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Canon India Entitled to Full FTC on Japan Taxes Despite Sec. 10A Exemption

Facts

The appellant, Canon India Pvt. Ltd., is engaged in trading and distributing imaging and optical products, filed its return for AY 2003-04 declaring a loss of INR 1,29,49,178, later revised to reflect a loss of INR 4,48,34,310 crore including a claim for deduction under Section 10A of the Income Tax Act, 1961 against income of INR 3,05,13,171 earned by its STPI unit. The assessment was completed under Section 143(3) at NIL income after set-off of brought-forward losses and a transfer pricing adjustment. During the year, the assessee earned income from Japan, where INR 20,39,37,900 was withheld as tax, and claimed Foreign Tax Credit (FTC) under Section 90 and the India-Japan DTAA. The AO disallowed the claim, stating that the corresponding income was either exempt under Section 10A or offset by brought-forward losses, resulting in no Indian tax liability against which the foreign taxes could be credited. Aggrieved, the assessee appealed, and the present matter before the ITAT concerns the correctness of the FTC disallowance and denial of refund for AY 2003-04.

Rulings

In the present case, The Delhi ITAT held that Canon India Pvt. Ltd. is entitled to claim full Foreign Tax Credit (FTC) in India for taxes withheld in Japan, even though the corresponding income was exempt under Section 10A or offset by brought-forward losses, resulting in no Indian tax liability and thereby a refund. The Tribunal relied on its own earlier ruling in the assessee's case, the Karnataka High Court judgment in Wipro Ltd., and the jurisdictional High Court ruling in HCL Comnet Systems and Services Ltd., which affirmed that FTC cannot be restricted due to nil tax liability arising from deductions or losses. Rejecting Revenue's argument based on the Act and Article 23 of the India-Japan DTAA, the bench clarified that the existence of a jurisdictional High Court decision makes the question of following binding precedent unquestionable. Accordingly, the ITAT directed that the assessee be granted complete credit of taxes paid in Japan on export revenues, without restriction on account of Section 10A deduction or business losses.

Source: ITAT, Delhi in the case of Canon India Pvt Ltd. Vs DCIT vide [TS-1493-ITAT-2025(DEL)] on November 10, 2025

No FTS Taxability on Support Services Where 'Make Available' Condition Not Met: India-UK DTAA

Facts

The assessee, a UK-based company and part of the CPP Group and provides a range of services. During the relevant year, the assessee rendered services to its Indian associate enterprise, CPP Assistance Services Pvt. Ltd. (CPP India), comprising (i) IT support services for maintaining and operating the CPP Group's core IT infrastructure, earning INR 20.81 crore at a 5% markup; (ii) non-IT support services in HR, finance, legal, compliance, and internal audit, earning INR 89.41 lakh at a 5% markup; and (iii) IT development services for creating a dedicated IT platform for CPP India, earning INR 5.32 crore. The assessee offered the income from IT development services for taxation, while the dispute pertains to IT and non-IT support services. The assessee contends that similar payments were held non-taxable by the Tribunal in CPP India's case for AYs 2017-18, 2018-19, and 2020-21, as the "make available" condition under the India-UK DTAA was not satisfied, and therefore the amounts cannot be treated as Fees for Technical Services (FTS) under the Act.

Rulings

The Hon'ble bench hold that payments received by a UK-based entity from its Indian affiliate for IT development and non-IT support services are not taxable as Fees for Technical Services (FTS) under Article 13 of the India-UK DTAA, as the 'make available' condition was not satisfied. The Tribunal rejected Revenue's argument that IT development services altered the factual matrix, noting that the DRP itself found IT support and IT development functionally distinct. It observed that Revenue failed to show any evidence that the Indian entity became independently capable of performing IT support services. Regarding non-IT support services, the bench noted these were routine managerial and standardization services, with no transfer of know-how or creation of capability. The AO had treated both IT and non-IT services as FTS on the premise of technical know-how transfer, but the Tribunal found no enduring knowledge or skill was imparted. Accordingly, the ITAT allowed the assessee's appeal, holding that receipts for IT support and non-IT services cannot be taxed as FTS under the DTAA.

Source:ITAT, Delhi in the case of CPPGROUP Services Limited vs ACIT vide [TS-1477-ITAT-2025(DEL)] on November 4, 2025

Subscription Fee for Access to Copyrighted Articles Not Royalty Under India-US DTAA

Facts

The assessee, a company incorporated in the USA and a tax resident there, acts as the sole Global Decimal Administrator (GDA) for the mobile industry, responsible for allocating IMEI numbers to device manufacturers as per 3GPP standards. It appointed AB Mobile Standards Alliance India Pvt. Ltd. (MSAI) as Regional Administrator under an agreement requiring MSAI to pay 70% of service fees collected from manufacturers as administration fee. The AO and DRP treated this fee as royalty under Section 9(1)(vi) of the Income Tax Act and Article 12 of the India-US DTAA. The assessee argued that similar additions for AYs 2013-14 and 2015-16 were deleted by the Tribunal, holding the fee was not royalty. The second issue relates to INR 21.33 lakh subscription fees received from Comviva Technologies Ltd. and Plintron Global Technology Solutions Pvt. Ltd. under agreements granting limited, non-transferable access to telecom data. The AO treated this as royalty, but the assessee contends ownership remained with it, subscribers could not copy or commercially exploit the data, and relied on Delhi HC ruling in CIT v. Relx Inc. to argue the subscription fee is not royalty.

Rulings

In the present case, the Hon'ble Tribunal hold that the subscription fees for providing access to copyrighted articles are not royalty under the Income Tax Act or Article 12(3) of the India-US DTAA. Relying on the Supreme Court's ruling in Engineering Analysis, ITAT noted that payments for use of a copyrighted article, without granting rights in the copyright itself, do not constitute royalty. Examining the Master License Agreement with Comviva Technologies, the Tribunal observed that the assessee granted limited, internal-use access without permitting commercial exploitation or transfer of rights. ITAT emphasized that subscribers only accessed copyrighted material, not the copyright itself. Referring to the Delhi High Court decision in Relx Inc., it reiterated that subscription fees neither amount to royalty nor fees for technical services. Finally, ITAT directed deletion of the addition treating administration fees as royalty, following its own rulings for AYs 2013-14 and 2015-16.

Source: ITAT, Delhi in the case of GSMA Ltd. vs ACIT, vide [TS-1489-ITAT-2025(DEL)] on November 4, 2025

LO Activities Held Preparatory and Auxiliary Under India-Netherlands DTAA; No PE and Profit Attribution

Facts

The brief facts are that the assessee, a foreign company, operates a Liaison Office (LO) in India performing activities permitted by the RBI. For AY 2021-22, it filed a nil return, stating that the LO only incurred expenses for salaries, rent, travel, and office operations, and its role was limited to liaising between Indian parties and group companies without undertaking any business activity. The LO gathers market information on petroleum coke from refineries and user industries and communicates it to the head office. It has no authority to conclude contracts, holds no inventory, and operates solely on inward remittances from the head office. The AO rejected the assessee's claim that its activities were preparatory and auxiliary, citing employment of qualified staff and lack of trade details, and attributed 50% of profits, adding INR 1.53 crore. On appeal, the DRP upheld the existence of PE but reduced attribution to 12.27%, lowering the addition to INR 37.63 lakh. The assessee has challenged this order before the Tribunal.

Rulings

The Hon'ble Tribunal held that the Liaison Office (LO) of a Netherlands-based assessee cannot be treated as a Permanent Establishment (PE) under Article 5 of the India-Netherlands DTAA. The assessee, permitted by RBI to carry out limited liaison activities, filed a nil return for AY 2021-22. The AO attributed 50% profits to the LO, alleging that its highly qualified staff performed more than preparatory or auxiliary functions, and added INR 1.53 crore. On appeal, the ITAT noted that the LO merely acted as a communication channel between Indian parties and the head office without engaging in commercial or industrial activities. Referring to Article 5(1) and 5(4) of the DTAA and OECD BEPS Action 7, the Tribunal emphasized that fragmentation of activities cannot create PE status unless core business functions are performed. It found no evidence that the LO or the dormant Indian subsidiary concluded contracts or undertook business activities, nor were LO employees authorized to sign agreements. Applying the Supreme Court ruling in UOI v. UAE Exchange Center, the ITAT held that the LO's activities were within RBI's permitted scope and purely preparatory and auxiliary. Accordingly, the addition was deleted.

Source: ITAT, Mumbai in the case of Oxbow Energy Solutions B.V. vs DCIT, vide [TS-1465-ITAT-2025(Mum)] on November 4, 2025

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