SATURDAY INTERNATIONAL TAX GYAN !!!

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Deloitte Haskins & Sells LLP
V/s
Deputy Commissioner of Income-tax, (IT)

Shared services provided for the internal use of group companies/members is not liable to tax.

[2022] 141 taxmann.com 205 (Mumbai - Trib.)

Date: 24.09.2022

Fact of the Case

- The Assessee (a limited liability Partnership firm) is the tax-resident of UK and rendering professional services to domestic and MNCs. The Assessee along with various other firms was known as ‘Global Network’ created a company known as Deloitte Global Holding Service Ltd.

- Deloitte Global Holding Service Ltd. was created to facilitate the attainment of the objective i.e., to internationally align the cooperation, cohesion and Professional standards to the highest quality among its member firms.

- All these activities were carried out by holding company and later expenses were recovered from the member firms **without adding any mark-up.**

- These activities were embodied under an agreement called ‘**Shared Services Agreement**’ which included 11 different kinds of group services including Global services, Global brand, Global communication, etc.

Fact of the Case

- AO issued certificate under section 195(2) for remittance of amount under the shared agreement for non-deduction of Tax for FY 2012-13 to 2016-17.

- However, in the later assessment year various group activities were under dispute of falling in definition of Royalty, which were named as **Global brand, Global Communication and Global technology.**

- Global brand consists of services like implementing brand strategy, providing common training guidance and policy for the use of network of the holdings.

- Global communication consists of services like guidance over public relation management, events, guidelines along with guidance over media communication and distribution.

- Global technology consists of activities like acquire, develop, manage, operate and distribute information technology & promoting common technology standards.

Revenue's Contention

- A.O. contends that for the Assessment year 2018-19 & 2019-20 payments to the extent they were related to Global Brand; Global Communication; & Global technology, were in the nature of Royalty, being payment for use of computer software/literary work.
- AO also stated that thus, the payment made are liable for deduction of tax @3%(as per LDC rate) of the overall remittance made by applicants i.e., member firms to the holdings with reference of India-UK DTAA.

Assessee's Contention

- In oppose Assessee contended that the services which are being referred by the AO cannot be regarded as Royalty as per article 13(3) of India-UK DTAA.
- Assessee also stated that the Holdings is a mutual concern, as there was a complete identity between its participants and contributors. Also, **the Holdings do not have any dealings with the third party clients but wholly deals with the member firms.**
- Assessee contended that as per the Principle of Mutuality the payment was made to group firms for internal use only and it is in the nature of reimbursement.

Legal provisions related to Income Tax Act,1961 and India-UK DTAA

As per **Section 9(1)(vi)(b) of Income Tax Act, 1961** –

- Income by way of royalty payable by a person who is a resident, except where the royalty is payable in respect of any right, property or information used or services utilized for the purposes of a business or profession carried on by such person outside India or for the purposes of making or earning any income from any source outside India.

As per **Article 13 of India-UK DTAA, the term 'Royalty' means:**

- Payments of any kind received as a consideration for the use of or the right to use, any copyright of a literary, artistic or scientific work, including cinematography films or work on films, tape or other means of reproduction for use in connection with radio or television broadcasting, any patent, trade mark, design or model, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience; And
- Payments of any kind received as consideration for the use of, or the right to use, any industrial, commercial or scientific equipment, other than income derived by an enterprise of a Contracting State from the operation of ships or aircraft in international traffic."

RULING

- The Holdings was incorporated to attain various objectives to further international alignment, co-operation, cohesion and professional standards of highest quality amongst its member firms and the expenditure incurred for the above activities for the benefit of all members **which are then recovered from them without adding any markup**.
- Out of various services enumerated in "Shared Services Agreement", the dispute is with regards to payment made under the head:

  a) Global Brand;

  b) Global Communication;

  c) Global Technology/ Knowledge Management.

- **It was stated that these services are more of guidance and advisory and not for providing any intellectual property**. Thus, providing mere common policy or guiding cannot be reckoned as use of or right to use of copyright.
- It was also held that, all these various activities were performed for **members only and its guidance was only for the internal use of the member firms.**

RULING

- Hence, it is viewed that payment for such services cannot be considered for information concerning industrial, scientific or commercial experience.

- Again, there is no transfer of intellectual property by Holdings to the appellants and also there cannot be a case of giving industrial, commercial or scientific equipment.

- Further, the said service is purely for internal purpose and not for any commercial exploitation, nor any scientific equipment is given to the appellants by Holdings.

- **Principle of Mutuality's** pleading was not discussed as the same has to be seen *qua* in the hands of recipient and not in hands of payer and is not applicable in case of section 195.

Hence, the payments made for global brand cannot be treated as in the nature of Royalty as per article 13(3) of India-UK DTAA. Another important thing is that the payment is also not for any use of trademark/patent provided by Holdings.

OUR COMMENTS

- If any service or group services is provided to group entities by a parent/holding or leader company to its subsidiary/associate/group or member firms/companies for merely internal use and reference, then such services cannot be regarded as royalty.

- Definition of Royalty as per Income Tax Act is very wide, thus the activities referred in the case could fall under the said definition as per the Act.

- "Principle of Mutuality" provides that where a number of person collectively contribute to a common fund, which is controlled by them for a common purpose, then the benefit or surplus arising out of such fund is not an income.

- In case of deduction of TDS under section 195 of the Act, we have to first check whether the payment is in nature of income and liable to tax or not and hence, should we not check the principle of mutuality while deducting the tax?

Section/Article	Article 13 of DTAA and section 9 of Income Tax Act
DTAA/Country	India - UK
Court	Mumbai - Trib.
Date of decision	27.07.2022

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

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