Services received by ONGC from Dutch Co. not FTS in absence of transmitting of any technical knowledge

Summary – The Delhi ITAT in a recent case of ONGC., (the Assessee) held that where ONGC had benefit of services provided by assessee, a Dutch company, but did not gain any technical knowledge, experience or skill which would enable ONGC to undertake such an endeavour independently in future without aid and assistance of assessee, payment made to assessee for such services would not fall within scope of article 12 of DTAA between India and Netherlands and would not be taxable in India

Payment received by assessee, American company, from ONGC for blowout control services which are intended to bring under control a situation where there is an uncontrolled flow of crude oil/natural gas from oil or gas well after pressure control systems have failed would be taxable under section 44BB

Amount received by Russian company from ONGC for services in connection with Underground Coal Gasification (UCG) which is a process to convert underground coal/lignite into combustible gases by classifying coal insitu would be taxable under section 44BB

Facts

- ONGC appointed assessee, a company of Netherlands, to advise and for support services relating to BHN well platform accident investigation. For the said services, said company received certain amount from ONGC.
- As the contract was tax protected, the ONGC filed the return of income as a representative assessee of the non-resident claiming the receipt of the assessee as not taxable in India as per article 7 of DTAA with Netherlands.
- The Assessing Officer held that the services rendered by the assessee were in the nature of FTS and, therefore, the revenue earned by the assessee was taxable in India as per the provisions of section 9(1)(vii) and 115A as also as per DTAA between India and Netherlands.
- The DRP confirmed the findings of the Assessing Officer.
- On appeal:

Held

- The services rendered by the vendors to the ONGC in this matter are one-time job performed by the vendors and their job ends with the submission of the investigation report. There is no recurrence of the services and there is no guarantee that the accidents would happen in the same way so that the investigation report submitted by the vendor would be a guidance for the ONGC for conducting such investigation on its own. It is plainly clear that the ONGC had the benefit of the services but did not gain any technical knowledge, experience or skill in respect of the conducting, reporting and

analysing any investigation into an accident, which would enable the ONGC to undertake such an endeavour independently in future without the aid and assistance of the vendor. With this view of the matter, the impugned payment did not satisfy the tests of, firstly, for the services which are ancillary and subsidiary to the application for enjoyment of any right, property or information under article 12(5)(a), and secondly, the 'make available' clause within the meaning of article 12(5)(b) of the DTAA between India and Netherlands. Accordingly the payment in question does not fall within the scope and ambit of article 12 of the DTAA between India and Netherlands. It follows that inasmuch as there is no permanent establishment for the services rendered in India, the receipts are not taxable under article 7 also.