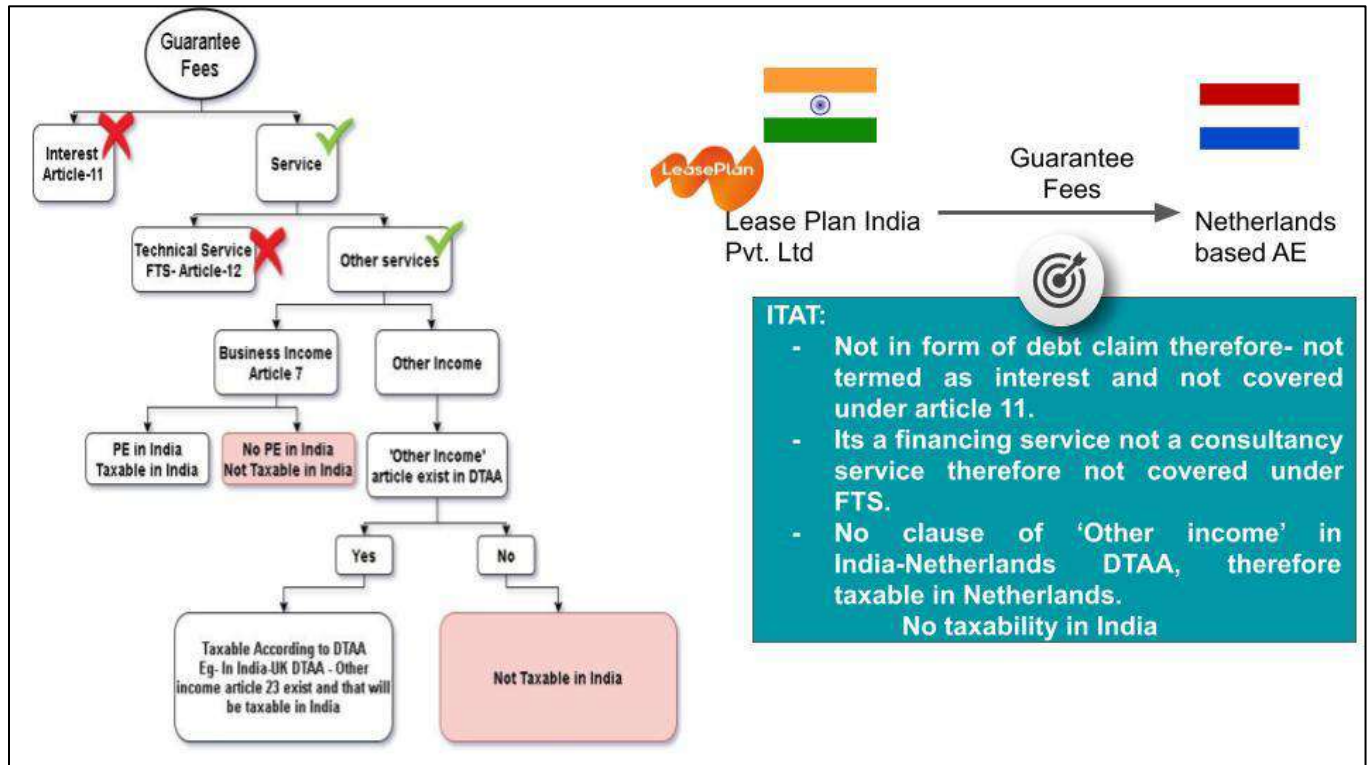


SATURDAY INTERNATIONAL TAX GYAN !!!

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Lease Plan India Pvt. Ltd vs. Deputy Commissioner of Income Tax, Circle-4(1)

Guarantee fees cannot be considered as Fees for Technical services



Facts:

- Assessee is a company engaged in the business of leasing of motor vehicles, financial services and fleet management.
- Further it was submitted that lease plan Corporation NV is Netherland-based Company from whom it had for the purpose of its business obtained a corporate guarantee.
- Assessee has paid guarantee charges at the rate of 1/8 percentage per annum to its associated enterprise based in Netherland.



Assessee's contention:

- Assessee contended that the amount paid is a reimbursement against actual expenses, it does not involve any element of technical, consultancy or advisory services and therefore is not chargeable to tax in India and hence no tax is deductible as source.

Revenue's contention:

- Assessing officer disallowed the expense and contended that sums were paid by way of an expenses to a non-resident who had rendered services to the assessee and those payments fall within the purview of section 9 (1) (vii) and therefore are taxable in India as "fees for technical services" on account of guarantee charges paid to a non-resident without deduction of tax at source.

Ruling:

- As per section 9 of the Income Tax act the income would be deemed to accrue or arise in India as the fees paid by assessee is against the services offered by AE against loan in India.
- Two criteria need to be satisfied for any income to be covered as interest under the relevant DTAA:-
 - (1) "provision of capital" and
 - (2) It should be in the form of debt claim.In view of this the guarantee fee paid cannot be covered in the definition of interest¹ as per Article 11 of The DTAA.
- The nature of "Service" provided by the Netherlands company in providing guarantee, it is a financial service and can by no stretch of imagination be called a "Consultancy services".
- The co-ordinate bench in a similar scenario² dealing with India UK Treaty has ordered that guarantee fees is neither interest income nor fees for technical service and hence would be charged as other Income.
- However, since there is no clause of "other income" in India Netherlands DTAA, hence the same would not be taxable in India and not liable to tax deduction in India.

¹ Container Corporation Versus Commissioner of Internal Revenue of United States Tax Court Report [134 T.C. 122 (U.S.T.C. 2010) • 134 T.C. 5 Decided Feb 17, 2010].

² Johnson Mathey public limited company versus Deputy Commissioner Of Income Tax (International Taxation) New Delhi **88 taxman.com 127**



Our comments:

- Guarantee fees cannot fall under interest income or fees for technical service.
- Also the circular cited in the order i.e. 787 of 2000 is irrelevant here as it talks about guarantee money which is totally different from the guarantee fees.
- Thus, It can either be taxed as business income if there is PE in India or other sources income if DTAA includes that clause and in both the scenarios it shall be **taxed at 40% (plus surcharge and cess)**.

Section	Section 9, Article 7, 11, 12
DTAA/Country	Netherlands
Court	Delhi Tribunal
Date of decision	15/06/2020

Note: Case law name in **Red**- in favour of the Revenue, **Green**- In favour of the Assessee, **Orange** = Partial.

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Thank you