

## Interconnect usage charges paid by 'BSNL' to foreign telecom operators were neither FTS nor Royalty

**Summary – The Delhi ITAT in a recent case of Bharat Sanchar Nigam Ltd., (the Assessee) held that Interconnect Usage Charges paid by assessee a telecommunication service provider to foreign telecom operators for providing connectivity to and fro from locations where assessee had no reach was not chargeable to tax in India in hands of non-resident recipients**

### Facts

- The assessee was a Government of India Undertaking engaged in the business of providing telecommunication services.
- The Assessing Officer observed that during the year under consideration, the assessee made payments for Interconnect Usage Charges (IUC) *i.e* charges paid to other telecom service providers (foreign/domestic operators) for providing connectivity to and fro from locations where assessee has no reach.
- In the order of assessment the Assessing Officer observed that payment of IUC charges was 'Fee for Technical Services' both under the provisions of Act under section 9(1)(vii) and as per provisions of article 12 of the DTAA. The Assessing Officer further held that payment for IUC charges also constituted income in nature of 'Royalty' as defined under section 9(1)(vi) and article 12 of the DTAA. Thus, he concluded that the amount paid by assessee to the foreign telecom service providers was income chargeable to tax in India in hands of foreign service providers and since the assessee had defaulted in not deducting tax under section 195, a consequential disallowance under section 40(a)(i) was made.
- On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.
- On appeal to the Tribunal:

### Held

- The issue in dispute is directly covered by the decision of the Tribunal in case of *Bharti Airtel Ltd. v. ITO* [2016] 67 taxmann.com 223 (Delhi - Trib.). In that case coordinate bench of this court after deep examination of the issue *i.e* after considering and going through the process of providing roaming services; examination of technical experts and its cross-examination and also opinion of the then Chief Justice of India S.H. Kapadia, dated 3-9-2013, has held that payment of IUC Charges is not 'Fee for Technical Services' or 'Royalty' within the meaning of its definition as per section 9(1)(vi) and section 9(1)(vii). While reaching the above conclusion the co-ordinate bench also took into consideration retrospective amendments made to section 9 by the Finance Act 2012. The revenue has not been able to controvert the fact that the issue in dispute is no more *res integra* considering the above binding precedents. Moreover, a perusal of sample agreement for payment of IUC charges between BSNL and Cable & Wireless UK in the instant case also clearly shows that a

standard facility for availing interconnectivity services while roaming was availed by the appellant in the instant case. This does not require any human intervention. Respectfully following the above judicial precedents, it is held that payment for IUC Charges is not chargeable to tax in India in the hands of the non-resident recipients and hence TDS was not deductible as per provisions of section 195. Therefore, the order of the Commissioner (Appeals) on this issue is reversed and the same is decided in favour of the assessee. Accordingly, respective grounds are allowed.

- In the result, the appeal of the assessee is partly allowed.