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Payments made to Foreign Bank for providing financial services is not liable to tax as 'FTS'

Summary – The High Court of Bombay in a recent case of Indusind Bank Ltd., (the Assessee) held that payments made to Foreign Bank for providing financial services is not liable to tax as 'FTS'

Facts

- The assessee was a scheduled bank engaged in banking and decided to raise capital abroad through the issuance of Global Depository Receipts ('GDRs'). The assessee had engaged one Amas Bank of United Arab Emirates for providing services such as Global co-ordinator and Lead Manager to the said GDR offer.
- In course of assessment, revenue authorities opined that payments made by assessee to Amas bank were liable to tax in India as fee for technical services.
- The Tribunal, however concluded that services rendered by Amas Bank were purely of a commercial nature and any income therefrom arose to it wholly outside India in the course of carrying on of its business wholly outside India. Such services were neither rendered in India nor utilized in India and therefore, payments for services so rendered did not partake the character of fees for technical services.
- Accordingly, addition made by authorities below was deleted. On revenue's appeal:

Held

- The HC stated that in the instant case the services were rendered by Amas Bank outside India for raising such funds outside India and the Tribunal had, come to the conclusion that the services rendered by Amas Bank were neither rendered in India nor utilized in India and the charterer of income arising out of such transaction was wholly outside India emanating from commercial services wholly outside India. The Tribunal was, therefore, correctly of the opinion that such services cannot be included within the expression technical services in terms of section 9(1)(vii)(b) read with *Explanation* to section 9.
- The revenue, indicated that two successive amendments to section 9 by Finance Act of 2007 and Finance Act of 2010 state that whether or not the non-resident has a residence or place of business connection in India, or had rendered services in India, would be inconsequential when one decides whether in terms of section 9(1) of the Act, the income was to be charged in India or not.
- The HC held that while the subsequent explanation of 2010 which replaced the previous one of 2007 has somewhat widened the scope of applicability of section 9, however, the question of non-resident having rendered services in India is quite different from such services having been consumed by the assessee in India.
- In the result, there is not error in the view of the Tribunal. The revenue's appeal is dismissed.