SATURDAY INTERNATIONAL TAX GYAN !!!
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SITG No. 297

Vijay Mariappan Austin Prakash
v.
ACIT

Consultancy income of a UAE tax resident was held non-taxable in India under India-UAE DTAA, despite invocation of Significant Economic Presence provisions.

14.02.2026

[2026] 182 taxmann.com 285 (Visakhapatnam - Trib.)

Jain Shrimal & Co.

Facts of the Case

- The assessee, a non-resident individual, was engaged as a consultant with Zerodha Broking Limited (ZBL), **rendering business advisory services** relating to business planning and development.

- During the year under consideration, he received **consultancy fees of approximately Rs.8.28 crore**, on which tax was deducted at source under section 195. The assessee **claimed the said consultancy income as exempt** under the India–UAE DTAA in his return of income.

- The Ld. AO observed that the assessee was earlier a salaried employee of the Zerodha group up to 30.09.2020 and **thereafter transitioned to a consultancy arrangement** from 01.10.2020. He held that the assessee had changed the source of income from salary to consultancy to avoid taxability in India.

- The Ld. AO also invoked section 9(1)(i) stating that the assessee is having a business connection in India on account of significant economic presence (SEP). It was further held that Article 14 of the India–UAE DTAA was not applicable, as the services did not qualify as "professional services."

- Now, the **assessee is in the appeal** before Hon'ble ITAT.

Assessee's Contention

- Assessee contended that the he was a **tax resident of the UAE** and was eligible to claim DTAA protection under section 90(2) of the Act. **He emphasized that he was engaged in management consultancy, which falls within the scope of "professional services**. Since Article 14 of the India–UAE DTAA provides an inclusive definition, the term is wide enough to cover management consultancy activities rendered independently.

- It was submitted that Article 14 provides taxation rights exclusively to the state of residence unless the individual has a **fixed base in India or stays in India for 183 days or more**. The assessee neither had a fixed base nor satisfied the threshold stay condition.

- The assessee further argued that invocation of SEP under section 9(1)(i) was academic in light of DTAA override under section 90(2). In **absence of a Permanent Establishment (PE) or fixed base** in India, no income could be taxed in India under the treaty.

- He also maintained that the consultancy arrangement was governed by a **valid agreement** and could not be disregarded merely because similar services were rendered during his earlier employment.

- The assessee submitted that even if Significant Economic Presence were assumed, only profits attributable to operations carried out in India are taxable under section 9(1)(i). Since no operations were conducted in India, no income was attributable to India and the taxable income would be nil.

Revenue's Contention

- Revenue argued that the assessee was previously employed by Zerodha Broking Limited (ZBL) and performed similar functions. Revenue held that the assessee had **changed the source of income from salary to consultancy to avoid taxability in India.**

- The Ld. AO invoked Explanation 2A to Section 9(1)(i), stating that the assessee had Significant Economic Presence in India since receipts **exceeded the prescribed threshold**.

- It was contended that the consultancy services **did not qualify as "professional services"** within the meaning of Article 14(2) of the India–UAE DTAA.

- Accordingly, the income was treated as business income taxable in India and the benefit of the DTAA was denied.

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 2A - For the removal of doubts, it is hereby declared that the significant economic presence of a non-resident in India shall constitute "business connection" in India and "significant economic presence" for this purpose, shall mean-

a) transaction in respect of any goods, services or property carried out by a non-resident with any person in India including provision of download of data or software in India, if the aggregate of payments arising from such transaction or transactions during the previous year exceeds such amount as may be prescribed.

Rule 11UD :

(1) For the purposes of clause (*a*) of *Explanation 2A* to clause (*i*) of sub-section (1) of section 9, the amount of aggregate of payments arising from transaction or transactions in respect of any goods, services or property carried out by a non-resident with any person in India, including provision of download of data or software in India during the previous year, **shall be two crore rupees**.

Legal provisions

Section 90(2)of the Act:

Where the Central Government has entered into an agreement with the Government of any country outside India or specified territory outside India, as the case may be, under sub-section (1) for granting relief of tax, or as the case may be, avoidance of double taxation, then, in relation to the assessee to whom such agreement applies, the provisions of this Act shall apply to the extent they are more beneficial to that assessee.

India - UAE DTAA

ARTICLE 14- INDEPENDENT PERSONAL SERVICES

2. The term "professional services" includes independent scientific, literary, artistic, educational or teaching activities as well as the independent activities of physicians, surgeons, lawyers, engineers, architects, dentists and accountants.

Ruling

- The Hon'ble ITAT noted that the consultancy agreement effective from 01.10.2020 was placed on record and the change in status from employee to consultant was contractual between parties. The observation of **tax avoidance lacked merit.**

- The Hon'ble Tribunal **acknowledged** Explanation 2A(a) to section 9(1)(i) and proviso, it is viewed that income shall deemed to accruing or arising in India to the assessee since he has a business income in India on account of Significant Economic Presence with crossing the threshold limit of Rs. 2 crores.

- However, the Hon'ble Bench held that Article 14 of DTAA provides an **inclusive definition of professional services** and the services rendered by the assessee were covered therein.

- Hence, in the absence of a permanent establishment or fixed base in India, and as conditions under Article 14 were not triggered, the assessee was entitled to **treaty benefit** under Section 90(2). The income was therefore **not taxable in India.**

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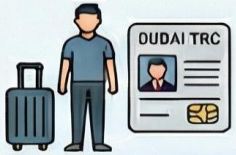
FACTS OF THE CASE



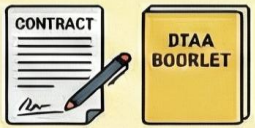
NON-RESIDENT INDIVIDUAL (Assessee)

Salaried Employee (till 30-9-2020) → **Consultant** (from 1-10-2020)
Provided **Business Advisory Services**

Consultancy Fees (approx. Rs. 8.28 Crores) after TDS u/s 195
Stay in India < 60 days

INDIAN COMPANY (ZBL)

ASSESSEE'S POSITION



Claimed Exemption under Article 14 of India-UAE DTAA

Services are 'Professional Services' (Inclusive Definition)

No PE
Entitled to benefit of Section 90(2)

REVENUE'S POSITION

TAX AUTHORITY (Assessing Officer)

Contention: Consultancy services fall outside Article 14(2) definition of professional services

- **Invoked 'Significant Economic Presence' (SEP)**
  - Alleged Business Connection due to crossing threshold
- **Services NOT 'Professional Services' (Article 14)**
  Change of status to avoid tax; functions same

TRIBUNAL'S ANALYSIS

Change from Employee to Consultant is valid based on Agreement

Income deemed to accrue in India due to SEP (Sec 9(1)(i))

However, Article 14 "Professional Services" definition is INCLUSIVE

Assessee's services ARE covered under Article 14

FINAL RULING / CONCLUSION

CONSULTANCY FEES – NOT TAXABLE IN INDIA

Services covered under Article 14. In absence of Fixed Base/PE in India, income not taxable under DTAA read with Sec 90(2). Appeal allowed.

Our Comments

- Article 14(2) uses the term "**includes**", which makes the definition of professional services broad and **illustrative rather than restrictive**. Any service rendered independently with the application of specialised knowledge, skill or expertise can fall within its ambit even if not specifically enumerated. The Tribunal observed that business and management consultancy inherently involves such expertise and therefore qualifies as professional services. Accordingly, the narrow view adopted by the Assessing Officer to deny the benefit of the DTAA was held to be unsustainable.

- The AO has invoked SEP and even if the service does not fall under Independent personal service it could fall under Business income. In the absence of any finding on PE or fixed base, the treaty does not permit taxation in India, rendering the SEP discussion academic and legally unsustainable.

Our Comments

- Even assuming that the assessee had continued as an employee instead of converting into a consultant, the salary in our understanding would not have been taxable in India under section 9(1)(ii), as **salary is deemed to accrue in India only if services are rendered in India**, i.e., where the function is performed. Since the function was performed outside India, such income would fall outside the scope of section 9 itself, without even requiring recourse to the DTAA.

Section/Article	Section 9 & 90(2) and Article 14
DTAA/Country	India-UAE DTAA
Court	ITAT Visakhapatnam
Date of decision	05-12-2025

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

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