

Sum paid to Singaporean-Co. for logistic services wasn't 'FTS' as it didn't satisfy make available clause of DTAA

Summary – The High Court of Karnataka in a recent case of Sun Microsystems India (P.) Ltd., (the Assessee) held that where a Singapore company rendered services to assessee, without making available to assessee its technical knowledge, experience or skill, there was no liability to deduct tax at source from payments made for services in question.

Facts

- The assessee entered into a logistics services agreement with its associated enterprise, namely, 'S' Singapore.
- In terms of agreement, 'S' Singapore was required to provide distribution management and logistics services to the assessee-company 'S' India and such services included providing spare management services, provision of buffer stock, defective repair services, managing local repair centers, business planning to address service levels etc.
- 'S' Singapore was not having any place of business or permanent establishment in India. Entire services were rendered by 'S' Singapore from outside India. 'S' Singapore was not engaged in the business of providing logistic services in India.
- The material on record did not disclose that 'S' Singapore had made available to the assessee its technical knowledge, experience or skill.
- Under these circumstances, the Tribunal held that, as 'S' Singapore was not having any permanent establishment and that 'S' Singapore had not made available the technical knowledge, experience or skill, the payments made by assessee to 'S' Singapore were not taxable in view of articles 7 and 12 of DTAA between India and Singapore.

Held

- From the facts of this case, it is clear that Sun Singapore has not made available to the assessee the technology or the technological services which is required to provide the distribution, management and logistic services. That is a finding of fact recorded by the Tribunal on appreciation of the entire material on record. When once factually it is held the technical services has not been made available, then in view of the law declared in *CIT v. De Beers India Minerals (P) Ltd.* [\[2012\] 346 ITR 467/208 Taxman 406/21 taxmann.com 214 \(Kar.\)](#), there is no liability to deduct tax at source and therefore, the finding recorded by the Appellate Authority cannot be found fault with. In that view of the matter, the substantial question of law is answered in favour of the assessee and against the revenue.
- Accordingly, the appeal is dismissed.