VERENDRA KALRA & CO
CHARTERED ACCOUNTANTS

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ITAT Grants DTAA Exemption for Zerodha Consultancy Income Despite SEP Allegations

Facts

The assessee, a Non-Resident Individual, filed his return of income on 17.07.2022 declaring taxable income of Rs. 9,21,280/- and claiming exempt consultancy income of Rs. 8,28,36,296/- received from Zerodha Broking Limited ("ZBL"), on which tax was deducted under section 195 of the Act. The assessee rendered business advisory services to ZBL and claimed refund of TDS. The case was selected for scrutiny and notices under sections 143(2) and 142(1) were issued. The assessee submitted that he stayed in India for less than 60 days during the relevant year and furnished a Tax Residency Certificate. The Assessing Officer noted that the assessee was earlier employed with the Zerodha Group up to 30.09.2020 and thereafter engaged as a consultant from 01.10.2020, observing that the nature of services remained unchanged. The AO treated the change as an attempt to avoid tax and invoked section 9(1)(i) of threshold, income from professional services is taxable only in the country of residence under Article 14 of the DTAA. Accordingly, the Tribunal ruled that the assessee was entitled to DTAA protection and that the impugned income was not taxable in India. The Tribunal also rejected the Revenue's allegation that the consultancy arrangement was a colorable device adopted to avoid tax, holding that mere similarity in functions before and after termination of employment does not justify recharacterization of the contractual relationship. Consequently, the ITAT allowed the assessee's appeal, holding that the UAE-based NRI assessee was eligible for beneficial treatment under Article 14 of the India–UAE DTAA by virtue of section 90(2) of the Act.

Ruling

In the present case, The Hon'ble bench held that the assessee was entitled to the benefit of the India–UAE DTAA in respect of consultancy income of INR 8.30 crore received from Zerodha Broking Limited ("ZBL") for rendering management consultancy services. The Tribunal observed that the services provided by the assessee fall within the ambit of "professional services" as defined under Article 14(2) of the DTAA. While the Revenue denied DTAA relief by contending that the services rendered were not professional in nature and invoked section 9(1)(i) of the Act on the ground of Significant Economic Presence ("SEP"), exceeding the threshold prescribed under Rule 11UD, the Tribunal noted that although the income may be deemed to accrue or arise in India under Explanation 2A(a) to section 9(1)(i), the overriding provisions of section 90(2) of the Act remain applicable. The bench held that, in the absence of a permanent establishment or fixed base in India, and the assessee's stay being below the prescribed the Act by alleging Significant Economic Presence, further holding that the assessee was not eligible for relief under Article 14 of the India–UAE DTAA. A draft assessment order was passed under section 144C(1) on 29.03.2024 proposing addition of Rs. 8,28,36,296/- as business income. The assessee filed objections before the DRP, which were rejected as time barred. Consequently, the AO passed the final assessment order on 10.12.2024 under section 144C(13) assessing the said amount as taxable business income. Aggrieved, the assessee is in appeal before the Tribunal.

Source : ITAT, Visakhapatnam in the case of Vijay Mariappan Austin Prakash Vs ACIT vide [TS-1744-ITAT-2025(VIZ)] on December 05, 2025

Transponder Charges Not Royalty; TDS Not Required Under India–UK DTAA

Facts

The assessee, an Indian company engaged in media publishing and broadcasting activities across India and South Asia, entered into an agreement with Intelsat Global Sales and Marketing Limited, a UK-based company, for up-linking and down-linking of satellite signals for broadcasting television channels in India. Pursuant to the agreement, the assessee made periodic payments to Intelsat UK towards transponder service charges, with taxes, if any, to be borne by the assessee. Though the assessee believed that such payments were not taxable in India under the Income-tax Act as well as the India–UK DTAA, it withheld tax on a grossed-up basis as a measure of abundant caution and thereafter filed an appeal under section 248 of the Act seeking a refund. The learned CIT(A), relying on judicial precedents including the decisions of the Hon'ble Bombay and Delhi High Courts, held that payments for transponder services do not constitute royalty and that no tax was deductible at source. On appeal by the Revenue, the Tribunal set aside the order on procedural grounds and remitted the matter to the CIT(A) for fresh adjudication.

Ruling

The Hon'ble bench held that payments made by the assessee to a UK-based satellite operator for transponder services do not constitute "royalty" under Article 13 of the India–UK DTAA and, consequently, no withholding obligation arises under section 195 of the Act. The Tribunal observed that under the contractual arrangement, the UK entity retained full ownership, control, and operation of the satellite and related infrastructure, while the assessee merely availed a standard transponder facility without any possessory rights, control, or access to the satellite or transponder. Relying on the rulings of the Hon'ble Delhi High Court in Asia Satellite Telecommunications Co. Ltd. and the jurisdictional High Court in Neo Sports Broadcast Pvt. Ltd., the Tribunal reiterated that payments for transponder services do not amount to royalty under tax treaties in the absence of use of, or right to use, equipment or a secret process. The ITAT further held that the retrospective amendment introduced by Explanation 6 to section 9(1)(vi) of the Act cannot be read into the DTAA unless the treaty itself is amended through bilateral negotiations. The Tribunal noted that since Article 13 of the India–UK DTAA remained unamended, the domestic law amendment had no bearing on treaty interpretation, particularly where the applicability of the DTAA was not disputed and treaty provisions prevailed under section 90(2) of the Act. Accordingly, the ITAT held that no tax was deductible at source on payments made towards transponder services and dismissed the Revenue's appeal.

Source : ITAT, Mumbai in the case of Income tax officer vs Bennett Coleman & Co. Ltd. vide [TS-47-ITAT-2026(Mum)] on January 14, 2026

Flight Data and Information Services Do Not Constitute Royalty Under India–Germany DTAA

Facts

The assessee is a company incorporated in Germany and a tax resident of Germany under Article 4 of the India–Germany DTAA, engaged globally in providing specialized aeronautical information solutions and flight-planning software to airline operators. During the year under consideration, the assessee earned INR 47.61 crore from Indian customers for supplying navigational and aeronautical data in electronic and physical formats and for licensing Electronic Flight Bag and related software along with associated implementation, training, and support services. The assessee claimed the receipts as business income not taxable in India in the absence of a Permanent Establishment. The Assessing Officer, however, held that the consideration constituted "royalty" under section 9(1)(vi) of the Act and Article 12 of the India–Germany DTAA on the ground that the compilation and supply of specialized data and software involved use of commercial and scientific experience, noting also the assessee's differing tax treatment in earlier years and discrepancies in exempt income and TDS disclosures. The Dispute Resolution Panel upheld the Assessing Officer's view, and the final assessment order dated 24.12.2024 was passed under section 143(3) read with section 144C(13), treating the receipts as royalty..

Ruling

In the present case, the Hon'ble Tribunal partly allowed the appeal of the assesse. The Tribunal held that the services rendered by the assessee could not be characterized as "royalty" under Article 12(3) of the India–Germany DTAA, and that even the ancillary services fell outside the scope of the said Article. The ITAT observed that where the Revenue seeks to tax a payment as royalty under the limb relating to "information concerning industrial, commercial or scientific experience," it must be demonstrated that proprietary know-how or experience has been transferred or imparted to the payer so as to enable its independent use. Relying on the OECD Commentary and the judgment of the Hon'ble Bombay High Court in Diamond Services International, the Tribunal emphasized that the mere existence of specialized skill, experience, or technical capability with the service provider does not render the consideration royalty; rather, the decisive test is the nature of what is parted with. In the present case, the assessee merely used its expertise to compile and supply aviation data in an agreed format, without transferring any proprietary methodology, algorithms, or technical processes, and the customers were not enabled to independently utilize such know-how. Accordingly, the receipts were held to be consideration for services or supply of information, taxable, if at all, under Article 7 and not as royalty under Article 12(3) of the DTAA.

Source : ITAT, Mumbai in the case of Jeppesen GmbH vs ACIT, vide [TS-1761-ITAT-2025(Mum)] on December 29, 2025

Revenue Must Prove PE; Deemed PE Cannot Be Assumed Without Basis

Facts

The brief facts are that the assessee is a UK-incorporated and UK-tax-resident company, forming part of the Baker Hughes Group, engaged in offshore supply of equipment and standard software and in providing services and leasing plant and machinery for oil and gas exploration and production activities. During the relevant assessment year, the assessee entered into contracts with Indian entities and received Rs. 2,50,99,018/- towards offshore supplies made on an FOB basis, with title passing and consideration received outside India. The assessee contended that such receipts were not taxable in India and that it had no Permanent Establishment in India under the India–UK DTAA. However, the Assessing Officer, without assigning reasons, held that the assessee had a deemed PE in India and attributed 38.28% of profits to such alleged PE. The Dispute Resolution Panel upheld the Assessing Officer's view, leading to the final assessment order, which is challenged by the assessee as being arbitrary and unsupported by facts.

Ruling

The Hon'ble Tribunal held that the assessee, a Baker Hughes group entity engaged in offshore supply of equipment and standard software, did not have a Permanent Establishment (PE) in India. The Tribunal observed that the burden to establish the existence of a PE or deemed PE lies squarely on the Assessing Officer. On examination of the assessment order, the ITAT noted that the Assessing Officer had merely assumed the existence of a deemed PE under Article 5 of the India–UK DTAA, without setting out any factual or legal basis for such conclusion. The Tribunal also took note of the assessee's submission that in an earlier assessment year it had accepted a minimal profit attribution only to avoid protracted litigation, which could not be relied upon as a precedent in the absence of supporting facts. Relying on the decision of the Hon'ble Supreme Court in Ishikawajima-Harima Heavy Industries Ltd., the ITAT reiterated that where offshore supplies of goods are concluded outside India, with transfer of title and receipt of consideration occurring outside India, such transactions are not taxable in India. Accordingly, the appeal was partly allowed.

Source : ITAT, Delhi in the case of Sondex Wireline Ltd. vs ACIT, vide [TS-1753-ITAT-2025(DEL)] on December 3, 2025

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