Education consultancy services provided by US based co. weren't taxable in absence of its PE in India

Summary – The Mumbai ITAT in a recent case of Partners Hardvard Medical International Inc., (the Assessee) held that Fees for education consultancy services rendered by assessee - non-resident not taxable in India

Facts

- The assessee was a non-profit educational entity incorporated in USA. It had become subsidiary of Partners Healthcare System Inc. and provided various educational and consultancy services under the agreements entered with various Indian entities and received consideration for the same.
- The assessee claimed that none of the receipt were taxable in India as they did not fall in category of royalty or fees for included services. It was further contended that these receipts fell in category of business receipts and they were not taxable in India, since it did not have permanent establishment in India.
- However, the Assessing Officer treated all the receipts as taxable.
- On appeal, the Commissioner (Appeals) held that fees received under consulting agreement from Wockhard Hospitals and Carol Info Services were taxable as 'Fee for included services'; the fees received from Wockhard Hospitals in pursuance of award agreement and receipts by way of reimbursement of expenses were not taxable; fees received from Wockhard Hospitals Ltd. and SRMCRI under the education and teaching agreement was partially taxable.
- On further appeal to Tribunal, both the parties challenged the order of the Commissioner (Appeals) on the points decided against each of them.

Held

- The coordinate bench of Tribunal has passed the order, dated 22-02-2013 in the assessee's own case relating to assessment year 2004-05 in IT Appeal No.791 of 2008 and IT Appeal No.1020 of 2008, wherein it has followed the orders passed by the coordinate benches from assessment year 2000-01 onwards. In assessment year 2004-05, the assessee had received fees from Max India Ltd. for identical services rendered by the assessee for advisory services rendered. Identical view was taken in the case of receipts from Wockhard Hospitals. The Tribunal consistent with the aforesaid view taken by the Tribunal in assessee's own case, held that the payments received from Max does not constitute FIS (Fee for Included Services) within the meaning of article 12(4), as nothing is made available by the assessee to Max and also the assessee does not have any P.E in India. Therefore the income so arising to the assessee in India cannot be taxed under article 7 as 'Business Profits'.In case of WHL (Wockhard Hospitals Ltd) also, it was held that it is neither taxable as FIS nor as royalty and also the assessee does not have any P.E in India and, therefore, the payment received by it cannot be taxed in India.

- The abovesaid decision of the Tribunal shall be applicable to the fees received by the assessee in the current year under consulting agreement (Wockhard Hospitals and Carol Info Services Ltd.) and under award agreement (Wockhard Hospitals).
- The Tribunal also considered the issue relating fees received under Education and Teaching Agreement from SRMCRI. Since the assessee had allowed the SRMCRI to use its Logo, the tax authorities had taken the view that the fee received also pertains to royalty for use of Logo. In respect of this receipt also, the Tribunal held that they cannot be considered as royalty or fee for Included Services and further it cannot also be taxed as Business profits, since the assessee does not have P.E. Hence this decision is applicable to the fees received from Wockhard Hospitals and SRMCRI under Education and Teaching Agreement.
- In respect of amount received by way of reimbursement of expenses also, the Tribunal in its order held that the same cannot be held to be taxable, since the main receipts have been held to be not taxable.
- Thus, it is seen that the Tribunal has considered identical issues in assessment year 2004-05 and it has held that none of the receipts is taxable in India.
- It was noticed that the tax authorities have examined only the agreements and have drawn conclusion against the assessee. They have not examined about the nature of services actually provided or delivered by the assessee to the Indian entities. One may not be able to come to a conclusion about the nature of services provided unless the actual services/deliverables are examined. Then one shall be in a position to ascertain as to whether the services or techniques provided was mere commercial information or a technique made available to the assessee.
- In the absence of such kind of examination from the side of tax authorities, it was noticed that the Tribunal also has proceeded to adjudicate the issue by considering the agreements only. In the absence of such kind of intricate details, the nature of services *vis-à-vis* the products/package, if any, delivered by the assessee cannot be examined. Since the Tribunal has consistently taken a particular view in the earlier years and since there was no deeper examination done by the tax authorities, the decision rendered by the Tribunal in the earlier years is to be followed. Accordingly, by following the order passed by the Tribunal in the earlier years, the orders of the Commissioner(Appeals) in assessment year 2006-07 and the assessment orders passed on the abovesaid issues in assessment years 2007-08 to 2009-10 are set aside and the Assessing Officer is directed to delete the addition of all the receipts discussed above.
- In the result, the appeal filed by the revenue for assessment year 2006-07 is dismissed and all the appeals of the assessee are allowed.