N. A. SHAH ASSOCIATES LLP
Chartered Accountants

TAX JURISPRUDENCE

CASE LAW ALERT – NOV 2024 VOL. 2

EXECUTIVE SUMMARY OF JUDGEMENTS / ADVANCE RULINGS UNDER DIRECT AND INDIRECT TAXES

We are pleased to draw your attention to following important decisions which might be useful for you to take call on tax position.

Case & Citation	Issue Involved	Decision
Direct Tax		
Rockwell Collins Southeast Asia Pte Ltd vs DCIT, Circle-3(1)(1) [Income tax Appellate Tribunal Delhi] (ITA No. 2409/Del/2023) (14.11.2024)	Whether amount received for rendering repair and maintenance services for aircraft equipment outside India, should be construed as Fees for Technical Services (FTS), both under section 9(1)(vii) of the Income-tax Act as well as under the India-Singapore Double Taxation Avoidance Agreement (DTAA)?	The Delhi ITAT observes that rendering repairs and maintenance services of aircraft equipment outside India, is not a technical service under the Act. Also, in absence of make available, such services is not FTS under the India-Singapore DTAA.
Indirect Tax		
Metal Corporation of India Limited VS Union of India – Delhi High Court [2024-TIOL-1858-HC-DEL-GST]	Whether import of services from overseas related company for supply of seconded employees would be liable to tax under reverse charge mechanism?	Hon'ble Delhi High Court held that where, in terms of Circular No. 210/4/2024-GST, where the recipient of service is eligible for full input tax credit, the value of services would be treated as "Nil" and hence no tax implication would arise.

The brief analysis of above referred decisions and rulings are given below.

DIRECT TAX

Rockwell Collins Southeast Asia Pte Ltd vs DCIT, Circle-3(1)(1) [Income tax Appellate Tribunal Delhi] (ITA No. 2409/Del/2023) (14.11.2024)

Facts in brief & issues involved:

- The taxpayer is a company established under the laws of Singapore and is engaged in providing repair and maintenance services of aircraft equipment to Indian customers. For rendering such services, the equipment's are shipped by Indian customer from India to its designated facility in Singapore and after performing necessary repair of the equipment, the same are shipped backed to India. As the services are not rendered in India, the taxpayer was of the view that the revenue earned from such services is not taxable in India.
- The Tax Officer however held that the services of repair & maintenance for aircraft equipment would have to be construed as FTS both under u/s 9(1)(vii) of the Act as well as under the India-Singapore DTAA. Thus, the income is chargeable to tax in India.
- Aggrieved by the adverse order of the tax officer and first appellate authority, the taxpayer preferred an appeal before the appellate tribunal.

Contention of the taxpayer:

- The Taxpayer contended that the repairs and maintenance services are routine maintenance services and not technical services, thus, revenue earned by it does not constitute payment for 'technical services' as defined in Explanation 2 to section 9(1)(vii) of the Act. Reliance was placed on the decision of Global Vectra Helicorp Ltd reported in 159 taxmann.com 282 (Del Trib).
- It is tax resident of Singapore and hence, the revenues earned thereon would not be chargeable to tax under the Act. The Taxpayer also placed reliance on the decision of the Delhi Tribunal in the case of DLF Ltd Vs. ITO reported in 111 taxmann.com 214 (Del Trib).
- It has no Permanent Establishment (PE) in India and hence the same would not be taxable as per the India-Singapore treaty as it would fall under the category of works contract constituting business receipts and in absence of PE in India, the same would not be taxable.

- The repair and maintenance services were carried outside India and once the equipment's were repaired, they were sent back to the customers in India. Thus, there is no transfer of any technology, nor technical plan or design, thus it does not make available technical knowledge to the recipient of the services, which would enable the recipient to carry out repairs on its own without the assistance of the Taxpayer. Hence the "make available" clause prescribed in Article 12 of India-Singapore treaty is not satisfied.

Contentions of the Respondent:

- The consideration received by the taxpayer for rendering repair and maintenance services are in the nature of "technical and consultancy services" since the solution is provided by the taxpayer through an automated process by using of data provided by the customers which involved special knowledge.
- The place of rending of service is not important as long as the service is utilised for business or profession in India and that income of the taxpayer would be chargeable to tax in the country where the source of payment is located.

Observation and Decision of the Hon'ble Delhi Tribunal:

- The tribunal observed that there is no transfer of any technology, technical plan or design or technical knowledge, which would enable the recipient to carry out the repairs on its own without the assistance of the Taxpayer. Therefore, the services rendered fail to satisfy the 'make available' clause prescribed in Article 12 of India-Singapore DTAA.
- It also observed that no representatives of the Taxpayer came to India for rendering of any services and the Taxpayer does not have any PE in India. Thus, relying on the decision of the co-ordinate bench decision of the Delhi Tribunal in the case of Goodrich Corporation Vs. ACIT in ITA No. 988/Del/2024 for AY 2018-19, held that the revenue earned by the Taxpayer from rendition of repairs and maintenance of services of aircraft equipment cannot be construed as FTS both under the Income-tax Act and the DTAA.

INDIRECT TAX

Metal Corporation of India Limited VS Union of India – Delhi High Court [2024-TIOL-1858-HC-DEL-GST]

Facts in brief & issues involved:

- Petitioner has entered into individual employment agreements with the employees of Metal One Corporation Japan (parent entity), who then also became employees of the petitioner.
- Petitioner is in receipt of Show Cause Notices (SCN) alleging that they should pay IGST on services received from their overseas parent under Reverse Charge Mechanism (RCM), for the period from July 2017 to March 2023.
- The respondent has relied on the decision of Honorable Supreme Court in Northern Operating Systems (P) Ltd., which interpreted such secondment arrangements as manpower supply, liable to GST.
- Aggrieved by said issue, petitioner has preferred the present writ petition before the High Court.

Contention of the Petitioner:

- The judgement in Northern Operating Systems (P) Ltd. could not be ipso facto applied to all cases irrespective of the factual scenario.
- Petitioner emphasized on the second proviso to Rule 28 of the CGST Rules, 2017 ['CGST Rules'] which prescribes that where the recipient is eligible for full input tax credit, the value as declared in an invoice would be deemed to be the open market value of goods and services.
- Further, petitioner also drew attention to para 3.7 of Circular No. 210/4/2024-GST wherein it was clarified that in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28 (1) of CGST Rules.

Contention of the Respondent:

- Supply of secondment of employees is common global practice between overseas group company and related party based in India. The valuation of such services rendered by overseas group company must be total consideration given to the employee working on temporary deputation in India shall be considered. Therefore, the transaction value of supply of manpower service to the Petitioner shall be the total of consideration actually paid or payable by the Petitioner including the expenses incurred in foreign currency (salary paid by Overseas Group Company in Japan and charged from the Petitioner) as well as in Indian Rupees (salary paid to expats in India in INR).
- The Petitioner itself admitted that the seconded employees in dispute were employees of its parent overseas company, and they were hired for a short span of time by the Petitioner, and it is pertinent to say that a relationship of employer-employee is not established between the Petitioner and the seconded employees.

Observation and Decision of High Court:

- The Hon'ble Delhi High Court considered the Circular No. 210/4/2024-GST, issued by the CBIC, which clarified that if no invoice was raised by the related domestic entity for services provided by the foreign affiliate, the value of such services would be "deemed" to be Nil. This "Nil" value would be treated as the market value for GST purposes under Rule 28.
- The Court emphasized that the Circular was binding on the respondents, and the value of the services would be treated as Nil. Once the value of the services was deemed Nil, no tax liability could arise. Furthermore, the imposition of penalties and interest for non-payment of tax would not be sustainable.

NASA Comments:

- This judgement by Delhi High Court is a positive step towards addressing the issue of taxability of secondment employee especially after the judgement of Northern Operating Systems (P) Ltd. The department has issued various SCN's invoking tax demand on supply of

seconded employee, even though CBIC has also issued instruction that the said judgement should not be applied mechanically in all cases but should be applied after considering the terms of the contract between overseas company and Indian entity. However, such judgment will have a persuasive value in such matters.

B 21-25, Paragon Centre,
Pandurang Budhakar Marg, Mumbai – 400013
Tel: 91-022-4073 3000, Fax: 91-022-4073 3090
E-mail Id: info@nashah.com