

# SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No.  
122

## Deputy Commissioner of Income-tax V/s Hyderabad Educational Institutions (P.) Ltd.

Educational services is not only restricted to teaching but also includes activities of evaluation & examinations

[2022] 140 taxmann.com 596 (Hyderabad - Trib.)

Date: 08.10.2022

## Fact of the Case

- ❖ The Assessee (a company) tax resident of India has been running a school in India offering education to students.
- ❖ Assessee collected examination fees for syllabus from students and remitted the same to two foreign universities/institutions (One of UK and other of Switzerland). No TDS was deducted u/s 195, taking the view that there was no income that accrued or arose in India.
- ❖ Services like setting up question papers, training of teachers, evaluation, etc. were provided by the foreign institutes to the Assessee.
- ❖ The fees which were collected by the Assessee were directly remitted to the foreign institutes, no part of such fees was retained by the Assessee, nor any expenditure was incurred by Assessee in this respect.

# Revenue's Contention

- ❖ A.O. contended that the services provided by the foreign institute was skilled educational services, therefore such services fell in the ambit of FTS under the relevant DTAAAs.
- ❖ Further, A.O. contended that the examination fee and the teachers workshop fee paid by the assessee did not constitute payments made for teaching services and such services were not exempt under DTAA
- ❖ A.O. also stated that the payment were in nature of consultancy and personal service rendered in the field of education and therefore exemption under DTAA cannot be stretched.

## Assessee's Contention

- ❖ Assessee contended that the examination fees collected by the assessee was not taxable as assessee was only acting as pass through entity in the sense that the examination fee, though collected by the assessee from the students was in toto remitted to the IB universities, therefore it could not be termed as the payment for managerial/technical/consultancy services.
- ❖ Assessee also contended that section 40(a)(i) could be invoked only when expenditure was booked by the Assessee, where in this case no expenditure was booked by the Assessee.
- ❖ Assessee further contends by making reference to the DTAA held that the amount paid by the Assessee to the universities were not covered within the description of technical services/royalty services as defined in relevant DTAA's.

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

As per Section 9(1)(vii) of Income Tax Act, 1961 –

income by way of fees for technical services payable by—

(a) the Government ; or

(b) a person who is a resident, except where the fees are payable in respect of services utilised in 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 ; or

(c) a person who is a non-resident, where the fees are payable in respect of services utilised in a business or profession carried on by such person in India or for the purposes of making or earning any income from any source in India:

**Where Fees for Technical Services means:** For the purposes of this clause, "fees for technical services" means any consideration (including any lump sum consideration) for the rendering of any managerial, technical or consultancy services (including the provision of services of technical or other personnel) but does not include consideration for any construction, assembly, mining or like project undertaken by the recipient or consideration which would be income of the recipient chargeable under the head "Salaries";

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

As per **Article 13(5)(c) of India-UK DTAA** –

5. The definition of fees for technical services in paragraph 4 of this Article shall not include amounts paid :

a) for teaching in or by educational institutions;

As per **Article 12(5)(a) of India-Switzerland DTAA** –

5. Notwithstanding paragraph 4, "fees for technical services" does not include amounts paid:

a) for teaching in or by educational institutions;

# RULING

- ❖ It was stated that the fees for services provided by the universities was collected by the Assessee from the students and directly remitted to the universities & no part of it was retained by the Assessee i.e. what is received by Assessee is transmitted. There was no loss or gain in the transaction for the Assessee.
- ❖ Tuition fees (fees other than that received for universities) received by the Assessee is separated from that received from Fees received for the courses of universities.
- ❖ In the given case, foreign universities are imparting instructions in India as per the syllabus set by the universities and subsequently exams are taken before issuing the degrees, in the given case Commissioner (Appeals) held that the Assessee is only a pass through entity.

# RULING

- ❖ Further as per the article 13(5)(c) of the DTAA between India-UK and article 12(5)(a) of the DTAA between India-Switzerland clearly read that the definition of FTS does not include any amount paid **for teaching in or by educational institution.**
- ❖ It was appealed that this expression “teaching in or by educational institution” cannot be confined to the activity of instructions only but it includes all related activities like evaluation, examinations, etc. and therefore it will fall in the exemption clause of relevant DTAA which exempts the amount paid for teaching in or by the educational institutions.
- ❖ **ITAT accordingly upheld the findings of Commissioner (Appeals) on this aspect as they are in harmony with the spirit of the Act and declared such payment as outside the ambit of definition of FTS and accordingly exempt in India.**



## OUR COMMENTS/QUERIES

- ❖ When an entity is acting just like a pass through entity then whether it is required to deduct TDS while remitting the amount to any foreign entity?
- ❖ Deducting TDS would depend on whether the amount is taxable in India or not. If the income is taxable in India then it should not matter, whether the person remitting the amount is acting as a pass through entity or not, because although the entity might not be claiming it as expense but it can attract penalty for non-deduction of TDS under the Income tax act.
- ❖ While checking taxability of a transaction under DTAA we need to first whether it is falling under any specific article of DTAA or not and what is the taxability of transaction in that article and then if the transaction is not taxable in that article then we need to see if it is getting covered under any other article or not and its taxability in that article. It is not necessary that the transaction should be covered under some article of DTAA.

<b>Section/Article</b>	Article 13/12 of India-UK/India-Switzerland DTAA and section 9 of Income Tax Act
<b>DTAA/Country</b>	India – UK, India-Switzerland
<b>Court</b>	Hyderabad - Trib.
<b>Date of decision</b>	26.05.2022

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



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