# SATURDAY INTERNATIONAL TAX GYAN !!!
#taxmadeeasy

## SITG No. 216

## Orbit Bearing India (P.) Ltd.

## v.

## Additional Commissioner of Income-tax

Where the payment has been made to non-residents in relation to rent on stall and allied activities outside India and services were also provided outside India hence same will not be taxable in India

27.07.2024

[2024] 163 taxmann.com 112 (Rajkot - Trib.)

Jain Shrimal & Co.

## Facts of the Case

- During the year under consideration, the assessee had taken part in business fare held in USA and paid to non-resident for providing services in the form of stall on rent and other allied expenses of business at USA.

- It is also mentioned that the amount is paid to them by way of demand draft or cheque payable at Germany.

## Assessee's Contention

- Assessee contended that the services have been provided outside India and non-resident does not have business connection in India and accordingly the income is neither accruing in India nor due in India and hence same should not be taxable in India.

## Revenue's Contention

- Revenue contended that the income was accruing in India and hence taxable in India.

# Legal Provisions

**Section 9(1)(i) of Income tax act is as under:**

(1) The following incomes shall be deemed to accrue or arise in India :—

(i) 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.

**Explanation 2 to Section 195 of Income tax act is as under:**

*Explanation 2.*—For the removal of doubts, it is hereby clarified that the obligation to comply with sub-section (1) and to make deduction thereunder applies and shall be deemed to have always applied and extends and shall be deemed to have always extended to all persons, resident or non-resident, whether or not the non-resident person has—

(*i*) a residence or place of business or business connection in India; or

(*ii*) any other presence in any manner whatsoever in India.

# Ruling

- Hon'ble Tribunal considered the facts of the case of ruled that assessee had taken part in the business fare outside India and payment was made to non-resident for services outside India and such services were also received by non-resident outside India.

- Accordingly, relying on the judgement of co-ordinate bench in case of Dy. CIT v. DML Exim (P.) Ltd. [2020] 118 taxmann.com 491/184 ITD 432 (Rajkot - Trib.) it was held that where payment was made for soliciting export customers assessee was not liable to deduct TDS on such payment as the income was not accruing or arising in India and accordingly not liable to tax in India.

# Our Comments

- There are various such services which the assessee has to undertake outside India while performing it's business activities, a clarification and a new update should be made in the requirement and TDS filing along with filing of Form 15CB and 15CA wherein the code which relates to services provided for business outside India should be either exempt from such filing.

- Further, in our humble opinion there could be a circular from the Revenue clarifying on various nature of expenses which would not accrue or arise in India to reduce litigation.

| | |
|---|---|
| **Section/Article** | Section 9 and 195 |
| **DTAA/Country** | India – USA |
| **Court** | Rajkot Tribunal |
| **Date of decision** | 17.05.2024 |

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


**Visit our website blog for previous case laws.-**
https://jainshrimal.com/blog/#taxgyaan

**Join Whatsapp group for discussion on International taxation By scanning the QR-**

# Disclaimer

- This presentation has been prepared on the basis of information available in the public domain and is intended for guidance purposes only.
- Jain Shrimal & Co. has taken reasonable care to ensure that the information in this presentation is accurate. It however accepts no legal responsibility for any consequential incidents that may arise from errors or omissions contained in this presentation.
- This presentation is based on the information available with us at the time of preparing the same, all of which are subject to changes which may, directly or indirectly impact the information and statements given in this presentation.
- Neither Jain Shrimal & co., nor any person associated with us will be responsible for any loss however sustained by any person or entity who relies on this presentation. Interested parties are strongly advised to examine their precise requirements for themselves, form their own judgments and seek appropriate professional advice.