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No Tax Liability in India on Design Review Income of UAE Company Without PE or FTS Clause

Facts

The assessee, a UAE-incorporated company, received INR 90 lakhs in AY 2018-19 from M/s Gannon Dunkerley & Co. Ltd. for design review services relating to a project in Assam. No return was filed u/s 139, claiming absence of PE in India and no income accrual in India. Pursuant to proceedings u/s 201 against the payer, notice u/s 148 was issued on 05.05.2022. The assessee filed a nil return on 02.11.2023, relying on the India-UAE DTAA which does not contain an FTS clause, and submitted that services were rendered from outside India with no presence in India. A valid TRC was also filed. The AO, however, treated the amount as FTS u/s 9(1)(vii) and proposed an addition of INR 90 lakhs in the draft order dated 08.02.2024, raising a demand of INR 18.62 lakhs. The DRP upheld the AO's view on 29.11.2024 and final assessment order was passed on 06.12.2024, against which, the assessee has filed the present appeal before the Tribunal.

Rulings

In the present case, The Hon'ble Tribunal held that income received by the assessee, for reviewing designs and drawings for a turnkey project from an Indian entity is not taxable in India. The Tribunal accepted the assessee's contention that it is a non-resident without a Permanent Establishment (PE) in India, and in the absence of a specific "Fees for Technical Services" (FTS) clause under the India-UAE DTAA, such income constitutes business profits under Article 7, taxable only in the UAE. The bench noted that the reassessment was initiated based on an order u/s 201 in the case of the payer. However, the CIT(A) had already held that the payment to the assessee was not taxable in India and deleted the demand. The Revenue failed to produce any evidence of an appeal against the said CIT(A) order. The bench also emphasized that in the absence of a PE and a specific FTS clause in the DTAA, the income is not chargeable to tax in India, placing reliance on the Bangalore ITAT ruling in ABB FZ-LLC, which held that in absence of an FTS clause, such income is taxable only under Article 7, subject to existence of a PE. Thus, the ITAT concluded that the amount received by the assessee is not taxable in India. Therefore, the appeal of the assesse was allowed.

Source: ITAT, Chennai in the case of M/s. Castlewick FZE Vs ACIT vide [S-773-ITAT-2025(CHNY)] on June 11, 2025

TDS Deduction Doesn’t Establish Income Accrual Where Royalty is Irrecoverable

Facts

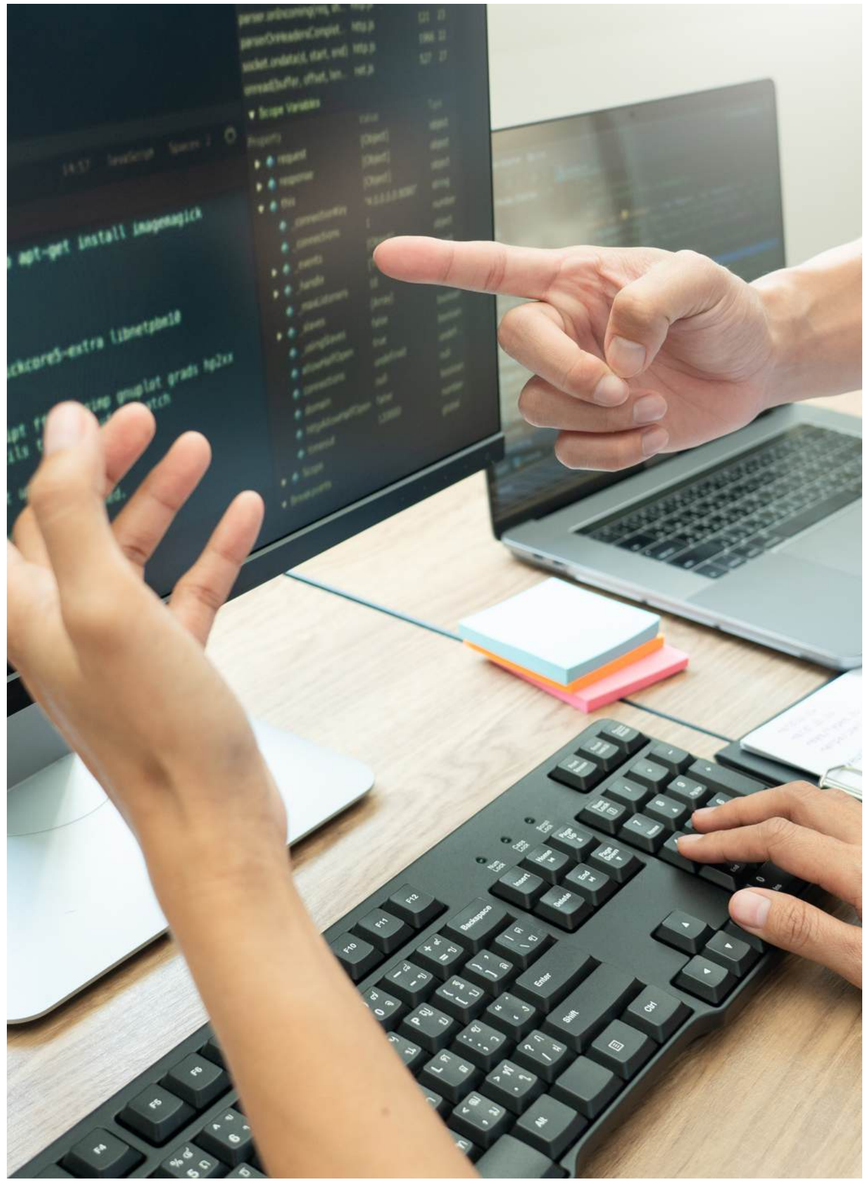
The Appellant, an Indian company engaged in the manufacture and marketing of slurry pumps, valves, spare parts, and related design support services, filed its return of income for the relevant assessment year on 30.11.2012, declaring income of INR 19,38,19,758. The case was selected for scrutiny, and assessment was completed u/s 143(3) of the Income-tax Act, 1961 vide order dated 23.03.2016, wherein the Assessing Officer made an addition of INR 79,81,999 towards undisclosed professional income. Aggrieved by the assessment order, the Appellant filed an appeal before the CIT(A), who upheld the addition. The Appellant is now in further appeal before the Tribunal.

Rulings

The Hon’ble Tribunal held that it is an undisputed fact that the impugned amount of INR 79,81,999 was never realized by the assessee and was subsequently written off as bad debts. The income was recognized in the subsequent financial year (FY 2012-13), and invoices were raised accordingly. Therefore, it is not a case of income escaping taxation, but at most a timing difference, especially since tax rates remained the same across both years. Although the payee deducted tax at source, such deduction does not, by itself, establish accrual of income in the assessee’s hands, particularly in the absence of reasonable certainty of collection. The revenue recognition was rightly deferred in accordance with applicable Accounting Standards prescribed by the ICAI, which the assessee, being a company, is mandatorily required to follow under section 211 of the Companies Act, 1956. The accounts were also duly audited without qualification, lending further credibility. Accordingly, the bench finds no justification in the addition made by the AO and upheld by the CIT(A). The addition of INR 79,81,999 is directed to be deleted. However, since the assessee has claimed TDS credit of INR 7,98,200, which under section 198 is deemed income, the same is to be added back. Consequently, the assessee is entitled to net relief of INR 71,83,799 (i.e., INR 79,81,999 minus INR 7,98,200). Therefore, the appeal is party allowed.

Source: ITAT, Delhi in the case of Weir Mineral (India) Pvt Ltd vs DCIT vide [TS-764-ITAT-2025(DEL)] on June 06, 2025

Zscaler India Not a Dependent Agent PE; Mere Marketing Support Doesn't Create PE



Facts

The assessee, a U.S. incorporated company, provides software-based information security solutions globally, including to Indian customers, through its cloud platform, Zscaler Zero Trust Exchange, comprising four services: ZIA, ZPA, ZDX, and ZCP. It holds patents over these solutions and sells through Indian distributors, with support from its Indian subsidiary, Zscaler Softtech India Pvt. Ltd., which provides IT, sales, and marketing services. For AY 2021–22, the assessee filed a return declaring 'Nil' income and claimed a refund of INR 12.01 crore on total receipts of INR 131.38 crore, claiming exemption under the India-USA DTAA, stating it had no PE in India and income was business profits taxable only in the U.S. The AO, however, held that the Indian subsidiary constituted a Dependent Agent PE (DAPE) under Article 5(4)(c) of the DTAA, noting it was economically dependent on the assessee and engaged in securing orders and marketing the assessee's products in India. Accordingly, relying on Article 7 of the India–USA DTAA, the Ld. AO concluded that Zscaler Softtech India Pvt. Ltd. constitutes a PE engaged in the licensing/sale of software in India, having provided marketing and sales support. Therefore, the profits attributable to the PE comprise distribution profits from software sales and commission income for intermediary services.

Rulings

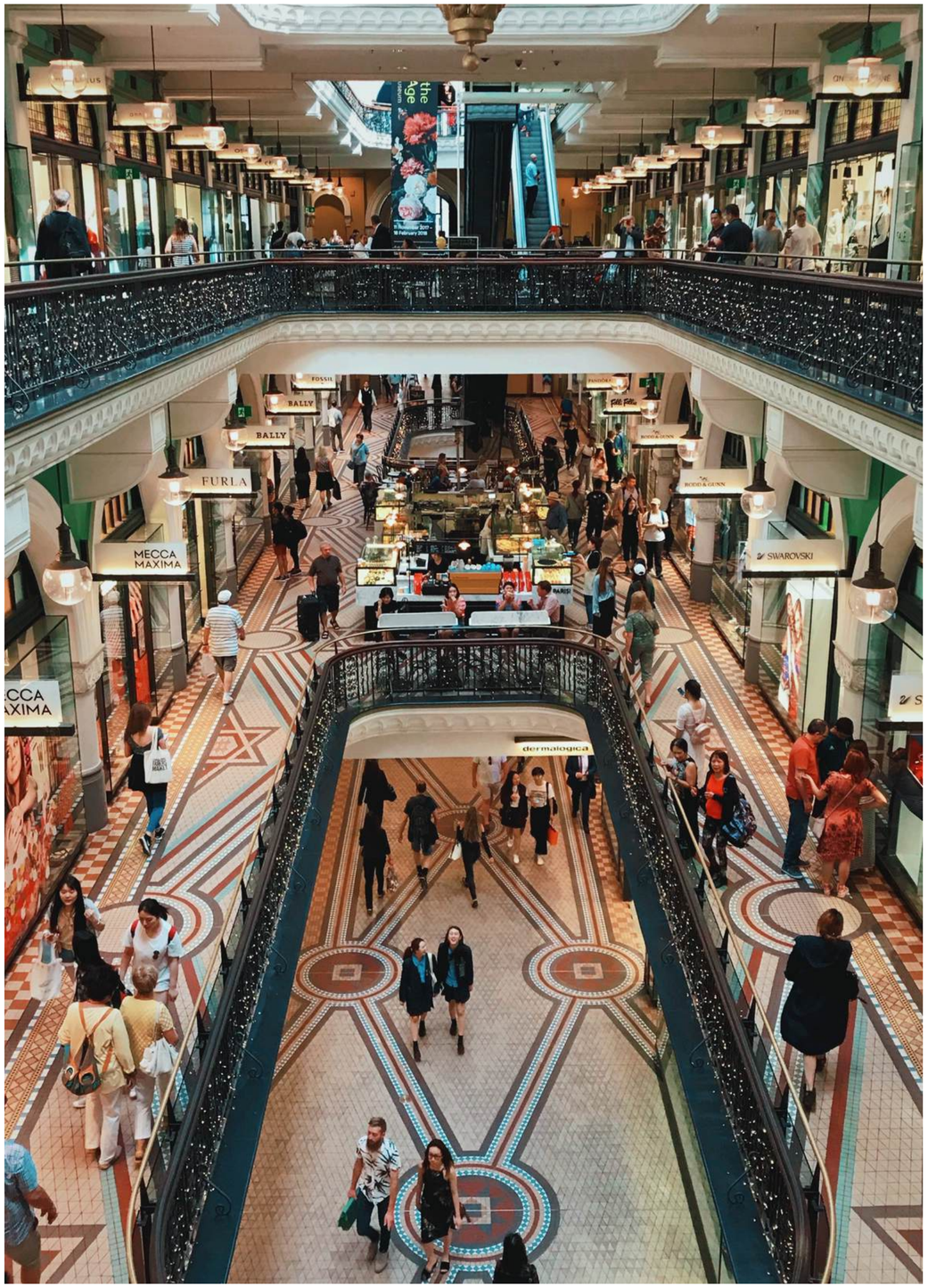
In the present case, the Tribunal held that Zscaler India does not constitute a Dependent Agent Permanent Establishment (DAPE) under Article 5(4) of the India US DTAA, as it merely provides marketing support services. Upon examining the reseller agreements and Article 5(4), the Tribunal noted that the relationship between Zscaler Inc. and Zscaler India is on a principal-to-principal basis, with no agency relationship as defined under the Indian Contract Act, 1872. The ITAT emphasized that Zscaler India was remunerated at an arm's length price, and in the absence of any contract authorizing Zscaler India to conclude agreements on behalf of the assessee, the DAPE condition is not satisfied. It was clarified that resellers and channel partners, not Zscaler India, entered into contracts with Indian customers. The Tribunal further observed that Zscaler India's role was limited to updating clients on product features and facilitating potential contract renewals activities constituting mere marketing support. Relying on the Supreme Court's ruling in E-Funds IT Solution Inc., the ITAT reiterated that the burden of proving the existence of a PE lies with the Revenue, which failed to discharge it in this case and the assessee's appeal was allowed.

Source: ITAT, Delhi in the case of Zscaler Inc. vs DCIT, vide [TS-799-ITAT-2025(DEL)] on June 18, 2025

Assessee's FTS Claim Sent Back for Reassessment

Facts

The brief facts are that the assessee, proprietor of Blue Lion Entertainment Company, registered at A/704, Andheri West, Mumbai, rendered services to Westgate Shopping Mall Limited, a Kenya-based company. Tax was withheld at source in Kenya amounting to ₹4,88,188 in accordance with the India–Kenya DTAA, and appropriate withholding certificates were issued. The assessee filed his return of income declaring total income of INR 87,92,220 and claimed foreign tax credit (FTC) under section 90/90A of the Income-tax Act, 1961. However, Form 67, a mandatory requirement for claiming such relief, was inadvertently not filed along with the return. Consequently, CPC, Bangalore denied the credit during processing. Upon identifying the lapse, the assessee filed Form 67 on 25.03.2021 and submitted a rectification application under section 154, which was rejected by CPC. The appeal filed before the Ld. CIT(A)/NFAC, Delhi was also dismissed. Aggrieved, the assessee has preferred the present appeal before this Tribunal.



Rulings

The Hon’ble Tribunal heard both parties and examined the record. The assessee claimed to be the proprietor of M/s Blue Lion Entertainment Company and submitted GST and Import-Export Code certificates in support, which were not considered by the CIT(A). The assessee also cited the ITAT decision in ITA No. 3647/Mum/2023, holding that delayed filing of Form 67 is directory and not fatal to the claim for Foreign Tax Credit (FTC). The Tribunal noted that the documents submitted support the assessee’s claim and, in the interest of justice, restored the matter to the AO for fresh adjudication. The AO is directed to verify the documents, consider the applicability of the above ITAT ruling, and decide the matter afresh after granting a hearing. The assessee must appear before the AO within 60 days. Accordingly, the appeal of the assesse is allowed.

Source: ITAT, Mumbai in the case of Hirachand Damji Dand vs ACIT vide [TS-788-ITAT-2025(Mum)] on June 09, 2025

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