

No income can be attributable to PE which is remunerated at ALP

Summary – The Mumbai ITAT in a recent case of Taj TV Ltd., (the Assessee) held that No income could be said to be attributable to assessee, a foreign income, in India from its Indian subsidiary when TPO had accepted that transaction between them was at ALP

Where assessee paid transponder fee to US based company for utilizing its transponder facilities in India and not for right to use artistic work or scientific equipment, it did not fall within ambit of royalty in terms article 12 of DTAA between India and US

Facts

- The assessee, a Mauritian company, was engaged in the business of broadcasting of sports channel, namely, 'Ten Sports' all across the globe including India. It appointed as its exclusive distributor of the TV Channel 'Ten Sports', Taj India (its subsidiary) to the cable operators and other permitted systems on 'principal to principal basis'. Taj India entered into sub-distribution agreement independently with other parties in India under which it shared the distribution revenue with such sub-distributors.
- The assessee filed its return of income declaring '*Nil*' income on the ground that advertisement and distribution revenue earned by it, was not taxable in India.
- The Assessing Officer held that assessee had income chargeable to tax in India on the ground that it had Permanent Establishment in India form of its subsidiary.
- The DRP, by and large upheld the order of the Assessing Officer and restricted 75 per cent of the assessable profits arising from Indian operation to be attributable for the functions performed by the 'PE' in India which had been held liable for taxable in India.
- On appeal, the assessee submitted that in assessee's own case for the assessment years 2003-04 to 2005-06, the Tribunal held that Taj India did not constitute assessee's PE in India. However, he submitted that even if it was presumed that Taj India was a PE of the assessee in India, then also, no income could be said to be attributable to India, because the assessee had remunerated its so-called agent (Taj India) In India at arm's length' consideration.

Held

- From a perusal of the Tribunal's order for the earlier years, so far as the issue relating to PE regarding 'distribution revenue/income' is concerned, 'which was raked up in revenue's appeal, it has been held that Taz India did not constitute 'agency PE' in terms of India-Mauritius DTAA. Only limited point which has been argued is that, even if for the argument sake, it is presumed that Taj India constitutes a PE of the assessee in India, then no further income can be attributed in the hands of the assessee, because the transaction between the assessee and Taj India has been found to be at

arm's length and in support the TPO's order under section 92CA(3) dated 30-9-2009 has been filed in the case.

- Thus, if admittedly Taj India was being remunerated at arm's length, then, no further income/profit could be said to be attributable to the assessee in India from PE. It is an undisputed fact that the TPO has accepted the transaction between the assessee and Taj India at an arm's length price. Hence, if arm's length price of transaction has been accepted between the assessee and Taj India, then nothing further should be attributable to assessee which is to be taxed in India