

## Fees paid by 'Deloitte' to Foreign Co. for gaining knowledge about foreign tax laws not taxable in India

**Summary – The Mumbai ITAT in a recent case of Deloitte Haskins & Sells., (the Assessee) held that Professional fee paid by assessee, Indian company, to foreign company for audit, knowledge about tax law applicable (VAT Laws) in that country etc., could not be taxed in India as per article 14**

### Facts

- The Assessing Officer found that the assessee had paid a certain sum to some foreign companies, namely, DTS, DTLL US and Deloitte Tax LLP, B.V., Netherlands and SJMS Associates, Sri Lanka. The Assessing Officer directed the assessee to explain as to why the payment made to above entities should not be disallowed for non-deduction of tax at source.
- The First Appellate Authority held that the assessee had paid professional fees to its non-resident entities which were of the nature of managerial/consultancy services and same were covered by the provisions of section 9(1)(vii).
- On appeal:

### Held

- While deciding the appeal for earlier year, the Tribunal has held that provisions of section 40(a)(i) were not applicable to payments made by the assessee to DTS and the US entities. Therefore, the order of the First Appellate Authority as far as DTS and to non-resident entities of US are concerned were reversed.
- With regard to Netherland entity the services availed by the assessee were professional services and not technical services. The non-resident entity had provided some information about tax laws of Netherland to assessee. It cannot be held royalty. For applying provisions of article 12(5)(b) of the DTAA, the first pre-condition is that the non-resident should have made available technical knowledge/experience/skill etc. to the assessee. There is no evidence to prove that any knowledge was made available to the assessee that was used by it. Besides, the professional services are to be taxed in the country of receipt, as per the article 14 of the Treaty. As the non-resident was not having any PE in India, so, the professional fees received by the Netherland would not be taxable in India.
- Now, the issue of payment made by the assessee to Sri Lankan entity assessee, before signing of the DTAA of 2014 there was no provision in the Indo-Sri Lankan DTAA for charging FTS. The non-resident entity had no PE in India and professional fees was to be taxed as per article 14 of the treaty. Considering the facts of the matter, the FAA was not justified in upholding the order of the Assessing Officer with regard to the payments made to Sri Lankan entity.