

Sum paid to NR for providing advisory by way of reviewing strategies and M&A options not to be held as FTS

Summary – The Mumbai ITAT in a recent case of Entertainment Network (India) Ltd., (the Assessee) held that where assessee paid certain amount to a France based company for providing advisory services by way of review strategies and M & A options, since professional services rendered by said company did not make available to assessee any technical experience, skill, know-how etc., amount paid for availing said services was not taxable in India as fee for technical services

Facts

- The assessee engaged one 'P' in France to provide advisory services by way of review strategies and M & A options. The assessee remitted certain amount as fees to 'P' for the said services without deduction of tax at source.
- The Assessing Officer took a view that amount paid to 'P' was taxable in India as fee for technical services. Since assessee did not deduct tax at source while making said payments, the Assessing Officer disallowed same under section 40(a)(i).
- The Commissioner (Appeals) confirmed disallowance made by the Assessing Officer.
- On second appeal:

Held

- Under the DTAA between India and France, the definition of 'Fees for Technical Services' has to be given a restrictive meaning similar to that of the expression 'Fees for Technical Services' appearing in the DTAA between India and UK. Thus, reading the definition of 'Fees for Technical Services' appearing in the DTAA between India and France, the advisory services rendered by 'P' to the assessee do not 'make available' any 'technical knowledge, experience, skill, know-how or processes' to the assessee-company since, the assessee-company would have to go back to 'P' even in the future for availing similar advisory services.
- Consequently, in the absence of the professional services provided by 'P' 'making available' any 'technical knowledge, experience, skill, know-how, etc.' to the assessee-company, the remittance made to them was not chargeable to tax in view of the beneficial provisions under the DTAA and no tax was deductible at source on the said remittance. In the circumstances, the remittance made to 'P' being not chargeable to tax in India, there was no requirement to deduct tax at source on the said remittance. Hence, the Assessing Officer was to be directed to delete the disallowance made under section 40(a)(i).