No remand order as CIT(A) had analyzed all clauses of India-UK DTAA to hold that sums couldn't be taxed as royalty

Summary – The Mumbai ITAT in a recent case of Airline Rotables Ltd., (the Assessee) held that where in order to determine taxability of payment made to a UK based company for supplying aircraft components to an Indian company, Tribunal remanded matter back to examine provisions of article 13 of India - UK DTAA, in view of fact that article 13(3)(a) would not apply to assessee's case, Commissioner (Appeals) was justified in examining matter from angle of article 13(3)(b) of DTAA only and holding that payment in question was not taxable in India as 'royalty'.

Facts

- The assessee was a non-resident company incorporated in United Kingdom (UK) with the main business object of providing spares and component support for aircrafts to aircraft operators.
- It entered into an agreement for providing rotables (aircraft components) to 'J' Ltd. an Indian company.
- In the course of assessment, the Assessing Officer taking a view that assessee had a PE in India within the meaning of article 5 of Indo-UK DTAA, held that the 10 per cent of the 'global turnover' of the assessee from Indian operations was taxable as 'business income' of the assessee.
- The matter travelled to the Tribunal on the issues relating to the PE in India and also about the quantification of the income applying the 10 per cent as rate of profit. The Tribunal passed an order holding that the assessee had no PE in India within the meaning of article 5 of Indo-UK DTAA.
- However, on the taxability of the impugned payments, the Tribunal observed that the absence of PE in India and consequently, the inapplicability of article 7(1) of the Treaty, was not the end of the road.
- The Tribunal opined that it was possible while the consideration for use or right to use the consignment stock of equipment may become taxable under article 7(1) read with article 13 of India-UK DTAA.
- Thus, for the purpose of examining the applicability of the provisions of Article 13 in general and Article 13(3)(b) in particular, the matter was remitted to the files of the Commissioner (Appeals) for limited adjudication on this aspect of the matter.
- The Commissioner (Appeals), having examined the provisions of article 13(3)(b) of India-UK DTAA, concluded that amount received by assessee could not be brought to tax in India as 'royalty'.
- Against said order, the revenue filed instant appeal contending that since the Commissioner (Appeals) examined the directions of the Tribunal only from the angle of the applicability of the article 13(3)*(b)* only, the issue was to be remitted once again for adjudication from the angles of the applicability of all the provisions of article 13 of DTAA with UK.

Held

- On perusal of the order of the Tribunal in first round of the proceedings, it is found that the Tribunal is categorical in making a reference to article 13(3)*(b)* of the Treaty in a restricted sense. The Tribunal correctly opined the same considering the special provisions applicable to the impugned payments.
- From the above, it is clear that the Tribunal's direction was restricted to the examination of the applicability of the provisions of article 13 of the treaty in general, and article 13(3)*(b)* in particular. *Prima facie,* the provisions of article 13(3)*(a)* would not apply to the case of the assessee as the said clause *(a)* deals with situation of payment 'for information concerning industrial, commercial or scientific experience'.
- It is also not the case of the Tribunal that the provisions of section 9(1)*(vii)* should also be examined. Therefore, the scope of remitting the matter to the files of the Commissioner (Appeals) was restricted to in the said order of the Tribunal. Thus, the order of the Commissioner (Appeals) is reasonable and it does not call for any interference.
- In the result, the appeals of the revenue are dismissed.