TAX SPHERE

Tribunal expands the scope of 'Professional Services' under the DTAA

The Delhi bench of the Tribunal in its recent ruling explained that the term 'professional service' in Article 14 - Independent Personal Services has a wider scope than the illustrative list provided in the DTAA.

Brief facts

The assessee (Sujan Luxury Hospitality Pvt Ltd.) had made foreign remittance during the year to **Ms. Rosamond Freeman-Attwood, Sri Lanka** ('Rosamond'), for providing spa consultancy and management services. The Assessing Officer disallowed the said expenses under section 40(a)(i) of the Income Tax Act ('the Act'), alleging that the assessee failed to withhold tax under section 195 of the Act the said payments that are in the nature of Fee for Technical Services ('FTS').

[1] Sujan Luxury Hospitality Pvt. Ltd. v. ACIT: ITA No. 2844/Del/2019 (Del. Trib.)

The CIT(A) upheld the disallowance under section 40(a)(i) of the Act, holding that the payment made to Rosamond was in the nature of FTS. The CIT(A) relied on the decision of Madras High Court in *Skycell Communications Ltd.* and held that the services involving the transfer or training in specialized skills—such as spa consultancy and management constitute technical services.

Tribunal's observations

The Hon'ble Tribunal examined the nature of the services in light of the relevant articles of Double Tax Avoidance Agreement ('DTAA') between India-Sri Lanka. The Tribunal observed that the meaning of professionals as defined in Article 14 of the India–Sri Lanka DTAA - Independent Personal Services ('IPS') professions therein is illustrative and not exhaustive. The Tribunal, relying on the decision of the Ahmedabad Bench of the Tribunal in the case of Susanto Purnamo [2] held that since the services provided by non-resident required specialized personal expertise, thus the said payments were not taxable in India as the

[2] ITO (Int. Taxation)-I, Ahmedabad vs. Susanto Purnamo [2016] 73 taxmann.com 108 (Ahmedabad - Trib.)

recipient was not present in India for a period exceeding 183 days. In view of the said observations, the disallowance under section 40(a)(i) of the Act has been deleted.

The Tribunal further rejected the contention of the AO that an application under section 195(2) of the Act for determination of sum chargeable to tax was not required in the present case observing that section 195 of the Act applies only in cases where the payment includes an amount which is chargeable to tax. Relying upon the decision of Supreme Court in the case of *GE India Technology Centre*[3] held that in absence of income chargeable to tax in India, the certificate under section 195(2) of the Act is not required to be obtained.

[3] GE India Technology Cen. (P.) Ltd. vs. Commissioner of Income-tax [2010] 327 ITR 456 (SC)