DESAI SAKSENA & ASSOCIATES

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Friday Tax Alert

ITAT Hyderabad: Essential Additional Evidence Cannot Be Rejected on Procedural Grounds.

FACTS OF THE CASE:

- The Assessee, a foreign company engaged in providing professional services, filed its return of income for Assessment year 2021-22 declaring Rs. 7.19 lakhs. The case was selected for scrutiny and notice under section 143(2) was issued. As there were international transactions with its AE, the Assessing Officer referred the matter to the TPO under section 92CA.

- The TPO, by order under section 92CA(3), proposed a TP adjustment of about Rs. 2.68 crores on account of services provided to the AE, rejecting the Assessee's TP study on the ground that the Assessee did not furnish the original agreement between the AE and United States Agency for International Development (USAID) to support the claim of a back-to-back cost-plus arrangement. Based on the TPO's order, the Assessing Officer passed a draft order under section 144C(1) making the upward TP adjustment.

- The Assessee filed objections before the DRP. The DRP, by its directions, upheld the TPO's findings. Consequent thereto, the Assessing Officer passed a final order under section 143(3) read with section 144C(13) making the addition of about Rs. 2.68 crores and determining total income at about Rs. 2.75 crores.

- On appeal to the Tribunal.

CONCULSION:

- It is not in dispute that the Assessee has filed the additional evidence before the DRP.

- On perusal of the order of the DRP, it is evident that the Assessee had filed the said additional evidence before the DRP along with the paper book. However, **the DRP declined to admit the same only on the ground of non-compliance of procedure prescribed under Rule 4 of the DRP Rules. It is viewed that rejection of crucial documentary evidence merely on procedural grounds defeats the cause of substantive justice.** The said agreement is essential for determining the correct arm's length price. Therefore, the said additional evidence is admitted. Accordingly, ITAT has set aside the directions of the DRP and the matter is restored to the file of the DRP with a direction to consider the additional evidence filed by the Assessee and adjudicate the issue afresh after providing due opportunity to the Assessee.

[Deloitte Consulting India Projects LP v. Assistant Director of Income Tax (International Taxation)-1 [2025] 180 taxmann.com 595 (Hyderabad - Trib.)]

ITAT Delhi: Cost-to-Cost IT Reimbursements Not Taxable as FIS under India–US DTAA"

FACTS OF THE CASE:

- The Assessee, a tax resident of USA, was engaged in providing Information Technology Application Services, IT Infrastructure Services and IT Security to its Associated Enterprises (AE's) in India and other Invesco Group Companies located Worldwide. The cost incurred by the Assessee for providing IT Support Services was allocated to its AE's on the basis of allocation rationale provided in Annexure II to the Master Inter Company Services Agreement. The amount received by the Assessee was purely on cost to cost.

- The Assessing Officer treated the cost recovered by the Assessee as FTS/FIS as per DTAA and held that the same was taxable in India.

- On appeal, the Dispute Resolution Panel (DRP) upheld the additions.

- On appeal to the Tribunal.

CONCULSION:

- The solitary issue assailed by the Assessee in present appeal is addition by treating reimbursement of cost for providing IT/Support Services as FTS/FIS under Article 12 of India-US DTAA. The Associate Enterprises (AE's) have reimbursed the cost for providing IT/Support Services to the Assessee on the basis of Master Inter Company Services Agreement dated 20-5-2019. The reimbursements have been made on cost-to-cost basis, *i.e.* without any mark-up. Identical issue was considered by the Co-ordinate Bench of the Tribunal in Assessee's own case in Invesco Holding Company (US) Inc. v. ACIT [2024] 165 taxmann.com 330 (Delhi- Trib.) for assessment year 2020-21. This fact has also been acknowledge by the DRP in directions dated 26-11-2024. The Co-ordinate Bench while deciding this issue in assessment year 2020-21 examined the terms of agreement dated 20-5-2019, Article 12 of India-US DTAA and various decisions and held that **"there is nothing to show in the assessment order that the AO had made any enquiry on his own or relied any provisions of the Master Inter Company Services Agreement (in short "MSA") to show that the training as imparted was of such nature that it "made available", the technology to the associate enterprises so that on conclusion of the training the employees of AE's will be unable to use technology on their own and that the tax authorities below have fallen in error in not appreciating that the reimbursement was on cost to cost basis".**

- In subsequent assessment year as well *i.e.* assessment year 2021-22, the Tribunal in Invesco Holding Company (US) Inc. v. ACIT [2024] 165 taxmann.com 330 (Delhi - Trib.) followed earlier decision of the Tribunal and deleted the addition.

- No contrary material has been placed by the revenue to controvert earlier finding of the Tribunal, hence, there is no reason to deviate from the earlier decision of the Co-ordinate Bench. Thus, the ITAT directed to delete the addition for parity of reasons.

[Inveso Holding Company (US) Inc. v. Assistant Commissioner of Income-tax, International Taxation [2025] 180 taxmann.com 98 (Delhi - Trib.)]

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