

## No penalty for non-disclosure of 'FTS' if its taxability was determined by AO after interpreting DTAA

**Summary – The High Court of Bombay in a recent case of Koninklijke-DSM-NV., (the Assessee) held that where payments received from Indian affiliated companies for providing C-ICT and corporate services was not taxed in India in earlier years and TDS amount was refunded, Assessing Officer could not impose penalty even if he held in current year that, receipt from affiliated companies were FTS liable to tax**

### Facts

- The assessee was a company incorporated in Netherlands. The assessee received income from its affiliated companies operating in India in respect of C-ICT charges and corporate services. The assessee was of the view that said income was not chargeable to tax and, hence, filed return declaring *nil* income.
- The Assessing Officer held that the fees received in respect of said services was in fact in the nature of fees for technical services and, therefore, chargeable to tax in India and, hence, imposed a penalty of Rs. 25 lakhs.
- On appeal, the Commissioner (Appeals) held that there was no concealment of particulars of income or furnishing of inaccurate particulars of income and, accordingly, the penalty was deleted.
- On revenue's appeal, the Tribunal upheld the findings of the Commissioner (Appeals).
- On revenue's appeal to the High Court:

### Held

- The two authorities have concurrently come to a finding of fact that the conduct of the respondent assessee was *bona fide* and its claim that amount received from its affiliated companies on account of C-ICT and Corporate Services is not taxable was based on an interpretation of DTAA. It is a settled position of law that where the issue is debatable then mere making of a claim on the basis of a particular interpretation would not lead to an imposition of penalty. Bearing in mind that for the earlier assessment years the respondent assessee claimed and had been granted refund of taxes deducted at source by the affiliated companies in respect of the payment received by it for Corporate Services and C-ICT Services would also establish that the claim made by the respondent assessee that the income received is not chargeable to tax was a *bona fide* claim. On facts there is a concurrent finding of there being no concealment of income or furnishing an inaccurate claim of income.
- In view of the above concurrent finding of fact by the Commissioner (Appeals) and the Tribunal, the proposed question does not give rise to any substantial question of law and, accordingly, appeal dismissed.