

SATURDAY INTERNATIONAL TAX GYAN !!!

Volkswagen Finance Pvt Ltd v. Income Tax Officer (International Taxation)

Payment to Non-residents for events outside India to promote the business of the Company in India was liable to TDS in India.



Facts:

- Volkswagen Finance Pvt. Ltd. had organized the launch of Audi A8L in Dubai on behalf of Audi India.
- Nicolas cage was paid 4.4 lakh dollars for his appearance in the above event.
- Around 150 Indian customers were specially flown in from India for the event.
- Income tax department contended that Income has accrued in India and therefore assessee ought to have deducted TDS on the above payment.

Assessee's contention:

- The event took place in Dubai, UAE, and the celebrity made his appearance at the event in Dubai.
- No tax was deductible from this payment as the celebrity or his agent were not carrying out any activities in India and as such, the appearance fee could not be treated as accruing or arising in India, or deemed to be accruing or arising in India as there was **no business connection in India.**

Revenue's contention:

- The Assessing Officer held that the payment made to the celebrity was taxable in India, as all the publicity material will be used in India for an increase of sales in India and therefore it should be taxed in India. It added that it could also be taxed as royalty under section 9(1)(vi) of the Income Tax Act, 1961.

Ruling:

- ITAT was of the opinion that even though the income is not getting directly covered under section 5(2)(b) but then, given the broader scheme of the Income Tax Act, even first limit of Section 5(2)(b) needs to be read with, inter alia, Section 9(1)(i) of the Act which extends the scope of income accruing or arising in India by including, in the deeming fiction, “all income accruing or arising, whether directly or indirectly, through or from any business connection in India, or through or from any property in India, or through or from any asset or source of income in India, or through the transfer of a capital asset situate in India”.
- The event was held in UAE but it was going to be used for below the line publicity in India via the internet, social media, news reports. Thus, ITAT was of the opinion that an income which, directly or indirectly, accrues or arises to a non-resident, through or from any business connection in India, is also chargeable to tax in India.

Our comments:

- Judicial seems to expand the ambit of business connection, with the change of mode of doing business. The “tax laws version 2.0” has arrived without having its approval from the parliament.
- Why has the assessee not taken recourse of DTAA as its narrower definition would be beneficial?
- It can be said that even if the services are being provided outside India, but because the services being provided, **benefits the Indian business** of the company, the income is accruing in India. Does that mean that a person having only domestic sales will compulsorily need to deduct TDS on all its foreign expenses??

Section	195, 5(2)(b), 9(1)(i)
DTAA/Country	USA
Court	ITAT Mumbai
Date of decision	19.03.2020

Click here to [Read Judgement](#)

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

Disclaimer: This document has been prepared on the basis of information available in the public domain and is intended for guidance purposes only. We have taken reasonable care to ensure that the information in this document is accurate. It, however, accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this document.

Stay Healthy! Stay Safe!

Thank you