

## **ITAT directs AO to decide whether receipt for customized research/retail management services would royalty or FTS**

**Summary – The Mumbai ITAT in a recent case of Acnielsen Corporation Org Marg (P.) Ltd., (the Assessee) held that where assessee, a US based company, received certain amount from rendering customised research services and retail management services to its group concerns located in India, conclude as to whether consideration received by assessee company would fall within meaning of 'Royalty' or 'Fees for included services', matter was to be remanded back for disposal afresh in light of article 12 of India USA DTAA.**

### **Facts**

- The assessee, a US based company, belonged to AC Nielson Group. The said group was represented in India through its two legal entities.
- The assessee offered customized research services and retail management services to those legal entities in India.
- The Assessing Officer held that the amount received by assessee from rendering said services was taxable as 'royalty' within the meaning of section 9(1)(vi) and also under article 12 of the DTAA entered between India and USA. Accordingly, the Assessing Officer assessed the impugned receipts as 'Royalty' in assessment year 2004-05.
- However, in assessment years 2005-06 and 2006-07, the Assessing Officer took a view that the consideration received by the assessee was both in the nature of 'royalty' and 'Fees for included services' within the meaning of article 12 of the DTAA entered between India and USA. Accordingly, he apportioned the consideration in equal proportion between 'royalty' and 'fees for included services' and accordingly assessed the same in the hands of the assessee.
- The Commissioner (Appeals) affirmed the view taken by the Assessing Officer in assessment years 2005-06 and 2006-07 that the consideration received by the assessee was both in the nature of 'Royalty' and 'Fees for included services'. Accordingly, Commissioner (Appeals) modified the order passed by Assessing Officer for assessment year 2004-05 and directed him to assess the consideration both as 'Royalty' and 'Fees for included services' in equal proportion.
- On second appeal:

### **Held**

- The expressions 'Royalty' and 'Fees for included services' have been given distinct meaning in the Indo US treaty. The tax authorities were not able to come to a conclusion as to whether consideration received by assessee company would fall within meaning of 'Royalty' or 'Fees for included services' even though there are plethora of case laws explaining both the terms.

- Hence, it is opined that the tax authorities have not examined the impugned issue in proper perspective, i.e. the matter has not been examined in the context of Indo-US treaty by considering the meaning of various terms used therein. Under these circumstances, the impugned matter requires fresh examination at the end of the Assessing Officer.
- In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.