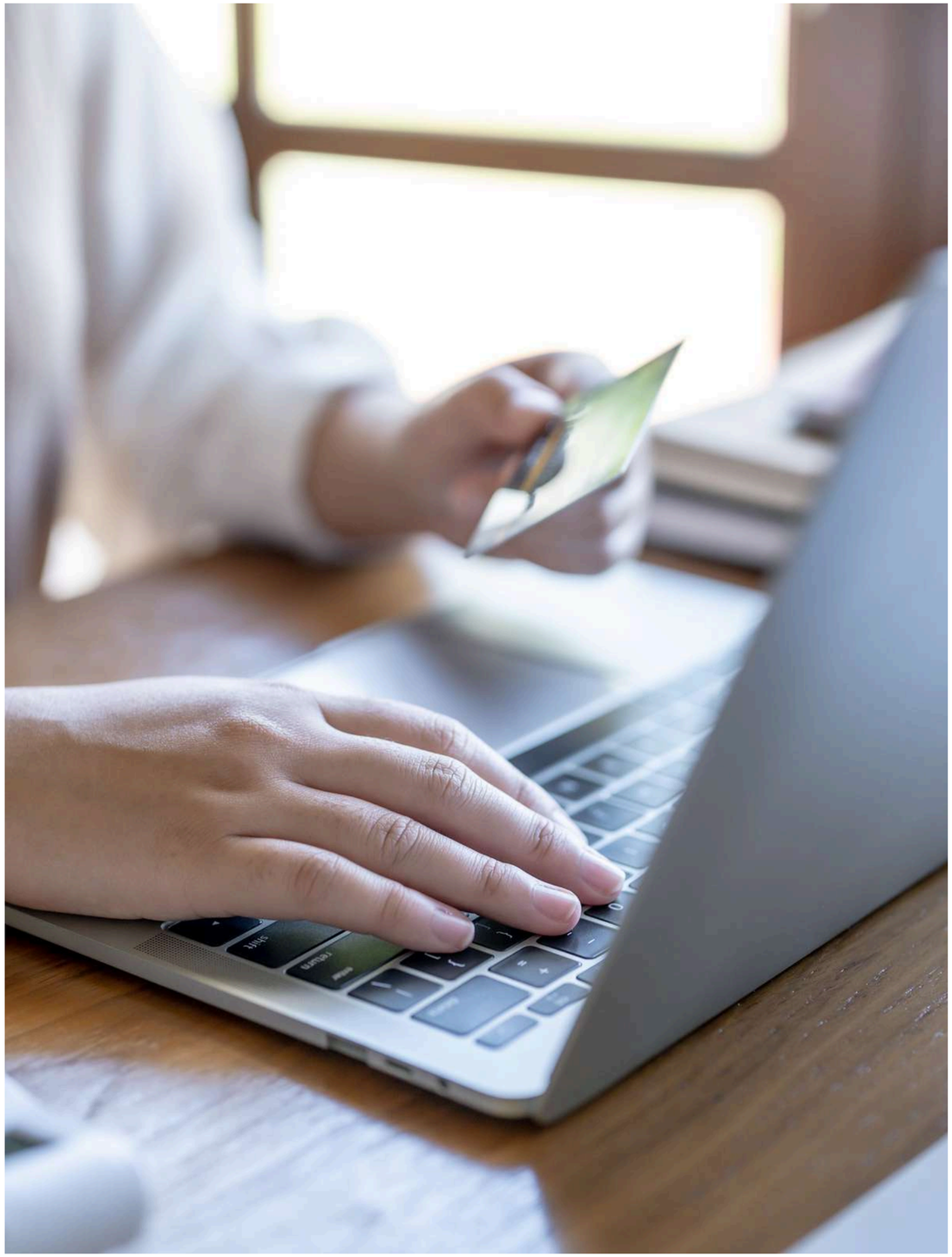


Assessee not liable to TDS on VoIP services payment, sans provision of technical services by recipient

Facts

The assessee is a company and engaged in the business of rendering Voice over Internet Protocol (VoIP) services to clients in India. VoIP is a technology that allows the user to make voice calls using internet connection instead of the regular or analog phone line. Under the VoIP technology voice signals are converted into digital data which is then transmitted over internet and uses a public network internet that results in lower cost and better quality. The assessee has obtained a license from Department of Tele-communications (DOT) in the year 2006 to operate the internet and VoIP services in India. The assessee has built its own data centre infrastructure and cultivated a customer base in India such as contact centre, BPOs and was purchasing VoIP units from International Telecom Carriers. The assessee filed the return of income for AY 2018-19 on 16.10.2018 declaring a total income of Rs. 20,17,190/-. The AO received certain information through insight portal from International Taxation, Mumbai that the assessee has paid a sum of Rs. 3,44,82,784/- to Novanent, Singapore Pte. Ltd (NSPL) during the Financial Year (FY) 2017-18 towards communication charges and that the assessee has not deducted tax on the same. Based on the said information the AO initiated the proceedings under section 148A of the Income Tax Act, 1961 (the Act) and after passing the order under section 148A(d) issued a notice under section 148 of the

Act. The assessee submitted that the amount paid by the assessee to NSPL is towards purchase of VoIP minutes which the assessee in turn would sell to the Indian customers and the difference in the price is the income of the assessee. The assessee also submitted that the amount paid is not taxable in the hands of NSPL in India and therefore the assessee has not deducted tax at source on the same.

Ruling

In the present case, the Hon'ble Tribunal held that VoIP is a fully automatic process with no human intervention i.e., the conversion of voice into digital data, transmitting data packets through optimum routing, and reconverting into voice at the receiving end etc. The role of NSPL and for that matter even that of the assessee is to ensure that the customer who has bought the dedicated VoIP network is provided with the same. NSPL is not involved in the technology of VoIP but acts as an intermediary to obtain the network services and sell the same to the customers. Therefore, it cannot be said that NSPL is providing any technical services to the assessee by procuring and selling the VoIP network. There are judicial precedence's as relied on by the assessee where it has been held that when there is no human intervention and process is carried out through a fully automated software, then there is no FTS. Considering unique nature of business of providing VoIP network to the customers, we are of the view that NSPL cannot be said to be providing any technical service to the assessee and therefore the payment made by the assessee cannot be treated as FTS. Further NSPL does not have a PE in India and that no technical services are made available to the assessee. Accordingly, we hold that the payments made by the assessee to NSPL towards VoIP are not taxable in the hands of NSPL in India and therefore the assessee is not liable to deduct any tax on such payments. The bench direct the AO to delete the disallowance made under section 40(a)(ia) of the Act. Therefore, the appeal of the assessee is allowed.

Source : ITAT, Mumbai in the case of Novanet India Private Ltd. VS ITO vide [TS-203-ITAT-2025(Mum)] on February 27, 2025

Siemens Germany not an AOP, protective assessment does not survive sans substantive assessment

Facts

The assessee is a company tax resident of Germany engaged in the business of research and development, production, sales and distribution as well as operation and maintenance of products, systems, installation and solution within the mobility sector. The assessee filed the return of income for AY 2021-22 on 10.03.2022 declaring a total income of Rs. 54,42,88,95/-. The return was selected for scrutiny and the statutory notices were duly served on the assessee. During the year under consideration the assessee has derived income by way of "Royalty, Fees for technical services" under various agreements / contracts entered into with different entities in India to the tune of Rs. 54,42,88,925/- which is offered to tax at 10% as per the DTAA between India and Germany. The assessee during the year under consideration has receipts from Chennai Metro Rail Corporation Ltd. (CMRL) towards contract for design, manufacture, supply, installation, test and commission of signally, platform screen doors and telecommunications. The contract was transferred to the assessee from Siemens AG w.e.f. 01.08.2018. The AO noticed that an amount of Rs. 27,85,63,237/- pertaining to the contract on has not been offered to tax on the ground that they pertain to offshore supplies of goods which are not taxable in India. The AO further noticed that an amount of Rs. 1,19,721/- received for offshore supply of software is also not offered to tax in India.

The AO issued a show-cause notice to the assessee as to why these receipts are not taxable in India. The assessee submitted that the transfer of title of the equipment's and material is passed on to CMRL at CIF Port of Shipment and accordingly the payments received by the assessee are not taxable in India. The assessee further submitted that the equipment's have been supplied outside India and therefore, income arising there from is not taxable in India. The AO did not accept the submissions of the assessee and proceeded to treat 5% of the total receipts as taxable income in India @ 40%.

Ruling

The Hon'ble Tribunal have heard the parties and perused the material on record. And from the perusal of the findings of the AO as extracted; the Hon'ble Tribunal found that the AO has held that the assessee and Siemens India Ltd. are to be treated as AOP in whose hands the income arising towards supply of equipment's is to be taxed on substantive basis. However, we notice that the no substantive assessment is done in the hands of AOP, and the revenue did not bring anything on record to substantiate that there has been a substantive assessment. It is a settled legal position that when there is no substantive assessment, the protective assessment does not survive. The bench notice that the coordinate bench in the case of Pegasus Properties (P.) Ltd. vs DCIT [2022] 135 taxmann.com 294 (Mumbai - Trib.) has considered the issue of protective assessment without substantive assessment and the ratio laid down in the

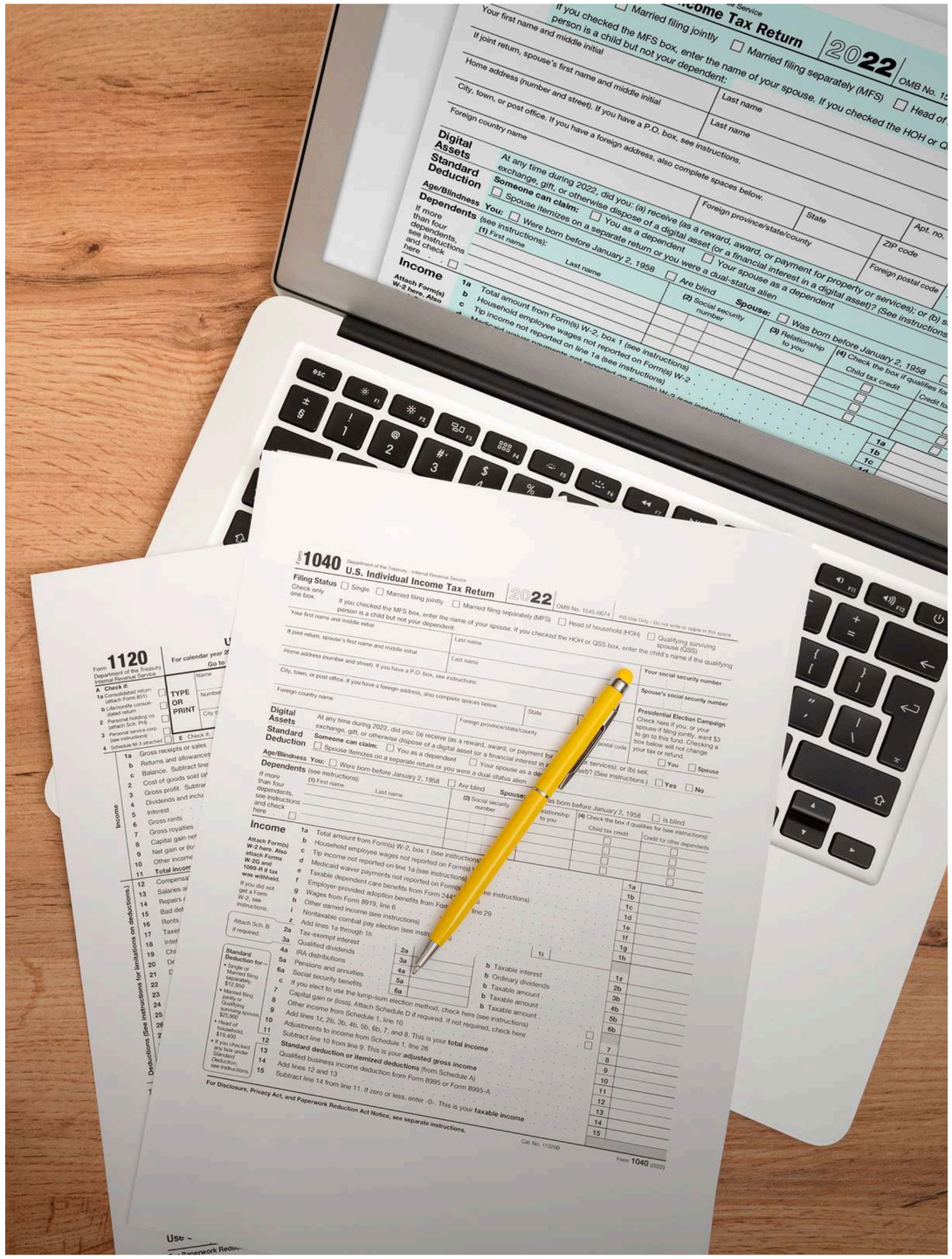
judicial precedence is that when no substantive assessment is made then the addition made on a protective basis does not survive. In assessee's case as already stated, it is an admitted position that there has not been any substantive addition in the hands of AOP. Therefore, respectfully placing reliance on the above case, the bench holds that there can be no addition made in the hands of the assessee towards income arising from offshore supply of equipment in relation to CMRL contract on protective basis. Also, the bench holds that the assessee and Siemens Limited do not constitute AOP. Therefore, the appeal of the assessee is partly allowed.

Source : ITAT, Mumbai in the case of Siemens Mobility GmbH vs ACIT vide [TS-210-ITAT-2025(Mum)] on February 27, 2025

Denying FTC for belated filing of Form-67 'not justified'; Allows Assessee's claim

Facts

The assessee is a resident and has filed the return of income showing total income of Rs. 75,54,930/- on 29.03.2019 which wasprocessed on 11.06.2020 with due demand. The credit for foreign tax (FTC) paid in USA was not allowed against which the assessee filed a rectification application on 03.10.2020 which was rejected on 05.10.2020. Aggrieved with the demand of Rs. 20,48,260/-, the assessee filed an appeal before the Ld. CIT(A). It was stated that the Ld. AO sent a communication of proposed adjustment u/s 143(1)(a) of the Act on 13.03.2020 which related to



Schedule VI-A and disallowance of carry forward of current year's losses and there was no intimation of any other disallowance of TDS credit of Rs. 14,35,797/- paid in USA as per DTAA u/s 90/90A, but on 11.06.2020, the Ld. AO raised demand of Rs. 20,48,260/- by not providing credit of Rs. 14,35,797/- paid in USA. It was submitted that the Ld. AO could not bring any material on record to hold why TDS credit of Rs. 14,35,797/- paid in USA was not allowed and it was stated that the CBDT had also issued an office memorandum on 17.11.2014 stating that frivolous additions or high-pitched assessments without proper basis should not be made. The assessee also filed written submission. The Ld. CIT(A) examined the material at hand including the submission of documents. The Ld. CIT(A) observed that the assessee could not submit the copy of full set of intimation order dated 11.06.2020 in the course of the appeal but provided some pages of the said order from which it was not clear whether the said claim of tax relief was rejected or not. However, from the submission of the assessee it could be assumed that the said tax credit had not been given to the assessee. The Ld. CIT(A) has also mentioned that the foreign tax credit for the impugned year could only be given to the assessee if Form No. 67 was filed on or before the due date of furnishing the return of income as prescribed u/s 139(1) of the Act.

Ruling

The Hon'ble Tribunal place reliance in the case of Jaspal Singh Bindra vs. DCIT in ITA No. 1826/KOL/2024 order dated 19.11.2024 in which the

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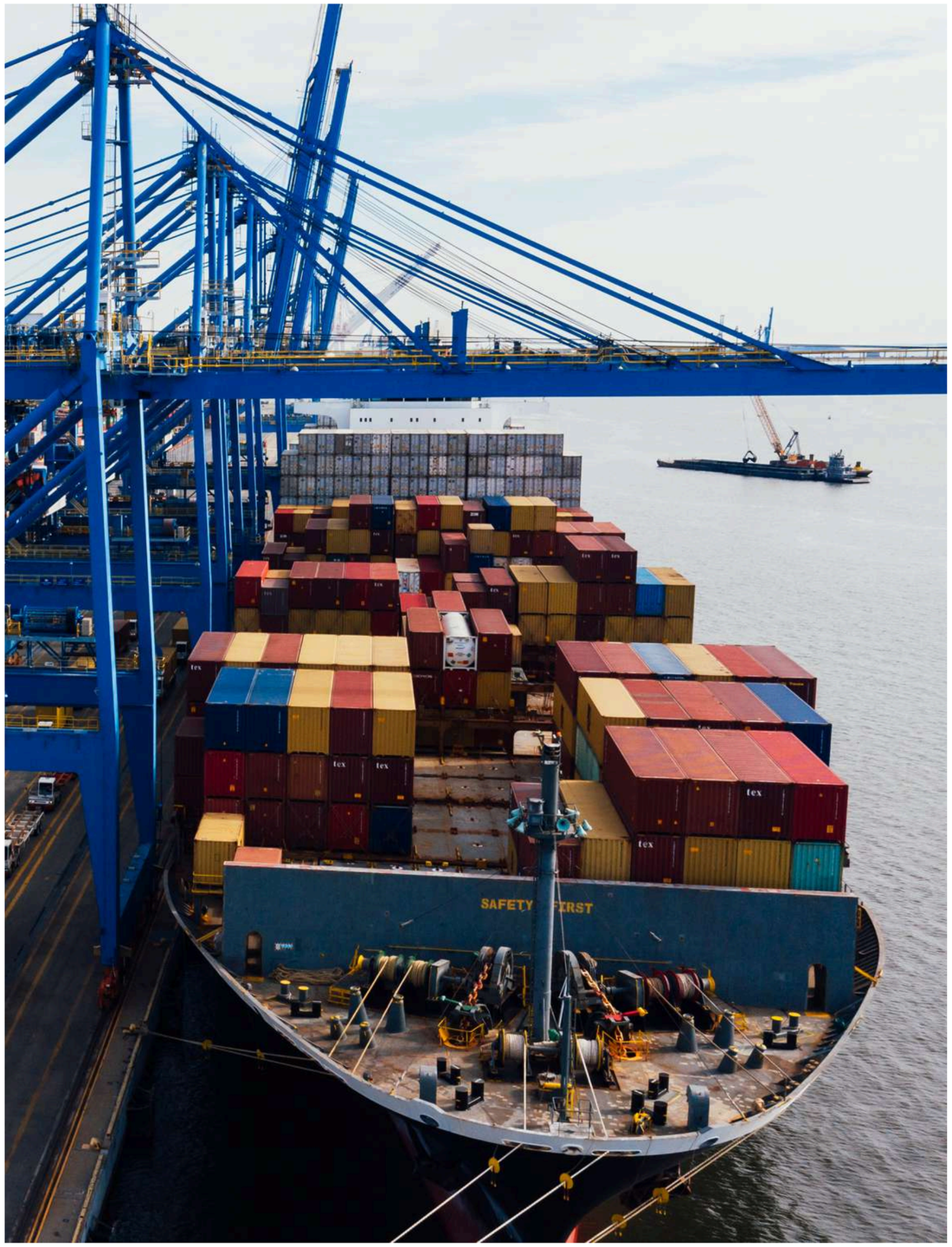
Coordinate Bench has held that the claim of FTC is allowable to the assessee on the facts of the case as Form No. 67 was filed along with the return of income and the filing of the Form is held to be directory and not mandatory in nature and the provisions of DTAA override the provisions of the Income Tax Act, 1961. Further, the relevant extract of Article 25 of the AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION OF INCOME WITH USA (DTAA) issued vide Notification: No. GSR 992(E), dated 20-12-1990, which is also discussed in the case of Sukhdev Sen Vs. ACIT, Circle-1, Kolkata (ITA No. 78/Kol/2014, dated 26.03.2024). Since the provision of DTAA override the provision of Section 90 of the Act as they are more beneficial to the assessee, in view of judicial pronouncements in this regard and since Rule 128(a) does not preclude the assessee from claiming credit for FTC in case of delay in filing the required Form No. 67 as the credit for FTC is a vested right of the assessee and since Form No. 67 was filed along with the return of income and was available at the time of processing the return of income u/s 143(1) (a) of the Act as contended by the assessee, therefore, there was no justification for not allowing the credit for FTC.

Hence, respectfully following the decisions cited in preceding paragraphs, the claim for FTC is directed to be allowed as the assessee had filed the required Form No. 67 as evidence of foreign taxes paid and the Ld. AO is directed to allow the FTC in accordance with DTAA between India & USA as per law. In the result, appeal filed by the assessee is allowed.

Source : ITAT, Kolkata in the case of Timirbaran Mazumder vs DCIT/ACIT vide [TS-251-ITAT-2025(Kol)] on March 20, 2025



Cargo booking role not DAPE under Art 5(4), booking contracts not akin to concluding contracts in DTAA

Facts

The brief facts are that assessee is a shipping company incorporated in Mauritius. It has shown gross receipts pertaining to freight of Rs.79,84,21,227/- in the A.Y.2013-14 and Rs.78,12,51,160/- in A.Y.2014-15. After applying the presumptive rate of tax u/s.44B which is 7.5% of these receipts was shown as income. However, in the return of income assessee claimed benefit of Article 8 of India-Mauritius DTAA and accordingly, the income from shipping activities was returned at 'Nil' and tax payable was also at 'Nil. Ld. AO noted from various details and documents filed by the assessee that, assessee has carried out its activities from UAE and therefore, assessee was required to explain as to how the place of effective management is situated in Mauritius in order to be entitled to the benefit of India-Mauritius DTAA. AO also admitted that there is no change in the facts compared to the last year and earlier years. The ld. AO noted that there are four directors of the assessee company out of which two of them were from Mauritius and two of them were in UAE. However, the share pattern of the assessee company was that only two Directors based on UAE were holding 50% of shares each, i.e., Mr. Saadi Rais held 50%; and Mr. Salim Rais held 50%; and both were UAE residents. Thus, he held that effective place of management was not in Mauritius. Thereafter, on perusal of the documents AO noted that there is an agency agreement between the

assessee and Freight Connection India P.Ltd. (FCIPL) dated 01/12/1997 wherein the address of the Bay Lines was given as 'P.O. Box No.7, Dubai, UAE' and agency appointment letter dated 01/07/1995 from the assessee to FCIPL. Thus, he held that letter of appointment and the agency agreement of an agent was a major decision which was taken outside Mauritius therefore, effective management of the assessee company was situated in Dubai and not in Mauritius.

Ruling

The Hon'ble Tribunal after reviewing the agreement and also from the submissions made before the authorities it is seen that; firstly, FCIPL is only an agent for booking cargo for the assessee as per the Tariff fixed by it and it has no capacity to conclude contracts of any nature. Further, the booking of freight as an agent does not imply that FCIPL is empowered to 'conclude any contracts; secondly, the assessee is not liable for any expenses, obligations or liabilities of expenses or otherwise of FCIPL; thirdly, in its normal course of conduct of business, FCIPL does not act as a representative of the assessee but only as an agent for booking cargo, just as it does for other shipping lines for which also it is an Agent; fourthly, the risks associated with their respective business are mutually exclusive. The assessee has limited access to books and records related only to the agency business of FCIPL; and lastly, the instructions are limited to booking of freight and the assessee has no say in the management of FCIPL.

In other words, FCIPL is functionally independent of the Assessee. Thus, simply booking of freight as an agent does not imply that FCIPL is empowered to conclude any contracts nor assessee was liable for any instances, obligations or liabilities of expenses of FCIPL. It does not act as a representative of the assessee but only an agent for booking cargo and the risk associated was also that of an agent. One very important fact which has been brought on record that FCIPL was doing business for other enterprises also and in as much as more than 77.60 % of the Revenue or the income was from other independent parties at only 22.32% Revenue was derived from assessee. Thus, FCIPL was an independent agent and not carrying out any work wholly and almost wholly for the assessee company. In any case this issue stands covered by the judgment of the Tribunal in assessee's own case for the various issues and the relevant extract has already been incorporated by the ld. CIT (A). Therefore, appeals of the Revenue are dismissed and the cross objections of the assessee are also dismissed.

Source : ITAT, Mumbai in the case of DCIT(IT) vs Bay Lines (Mauritius) C/o. Freight Connection India P. Ltd vide [TS-300-ITAT-2025(Mum)] on March 28, 2025

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