

No FTS or Royalty wrt Interconnect usage charges paid to foreign telecom operators

Summary – The Delhi ITAT in a recent case of Bharat Sanchar Nigam Ltd., (the Assessee) held that Interconnect usage charges paid to foreign telecom operators do not qualify as FTS or Royalty

Facts

- The assessee was engaged in the business of providing telecommunication services.
- During assessment, the Assessing Officer observed that the assessee had made payments for Interconnect Usage Charges (IUC) to other telecom service providers (foreign/domestic operators) for providing connectivity to and fro from locations where assessee has no reach.
- In the assessment order the Assessing Officer held 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. Further he also held that these payments also constituted income in nature of 'Royalty' as defined under section 9(1)(vi) and article 12 of the DTAA. He thus held that the amount paid by assessee to the foreign telecom service providers was income chargeable to tax in India 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 ITAT held that a perusal of sample agreement for payment of IUC charges 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. Hence based on 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.