

## **If recipient cannot perform such services on its own, sum received for providing technical services not taxable as FTS**

**Summary – The Mumbai ITAT in a recent case of Nielsen Company., (the Assessee) held that if recipient cannot perform such services on its own, sum received for providing technical services not taxable as FTS**

### **Facts**

- The assessee was a tax resident of USA. During the relevant period for the assessment year, the assessee received payment for providing services under General Service Agreement.
- The Assessing Officer while completing the assessment treated the said receipt as Royalty under section 9(1)(vi) and Article 12 of the India-US Tax Treaty. On appeal, the action of the Assessing Officer was confirmed. On further appeal before the Tribunal, the matter was restored back to the file of the Assessing Officer who again confirmed the receipt as 'Fees for Included Service (FIS)'.
- On further appeal, the Commissioner (Appeals) confirmed the action of the Assessing Officer.
- On the assessee's appeal before the Tribunal:

### **Held**

- The Tribunal held that the Assessing Officer erred in taxing the service agreement receipt as 'fee for included services' as per Article 12(4) of the India - USA DTAA since the recipient would not be able to perform these services of its own without any further assistance of the assessee.
- Considering the above-mentioned decision, the assessee's appeal is to be allowed.