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INLAND HAUL CHARGES

DCIT Vs. COSCO Container Lines (2026) 187 taxmann.com 1132 (Mumbai Trib.)

- Asseseee is a tax resident of China and is engaged in the shipping business in international waters.
- Assessee carried out transportation activity in India through its agent Cosco Shipping Agencies Pvt Ltd. (CSAPL)
- Assessee filed its Return of Income (ROI) declaring its total income of Rs. 46,20,25,910/-. In the course of assessment proceedings A.O observed that assessee received Inland Haulage Charges (IHC) amounting to Rs. 52,68,17,043/- while incurring expenses to the tune of Rs. 41,81,46,477/- and claiming the remaining amount of Rs. 10,86,70,566/- as exemption under Article 8(1) of the India – China DTAA.
- Assessee contended that the IHC was integrally connected to transportation of goods in international traffic . It also relied on various precedents involving similar issues under DTAA of tax treaties between India and other countries.
- A.O was of the view that exemption is only with respect to transportation of goods in international traffic and not received on account of transportation of goods in international traffic, and it also observed that the judicial precedents relied by the assessee is in relation with treaties with other countries and that there is a difference in the language of the relevant Articles. Hence IHC received would not be covered under Article 8(1) of the DTAA.
- A.O also treated CSAPL as Agency PE and held that the IHC receipts amounting to Rs. 10,86,70,566/- as profit attributable to the PE in India.

INLAND HAUL CHARGES (Contd..)

- Assessee preferred an appeal to FAA (First Appellate Authority) against the order of A.O.
- FAA concluded that: (i) Even in the absence of specific clause under Article 8(1) of India-China Treaty for exempting income derived from any other activities directly connected with transportation of goods in international traffic, still IHC would be covered under the said article as IHC is part of composite activity of transportation of goods in international traffic; (ii) Reliance was placed on the decision of a coordinate bench in the case of ***CMA CGM SA Vs. DCIT [ITA No. 6649/Mum/2017]*** wherein the provisions were *pari-materia* in the India- France DTAA which did not provide for specific clause exempting income directly connected to transportation of goods in international traffic and still assese's claim for exemption was allowed; (iii) Activity of IHC is not a separate business activity, but it is a part of the entire process of transport of goods in international traffic; (iv) IHC is covered under Article 8 (1) of the India- China DTAA.
- FAA did not adjudicate whether CASPL was an Agency PE of the assessee.
- The Tribunal applied the decisions in ***CMA CGM SA India Bulls Finance Centre Tower Vs. DCIT, [IT Appeal No. 6095 (Mum.) of 2018]; Delmass SAS*** (India- France DTAA), ***DCIT Vs. A.P. Moller Maersk AS [2018] 90 taxmann.com 326 (Mumbai)*** (India- Denmark DTAA), Bombay High Court in the case of ***DIT Vs. Safmarine Container Lines NV [2014] 48 taxmann.com 238 (Bom.)*** (India – Belgium DTAA), ***DIT Vs. A.P.Moller Maersk A/S (ITA No.1306 of 2013***) holding that Inland Haulage Charges received by the assessee shall form part of income from operation of ships in international traffic.

INLAND HAUL CHARGES (Contd..)

- Tribunal held that:
    - The entire IHC of the assessee is necessarily in connection with transport of containers either discharged or loadable at Indian ports for the purpose of delivery through international waters and is directly connected with such transportation will always be included within the term "operations of ships".;
    - The activities of the IHC are connected directly or an ancillary activity that provides minor contribution and should not be regarded as a separate business to the operations of ships; and
    - These activities are linked or connected to each other and as such one cannot say that one is to be conducted efficiently without the other and which have a nexus to the main business of the assessee of operations of ships should be considered as integral part of income from shipping operations.
    - Assessee's claim was allowed.

RESEARCH MANAGEMENT SUPPORT SERVICES

Jefferies Singapore Ltd Vs. DCIT (2026) 188 taxmann.com 522 (Mumbai Trib.)

- Assessee is a non-resident corporate entity, engaged in the business of providing advisory services .
- Assessee entered into an intra-group support services agreement with Jefferies India Pvt. Ltd. (JIPL). The scope of work of the assessee is to review the research activity undertaken by the Indian group entity to ensure that the research activities are in line with global standards of the group.
- Assesse received a fee of Rs. 7,92,83,445/- from JIPL towards rendition of research management support services and offered NIL income claiming a refund of Rs. 84,18,416/-.
- On scrutiny, the assessee was asked to explain why the said income was not offered to tax as FTS. The assessee submitted that the make available condition under Article12(4)(b) of the Treaty is not satisfied.
- A.O observed that the fee not only falls within the Article12(4)(b) of the Treaty but also under Section 9(1)(vii) of the Act. He further observed that in course of rendition of such service, the assessee did transfer technical knowhow, experience, skill, etc. to the Indian entity which satisfies the make available condition.
- Draft Assessment order was framed by the A.O and assessee did not file any objection before the DRP. Assessee preferred an appeal before FAA. Further, First appellate authority concurred with the view expressed by the A.O. with regard to the nature and character of the receipts as FTS. Assesee went on appeal before the Tribunal.

RESEARCH MANAGEMENT SUPPORT SERVICES (Contd..)

- Assessee contended that : (i) nature of services rendered are not managerial, technical or consultancy services; (ii) it merely reviews that the research activity undertaken by the Indian group meets the global standards of the Jefferies Group; (iii) these services are provided year-on year which proves that in the course of rendition of services, it has not transferred an technical know- how, knowledge, skill etc. to the Indian entity to enable it to carry out research activities independently without any aid or assistance of the assessee; (iv) fee received by the assessee does not fall within the ambit of FTS under Article 12(4) of India-Singapore DTAA.
- Tribunal held that:
  - In the course of assessment proceedings assesse furnished details related to services rendered covering Compliance, Controllers (Finance), Corporate Services, Human Resources, Information Technology, Internal Audit, Legal, Operations Risk, Tax Treasury etc.
  - As per Article 12(4)(b), to qualify as FTS, the requirement is, in course of rendition of such services, the service provider must have made available technology, knowledge, skill, know-how, or processes which enables the service recipient to apply the technology contained therein. Article 12(4)c) also covers fees received for development of technical plan and technical designing to be regarded as FTS if it enables the person to use the services contained therein.
  - The assessee from the date of execution of the agreement and in subsequent AYs, is providing research management support services to JIPL on year- to year basis without any disruption. This clearly demonstrates that the Indian entity is dependent upon the assessee for the nature of services provided by the assessee and it is not capable of performing such services on its own.

RESEARCH MANAGEMENT SUPPORT SERVICES (Contd..)

- Had it been the case of the assessee making available the technical knowledge, experience, technical know-how or processes or transfer of technical plan or technical designing to the Indian entity, certainly it would have enabled the Indian entity to perform its activities applying such technical knowledge, know-how, skill, technical plan, design, etc., on its own without depending upon the assessee.
- The Tribunal placed reliance on the judgement of : (i) Delhi High Court in the case of ***Bio-Rad Laboratories (Singapore) Pte. Ltd. [2023] 155taxmann.com 646/296 Taxman 167*** where it was held that *in order to invoke make available clauses, technical knowledge and skill must remain with the person receiving the services even after the particular contract comes to an end and the technical knowledge or skills of the provider should be imparted to and absorbed by the receiver so that the receiver can deploy similar technology or techniques in the future without depending upon the provider;* (ii) Delhi High Court in the case of ***Shell India Markets (P.) Ltd [2024] 160 taxmann.com 175*** where it held that consultancy services which are not of a technical nature cannot be included under Article 13 (4)(c) of the DTAA; (iii) Karnataka High Court in the case of ***De Beers*** held that *payment of consideration would be regarded as "fee for technical/included services" only if the twin test of rendering services and making technical knowledge available at the same time is satisfied.*
- The Tribunal held that the conditions under Article 12(4)(b) and (c) of India-Singapore DTAA having not been fulfilled, the fees received cannot be treated as FTS. Thus, if the fee received is held not to be in the nature of FTS, it can only be treated as income from business and profession. However, in absence of PE in India, it cannot be brought to tax in India and it directed the AO to delete the addition.

HO – BO/ PAYER- PAYEE RELATIONSHIP- SECTION 195

***United Airlines Vs. ACIT (2026) 188* taxmann.com 345 (Delhi- High Court)**

- Assessee is a branch office in India making remittances to the head office in U.S.A.
- Assessee in its earlier years, had been issued orders and certificates requiring no deduction of tax deducted at source (TDS) on such remittances. For FY- 2026-27, assessee filed an application seeking a certificate for non- deduction of TDS under Section 195(2) of the Act.
- ACIT declined to issue the certificate under Section 195(2) holding that the remittances by a branch to head office did not involve a payer- payee relationship and that Section 195 was not applicable.

Delhi High Court held that:

- Competent Authority has taken a correct view of the nature of transactions in the light of statutory provisions has rightly held that since remittance is being made by branch office to head office, there is no payer- payee relationship, hence Section 195 is not applicable.
- No certificate under Section 195(2) is required to be issued as no tax is required to be deducted by the assessee in relation to the remittances made.
- No action prejudicial to the assessee shall be taken in relation to the remittances made by it to the head office at U.S.A for want of non- deduction of tax.

ADVANCE PRICING AGREEMENT/ REAL INCOME/PE

CIT Vs. Gemological Institute of America Inc (2026) 187 taxmann.com 693 (Bombay HC)

- Assessee GIA is a U.S based company engaged in the business of grading/certification, which is a critical function associated with cutting, polishing, and sale of diamonds. GIA U.S provided its wholly owned subsidiary GIA India with required equipment, technical know-how, expertise, etc. and royalty was charged for the same by GIA U.S to GIA India for A.Y 2011-12. GIA US has also set up subsidiaries in Thailand and Botswana for the same reason.
- In earlier years, due to technical and physical constraints in GIA India, the diamonds were sent to GIA U.S or other subsidiaries for grading. This inter-group grading services were charged/paid by for by the group companies at an agreed rate as per the GIA Gem Grading Services Agreement, which is accepted by the Indian Tax Authorities to be at an ALP in case of both GIA India as well as GIA US.
- GIA U.S filed its ROI and the assessee was selected for scrutiny, and the transaction being an international transaction, ACIT made a reference to TPO. TPO passed an order proposing NIL adjustment under Section 92CA (3) and hence forth a draft assessment order was passed.
- Assessee filed its objections with DRP which issued directions. Thereafter, ACIT passed a final assessment order and assessed the total income at Rs. 72.88 crores (including royalty income) on the basis that GIA U.S has a PE in India under Article 7 of the India –U.S DTAA .

ADVANCE PRICING AGREEMENT / REAL INCOME/PE (Contd..)

- GIA India filed an application for entering in to an Advance Pricing Agreement (APA) under Section 92CC of the Act with CBDT for AY 2014-15 to 2017-19 before the case was referred to TPO in March 2013. This application was for the determination of the ALP of the royalty paid by GIA India to GIA US. For the roll back period of AY 2010-11 to 2013-14 GIA India filed the application in March 2015. CBDT entered into an APA in May 2018 determining ALP of royalty and requiring excess royalty received by GIA US to be repaid to GIA India.
- Royalty paid to GIA U.S was Rs. 68.53 crores for AY 2011-12. APA determined the ALP of royalty at Rs. 49.08 crores and GIA U.S was liable to refund the excess of Rs. 19.44 crores within a stipulated period . The same was applied to AY 2012-13 to 2017-18. For this purpose APA required GIA India to raise an invoice in respect of excess royalty paid and for IT purposes to reduce its claim for royalty deduction and file a modified return reflecting the same.
- GIA U.S made payments of the aforementioned refund amount and the same for other AYs. GIA U.S in its appeal before ITAT raised an additional ground stating that the refunded amount shall not be assessed as income. Similar appeals was raised for AY 2012-13 to AY 2013-14 and additional grounds were raised before ITAT. For AY 2014-15 to AY 2016-17 , issue was raised before DRP and for AY 2017-18 , the claim was made by revised ROI which was accepted by ACIT.
- Assessee filed an appeal before the Tribunal.
- ITAT decided by a common order for Ay 2011-12 to AY 2016-17 and allowed the additional grounds raised by GIA U.S regarding reduction of its income of the excess royalty paid by GIA India . It also held that GIA U.S did not have PE in India and royalty was taxable at 10% under Section 9 read with Section 115A.

ADVANCE PRICING AGREEMENT / REAL INCOME/PE(Contd..)

- Based on ITAT order and assessment order passed by ACIT , for AY 2017-18 GIA India got a lesser deduction of Royalty and GIA U.S's income was reduced by the same amount. Aggrieved by this order, Appeal was filed.
- Revenue contended that: (i) the transfer pricing provisions did not permit any downward adjustment in the income; and (ii) such a ground could not be raised and relief sought in an Appeal that was filed prior to the APA being entered into between GIA India and the CBDT.
- The Tribunal on the issue of :

(A) PE concluded that GIA India cannot be termed as PE of GIA US as:

(i) It did not have fixed place of business in India as the economic risks of gem grading services rendered by GIA U. S vis-a-vis stones /diamonds of the customers of GIA India were borne by GIA India, and hence there was no joint venture arrangement between GIA US and GIA India; Article 5(6) of India-US DTAA, provides that the mere fact that a company has a controlling interest in the other company does not construe the other company to be its PE.

(ii) It is not a Service PE as contemplated under Article 5(1);

(iii) It is not an agency PE as contemplated under Article 5(4) of the India-US DTAA; and

ADVANCE PRICING AGREEMENT / REAL INCOME/PE (Contd..)

(iv) GIA India was an independent, separate legal entity rendering grading services to its client up to a particular capacity beyond which GIA India would forward those stones for grading purposes to GIA US or to other enterprises of the GIA Group, depending upon the service requirement and the entire risk in relation to the stones forwarded by GIA India to GIA US on behalf of its own customers was borne entirely by GIA India, and no risk was attached whatsoever to GIA US.

(B) On Royalty, it concluded that:

(i) Section 92C(3) has no implication where differential royalty of Rs.19.44 crores has been paid by GIA U.S to GIA India as 92C(3) is sought to be applied to the same person to whom 92(1) applies. Section 92 only prohibits a downward adjustment in a case where a reduction in income is claimed without repayment of excess.

(ii) Second Proviso to Section 92C(4) applies only in a case where a transfer pricing adjustment is made by the A.O, i.e. where the ALP is determined by the A.O under Section 92C(3), and not where a variation or adjustment is made pursuant to an APA. Placing reliance on this proviso Revenue cannot contend that GIA U.S ought to pay tax on the initial amount of Rs. 68.53 crores rather than on Rs. 49.08 crores.

(iii) Relying on the decisions of SC in the case of ***H.M. Kashiparekh & Co. Ltd v CIT [(960) 39 ITR 706 (Bombay), Godhra Electricity Co. Ltd. Vs. CIT (1997) 225 ITR 746*** one salutary principle that emerges is that in order that income is taxed in the hands of the Assessee, it must be the ‘real income’ (cases of deemed income apart), which the Assessee has actually earned and not a mere hypothetical income which the Assessee could have earned but in fact did not earn.

ADVANCE PRICING AGREEMENT / REAL INCOME/PE (Contd..)

Hence , only real income in the hands of the Assessee can be taxed, the quantum of royalty that could be brought to tax for A.Y. 2011-2012 was the amount of Rs.49,08,99,451/- and not the amount of Rs.68,53,46,239/-.

(iv) Article 12 of the US - India DTAA contemplates that only the royalties that are 'paid' by GIA India to GIA US can be taxed in India i.e Rs. 49.08 crores that is retained by GIA U.S by virtue of APA entered into between GIA India and CBDT.

OTHER DEVELOPMENTS

- **Mauritius Government** approves ratification of protocol to DTAA amending the India- Mauritius DTAA. The protocol provides for (i) a paragraph in the Preamble section to reiterate the common intention of both countries to eliminate double taxation without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance; (ii) an article on Entitlement to Benefits to prevent the abusive use of the DTAA i.e., allowing either party to deny a benefit under the DTAA if one of the principal purposes of an investment is to benefit from the tax treaty (Principal Purpose Test)
- CBDT releases Annual Advance Pricing Agreement(APA) Report FY- 2025-26 which highlights the following: (i) Highest ever APA signings in any financial year since the launch of the APA programme, signing a total of 220 APAs; (ii) Signing of maximum number of Bilateral APAs, i.e. 84 BAPAs in any financial year till date, crossing the record of 65 BAPAs signed last year; (iii) Achievement of signing India's first ever Bilateral APA with France, Indonesia, Ireland and Sweden.

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