

Elitecore Technologies Private Limited – ITAT – Ahmedabad

Outcome: Against taxpayer

Category: Foreign tax credit

Tax Court rules in favour of Revenue and disallows general business deduction granted under provisions of Income-tax Act 1961 ('the Act') to taxpayer in respect of taxes paid abroad.

Accordingly, taxpayer's income was deducted for taxes at source on earning income from Indonesia, Malaysia and Rwanda, for which it claimed a foreign tax credit in India. However, the taxpayer was not allowed the entire credit and the claim was restricted to a restricted amount, with the balance claim remaining un-allowed.

In a cross-appeal involving Revenue and taxpayer, the matter of dispute concerned the 'first appellate authority', which not only confirmed the restricted claim for FTC, but also proceeded to allow the taxpayer a general business deduction for the balance un-allowed credit (which was previously not allowed by the Revenue) under the Act. To justify the business deduction granted, the taxpayer stated that the foreign taxes paid were in respect of expenses incurred for the business. Further, the taxpayer argued that it should get a FTC on entire taxes withheld, and not only a marginal credit.

Revenue, on the other hand, stated that balance claim allowed by first appellate authority, as a general business deduction, could not be allowed as the same would be not be an amount deductible under S. 40(a)(ii) of the Act.

Taxpayer argued that taxes on foreign income did not come under the definition of "tax" as per the Act, and hence would not be covered under S. 40(a)(ii). Tax Court rejects taxpayer's interpretation and holds as below.

On taxpayer's claim for foreign tax credit, Tax Court refers back the matter of calculating appropriate credit to the first appellate authority. Further, opines that under S. 40(a)(ii), business deduction shall not be allowed to taxpayer (for the balance foreign taxes), if any foreign taxes paid falls under a treaty or even if India does not have a

treaty with the source country. Accordingly, as taxpayer has withheld taxes from outside India, the taxpayer would be denied a general business deduction in India.

Marck Biosciences Limited – ITAT – Ahmedabad

Outcome: In favour of taxpayer

Category: Royalty

Tax Court accepts taxpayer's views on payment made for services received, and does not treat it as a royalty pay-out for which taxes would be withheld.

Accordingly, taxpayer made a strategic & financial counselling service payment to its US AE, for services which were business promotion, marketing, publicity and financial advisory. The Revenue considered the provision of service by US in the form of royalty as per the double tax treaty between India and US. As per the treaty, payment made in the form of "information concerning industrial, commercial and scientific experience" is covered as royalty (in India- USA DTAA, royalty gives right to India to withhold taxes).

Tax Court holds that since payment was not made for the right to use any information concerning industrial, commercial and scientific experience, it would not be covered under the definition of royalty and pertains to simple service provision.

Avery Dennison India Private Limited – ITAT – Delhi

Outcome: Against taxpayer

Category: Benefit test

Tax Court holds it necessary for the tax officer to assess the need test, benefit test, rendition test, duplication test, and shareholder activity test in the determination of arm's length price of intra group services.

A benefit test is generally seen from a business viewpoint, and not a tax situation. While this concept has not been adopted under the Act, it is seen that identifying a benefit from the business

transaction is important to know to find out if the service was duplicative or shareholder services and understand whether an independent party could also partake in the same benefit.

Accordingly, the taxpayer was required to provide evidence that the services it availed from its foreign AE, was actually rendered or not. On considering the evidence, Tax Court questions the reasoning behind respective evidences and expressed fundamental errors, for instance, taxpayer submitted marketing brochure for substantiating marketing support services rendered by AE. Tax Court holds the evidence submitted by taxpayer to be incomplete and remits matter back to tax officer for validating the need and benefit test of services.

Burt Hill Design Private Limited – ITAT – Ahmedabad

Outcome: In favour of taxpayer

Category: TDS under Secondment Agreement

Tax Court rules in favour of taxpayer and states that no withholding provisions shall apply on reimbursement of salary cost from India to US.

Taxpayer has a secondment agreement with its US holding company, under which taxpayer paid advance taxes on behalf of seconded employee from US. Such seconded employees work under the control and supervision of the taxpayer although they remain on the payroll of the parent company. Taxpayer reimburses salary for seconded employees to the holding company which was considered by Revenue as subject to withholding provisions for non-resident.

Tax Court holds the income to be in nature of salary and taxable in India under the head ‘Salaries’ as the taxpayer paid advance taxes for seconded employees which did not change the nature of transaction between the 2 related parties in light of non-resident withholding provisions. Further, Tax Courts states that it does not matter whether seconded employees continue to be in employment of the US holding company or not, and considered the payment from India to be related to income chargeable under head ‘Salaries’.

Recent News:

Tax relief form for Indian Patent Box notified

CBDT notifies form for obtaining tax relief on royalty income from patents which are developed and registered in India.

New Rule 5G and Form 3CFA have been notified with respect to patent box regime u/s 115BBF of the Act. Accordingly, Rule 5G states that the patent holder resident in India, shall provide the digitally signed Form No. 3CFA on or before the due date of filing return.

Form 3CFA requires the general details of the patent with respect to

- Patent number;
- Date of grant of patent;
- Description of patent; and
- Whether patent is granted to single person or patentees
- Details of amount and nature of royalty income
- Details of total expenditure incurred by the patent holder, in India and outside India

Nortel Networks faces Supreme Court in PE exposure issue

Revenues goes against Hon. High Court to contest US taxpayer’s permanent establishment exposure due to a contract between taxpayer’s Indian subsidiary and Reliance Infracom (India) for supply of equipment, for which taxpayer receives consideration and delivered the equipment overseas.

Accordingly, Hon. High Court had found that as contract stipulated delivery of equipment title outside India, there could not be any income attributed or apportioned in India. Further, holding the above true, it was held that taxpayer would not have a PE in India.