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High Court Rulings

Calcutta HC Upholds Higher Tax Rate on Foreign Bank's PE; No Relief Under DTAA Non-Discrimination Clause

Facts

The appellant, Royal Bank of Scotland N.V. (formerly known as ABN Amro Bank N.V.), is a non-resident banking company incorporated in the Netherlands and carrying on banking operations in India through its branch office, which constitutes a Permanent Establishment (PE) under the provisions of the Income-tax Act, 1961 as well as the India-Netherlands Double Taxation Avoidance Agreement (DTAA). For Assessment Year 2003-04, the assessee filed its return of income and claimed that it should be taxed at the rate applicable to domestic companies instead of the higher rate prescribed for foreign companies, relying upon the non-discrimination clause contained in Article 24(2) of the DTAA. The assessee also claimed deduction of interest paid by its Indian PE to its Head Office and other overseas branches. These claims were in line with the stand consistently taken by the assessee in earlier assessment years, including Assessment Year 1999-2000. Further, during the year under consideration, a dispute arose regarding the rate of depreciation admissible on Automated Teller Machines (ATMs). The assessee contended that ATMs are essentially computers and, therefore, eligible for depreciation at the higher rate applicable to computers under the Income-tax Rules. However, the Tribunal restricted the depreciation claim, giving rise to the dispute as to whether an ATM qualifies as a computer for the purpose of claiming higher depreciation under the tax laws.

Source : HC, Calcutta in the case of *The Royal Bank of Scotland N.V., Vs DIT vide [TS-1532-HC-2026(CAL)] on September 26, 2026*

Ruling

In the present case, The Calcutta High Court held that Royal Bank of Scotland N.V. was not entitled to be taxed at the lower rate applicable to domestic companies and was liable to tax at the rate prescribed for foreign companies. The Court rejected the assessee's contention that the benefit of the lower tax rate could be claimed by invoking the non-discrimination clause contained in Article 24(2) of the India-Netherlands DTAA. The Court observed that a company can be treated as a domestic company under section 2(22A) of the Income-tax Act only if it is an Indian company or a foreign company that satisfies the prescribed conditions regarding declaration and payment of dividends in India. Since the assessee did not fulfil these conditions, it continued to be a foreign company under section 2(23A) and was therefore subject to the tax rate applicable to foreign companies. The High Court further relied on Explanation 1 to section 90, inserted by the Finance Act, 2001 with retrospective effect, which clarifies that charging a foreign company at a rate higher than that applicable to a domestic company shall not be regarded as discrimination for the purposes of a DTAA. The Court held that the amendment was clarificatory in nature and reflected the legislative intent that different tax rates for domestic and foreign companies do not violate the non-discrimination provisions of a tax treaty. The Court also held that the requirement of taxpayers being in the same circumstances under Article 24(2) of the DTAA was not satisfied. A foreign company and a domestic company are not similarly situated, as a domestic company is generally taxed on its global income whereas a foreign company is taxed only on income arising in India. Therefore, the differential tax treatment between the two categories cannot be regarded as discriminatory. Accordingly, the High Court held that the DTAA did not override the domestic provisions prescribing a higher tax rate for foreign companies and dismissed the assessee's appeal.





ITAT Rulings

Indian AE's Support and Coordination Functions Insufficient to Trigger DAPE in India

Facts

The assessee, Expedia Lodging Partner Services Sarl (ELPS), a Switzerland-based company, was engaged in providing online lodging-related services and earned commission from Indian lodging suppliers under the "hotel collect" model, where customers paid hotels directly and the assessee subsequently received a commission. The assessee operated through its Indian associated enterprises, namely Hotels.com India Pvt. Ltd. (HCOM-IN) and Expedia Online Travel Services India Pvt. Ltd. (EXP-IN), which provided payment collection, software development, and administrative support services for which they were compensated at arm's length. For the relevant assessment year, the assessee received commission income of Rs. 12.88 crore from Indian lodging suppliers and claimed the same as non-taxable business income in India on the ground that it did not have a Permanent Establishment (PE) in India. However, the Assessing Officer held that the Indian AEs were performing core functions of the assessee and constituted a Dependent Agent Permanent Establishment (DAPE) under Article 5(5) of the India-Switzerland DTAA. Consequently, a portion of the profits was attributed to the alleged DAPE and taxed in India. The DRP upheld the assessment order, following which the assessee filed an appeal before the Tribunal.

Ruling

The Hon'ble bench held that Expedia Online Travel Services India Pvt. Ltd. (EXP-IN) did not constitute a Dependent Agent Permanent Establishment (DAPE) of the assessee in India under Article 5(5) of the India-Switzerland DTAA. The Tribunal observed that the Revenue failed to establish the essential condition that EXP-IN habitually exercised authority to negotiate or conclude contracts on behalf of the assessee. It found that the Assessing Officer had selectively relied on certain responses from Indian hotels and email communications while ignoring the overall factual position. On examining the evidence, the ITAT concluded that EXP-IN's employees were merely engaged in liaison, coordination, and administrative support activities and had no authority to determine contractual terms, pricing, or conclude contracts. Relying on the Supreme Court decisions in E-Funds IT Solution Inc. and Formula One World Championship, the Tribunal held that the existence of an Indian subsidiary or associated enterprise alone does not create a PE, and that the Revenue must prove the specific treaty conditions through cogent evidence. Accordingly, it held that no DAPE existed in India and deleted the profit attribution made by the Revenue.

Source : *ITAT, Delhi in the case of Expedia Lodging Partner Services Sarl. vs ACIT vide [TS-1541-ITAT-2026(DEL)] on September 28, 2026*



Tribunal Upholds Distinction Between Live and Non-Live Telecast Rights; Only Repeat Broadcast Rights Treated as Royalty

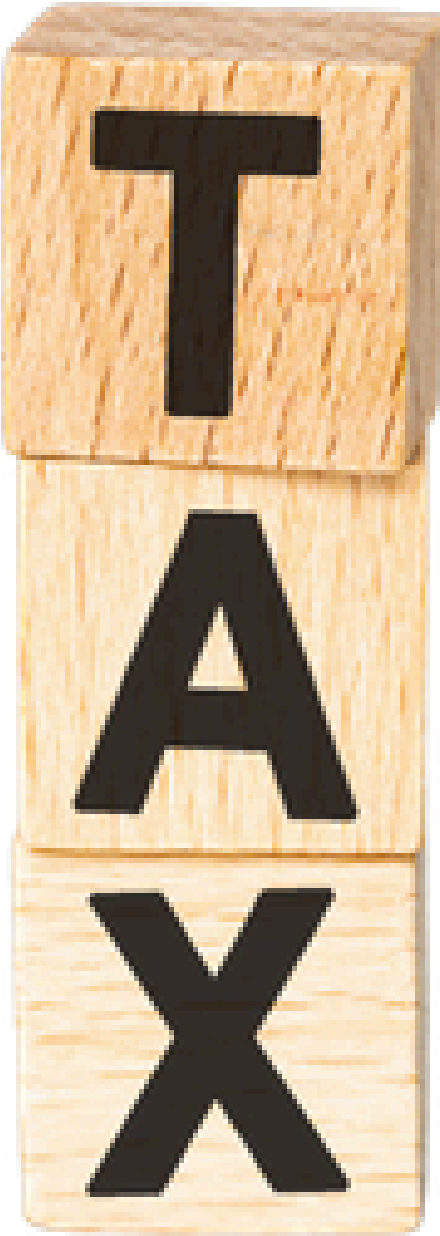
Facts

The assessee, was engaged in the business of live streaming and broadcasting sports events outside India and acquired media rights from overseas entities for the telecast of cricket matches in specified territories, including the USA and certain US territories. During the relevant year, the assessee entered into a media rights agreement with Willow TV International Ltd., which had obtained the relevant broadcasting rights through a chain of assignments originating from the International Cricket Council (ICC). Pursuant to the agreement, the assessee paid a composite licence fee of USD 30.40 lakh (Rs. 20.25 crore) towards live and non-live (post-match) broadcasting rights. During assessment proceedings, the Assessing Officer held that the payments made to the non-resident entity were subject to tax deduction at source and, since no tax had been withheld, disallowed a portion of the expenditure under section 40(a)(i) of the Income-tax Act. In appeal, the CIT(A) held that the payments were not in the nature of royalty and, following judicial precedents, accepted the bifurcation of rights in the ratio of 95:5 between live and post-match broadcasting. Accordingly, the disallowance was restricted only to the portion attributable to non-live (post-match) broadcasting. Aggrieved by the relief granted by the CIT(A), the Revenue filed an appeal before the Tribunal.

Ruling

In the present case, The Delhi ITAT partly allowed the Revenue’s appeal and held that consideration paid for live telecast of sports events could not be treated as royalty under section 9(1)(vi) of the Income-tax Act or Article 12 of the India-Singapore DTAA, since no copyright or related intellectual property rights were transferred to the assessee. Relying on the Supreme Court’s decision in Sri Lanka Cricket, the Tribunal observed that payments for mere live broadcasting rights, without any right to exploit or reproduce the copyrighted content, do not constitute royalty. However, the Tribunal held that consideration attributable to non-live or repeat telecast rights is taxable as royalty under section 9(1)(vi), as such rights involve the use of copyright in the broadcast content. While the CIT(A) had allocated the consideration between live and non-live rights in the ratio of 95:5, the Tribunal adopted a 93:7 ratio based on viewership data and held that 7% of the total payment related to repeat telecast rights. Accordingly, the Tribunal sustained the disallowance under section 40(a)(i)/40(a)(ia) to the extent attributable to the repeat telecast component, on which no tax had been deducted at source.

Source : ITAT, Delhi in the case of ACIT vs Times Content Limited (Now known as Time Internet Limited), vide [TS-1415-ITAT-2026(DEL)] on September 8, 2026



Payments for Diamond Certification Not Fees for Technical Services; TDS Default Demand Quashed

Facts

The brief facts are that the assessee was engaged in the business of importing, manufacturing, trading, and exporting diamonds, as well as manufacturing and exporting jewellery. During the relevant assessment years, it made payments to various non-resident entities located in countries such as the USA, UK, Belgium, Hong Kong, Thailand, Botswana, and South Africa for obtaining diamond grading and certification reports without deducting tax at source under section 195 of the Income-tax Act. The Assessing Officer held that these payments constituted Fees for Technical Services (FTS) chargeable to tax in India and, consequently, treated the assessee as an assessee in default under section 201(1) and levied interest under section 201(1A). On appeal, the CIT(A) examined the nature of the grading and certification services and concluded that the payments were not in the nature of FTS and were therefore not taxable in India. Accordingly, the demands raised under sections 201(1) and 201(1A) were deleted. Aggrieved by the relief granted by the CIT(A), the Revenue filed appeals before the Tribunal.

Source : *ITAT, Mumbai in the case ITO/DCIT vs Hari Krishna Exports Private Limited, vide [TS-1409-ITAT-2026(Mum)] on September 7, 2026*

Ruling

The Hon'ble bench held that the payments made by the assessee to non-resident entities for diamond grading and certification services did not constitute Fees for Technical Services (FTS) either under Explanation 2 to Section 9(1)(vii) of the Income-tax Act or under the relevant DTAA provisions. The Tribunal observed that the non-resident entities merely examined the diamonds and issued independent grading/certification reports, and no technical knowledge, skill, know-how, process, or methodology was made available to the assessee. The ITAT rejected the Revenue's contention that the use of specialized expertise or technical equipment by the grading agencies automatically rendered the payments as FTS. It noted that while the certification reports may enhance the marketability and credibility of the diamonds, the essential nature of the service remained that of independent evaluation and certification. The Tribunal further held that the location of the grading entity or the country in which it was situated did not alter the character of the payment. Relying on its earlier decisions in the assessee's own case and the Supreme Court ruling in GE India Technology Centre Pvt. Ltd., the Tribunal concluded that the payments were not chargeable to tax in India. Consequently, the assessee had no obligation to deduct tax at source under section 195, and therefore the demand raised under section 201(1) and the consequential interest under section 201(1A) were rightly deleted.



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