



SATURDAY INTERNATIONAL TAX GYAN !!!

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SITG No. 303

SMS Group Gmbh

v.

ACIT

Supply of goods and supply of services are two separate transaction and cannot be clubbed in one. Further, if there is a specialised technical service which is not fulfilling the PE condition but falling under FTS has to be taxed as FTS.

28.03.2026



[2026] 182 taxmann.com 17 (Delhi - Trib.)

Facts of the Case

- ❖ The assessee, a **Germany-based company**, was engaged in supply of plant and equipment, drawings/designs, and rendering supervisory and technical services to Indian customers in the metallurgical sector. The contracts were structured separately for **offshore supply** and **onshore services**.
- ❖ During the relevant assessment years, the assessee received consideration towards offshore supply of equipment and drawings/designs, onshore supervisory services, and technical services.
- ❖ The **offshore supplies** were executed **outside India with transfer of title** and receipt of consideration occurring outside India.
- ❖ The assessee **offered income from technical services** and supervisory services (where exceeding six months) to tax in India. However, it did not offer receipts from offshore supply of equipment and drawings/designs, claiming them as non-taxable.
- ❖ The Ld. AO held that the assessee had a Supervisory Permanent Establishment (PE) and a **fixed place PE in India**. Accordingly, he attributed profits to the PE, including receipts from offshore supply, and made additions.

Assessee's Contention

- ❖ The assessee contended that offshore supply of equipment and drawings/designs was **executed entirely outside India**, with **no operations carried out in India** in respect of such supplies. Hence, such **receipts were not taxable** under the Act or the India-Germany DTAA.
- ❖ It was submitted that contracts were clearly divided into separate parts for offshore supplies and onshore services, and all activities relating to design, manufacturing, and transfer of title occurred outside India. Therefore, such receipts constituted **business profits** not attributable to any PE in India.
- ❖ For **supervisory services exceeding six months**, the assessee accepted existence of PE and **offered income** accordingly. However, where supervision was for **less than six months**, it claimed such receipts as **non-taxable**.
- ❖ For the year involving supervisory PE exceeding six months, the assessee submitted that it had **maintained audited books** showing a loss from such activities, and hence no income should be attributed.

Revenue's Contention

- ❖ The Revenue contended that the assessee had a fixed place PE and supervisory PE in India due to presence of technical personnel. Therefore, entire receipts, including offshore supply, were attributable to the PE and taxable in India.
- ❖ The Ld. AO treated offshore supply of equipment and drawings/designs as part of composite business operations linked to services rendered in India. Accordingly, profits were estimated and attributed to the PE.
- ❖ For supervisory services rendered for less than six months, the Revenue argued that such services involved technical expertise and fell within the definition of Fees for Technical Services (FTS), thereby taxable irrespective of PE existence.
- ❖ In respect of supervisory services exceeding six months, the Ld. AO rejected the loss declared in books and estimated profit at a prescribed percentage of receipts for taxation purposes.

Legal provisions

Section 9 of the Act:

(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 1 - For the purposes of this clause-

(a) in the case of a business , other than the business having business connection in India on account of significant economic presence, of which all the operations are not carried out in India, the income of the business deemed under this clause to accrue or arise in India shall be only such part of the income as is reasonably attributable to the operations carried out in India

(vii) 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

Legal provisions

India - Germany DTAA

ARTICLE 7- BUSINESS PROFITS

1 The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2 Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make, if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3 In the determination of the profits of a permanent establishment, there shall be allowed as deductions, expenses which are incurred for the purposes of the business of the permanent establishment including executive and general administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere, and according to the domestic law of the Contracting State in which the permanent establishment is situated.

Legal provisions

India - Germany DTAA

ARTICLE 5- PERMANENT ESTABLISHMENT

1 For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2 The term "permanent establishment" includes especially:

- (a) a place of management ;
- (b) a branch ;
- (c) an office;
- (d) a factory;
- (e) a workshop;
- (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, including an installation or structure used for the exploration or exploitation ;
- (g) a warehouse or sales outlet ;
- (h) a farm, plantation or other place where agricultural, forestry, plantation or related activities are carried on ; and
- (i) **a building site or construction, installation or assembly project or supervisory activities in connection therewith, where such site, project or activities continue for a period exceeding six months.**

Ruling

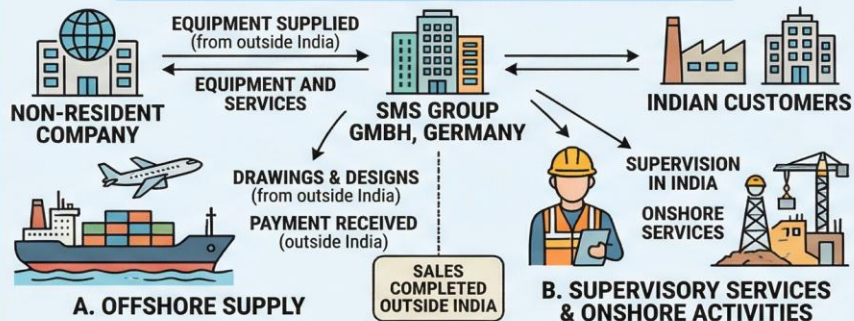
- ❖ The Hon'ble Tribunal held that consideration from **offshore supply** of plant/equipment and drawings/designs was **not taxable in India**. It relied on earlier decisions in assessee's own case, holding that such receipts, being executed entirely outside India, could not be attributed to a PE.
- ❖ It further held that where **supervisory services** were rendered for **less than six months**, such receipts qualify as **FTS** under both domestic law and DTAA. Accordingly, such income is **taxable in India irrespective of existence of PE**.
- ❖ For **supervisory services exceeding six months**, the Tribunal accepted existence of PE. However, it held that in absence of any valid rejection of audited books by the Ld. AO, profit attribution must be based on such books.
- ❖ Since the **audited books reflected a loss** from supervisory activities, the Tribunal held **that no income could be taxed in India** in respect of such PE-related activities.
- ❖ Accordingly, the appeal was partly allowed.

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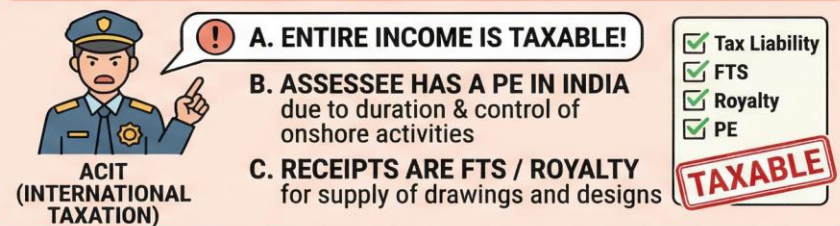
CASE LAW EXPLAINED: [2026] 182 taxmann.com 17 (Delhi - Trib.) - - SMS GROUP GMBH vs. ACIT (INTERNATIONAL TAXATION)

A QUICK VISUAL GUIDE

1. FACTS OF THE CASE (THE TRANSACTION)



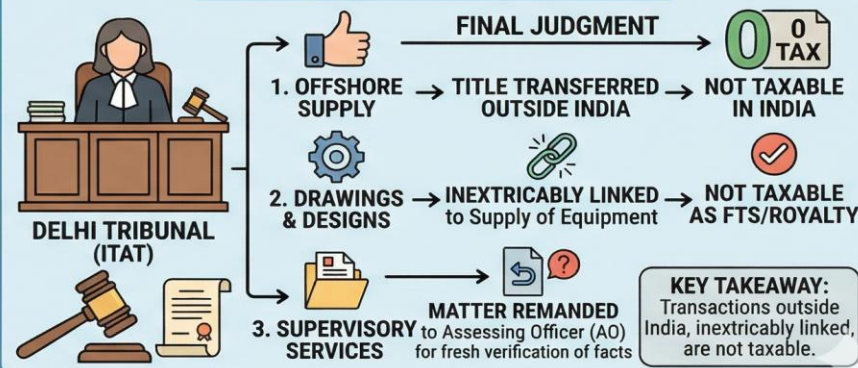
3. REVENUE'S CONTENTION (THE TAX DEPARTMENT'S STAND)



2. ASSESSEE'S CONTENTION (THE TAXPAYER'S CLAIM)



4. RULING (THE ITAT'S DECISION)



Our Comments

- ❖ This ruling clearly bifurcates between two transactions and that in case of international taxation each transaction has to be seen separately for taxation purpose, like in this case sale of goods and sale of services were seen separately.
- ❖ Further, it also bifurcates between two types of services —
 - (1) services where scientific knowledge is deeply involved and shared through reports, and
 - (2) services where even if scientific knowledge was provided but it was forming a permanent establishment then in such case we have to check the taxability as business profit.

Hence, it becomes important that while drafting any agreement for different transactions always segregate between different legs of transaction

Section/Article	Section 9 and Article 12
DTAA/Country	India - Germany DTAA
Court	ITAT Delhi
Date of decision	24-12-2025

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



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