Tenet Tax & Legal Private Limited

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ITAT applies results of MAP proceedings to hold that fee paid for strategic consultancy services isn't 'FTS'

Summary – The Mumbai ITAT in a recent case of McKinsey & Company INC Italy., (the Assessee) held that In view of MAP proceedings settled between Government of India and Government of U.S.A., strategic consultancy services provided by assessee to its clients could not be held to be FTS/FIS and hence not taxable in India under article 12 of Indo-US DTAA

Facts

- The assessees were part of 'M' group, which were engaged in providing strategic consultancy services to their clients.
- Assessees submitted that they were incorporated and were tax residents of US and thus eligible for claim of benefits under Indo-US DTAA. It was further submitted that similar issue had come-up for consideration, not only in the earlier years but also in the subsequent years, before the Tribunal in several cases of the concerned assessees. The Tribunal in all the cases had held that, firstly, such services do not fall within ambit of fees for services under article 12 of Indo-US DTAA and moreover, this issue has been settled under the MAP proceedings settled between Government to Government, which must be honoured and followed.
- Thus, the sole issue raised in all appeals was with regard to taxability of borrowed service charges and applicabilty of treaty benefits under India-US Tax Treaty.

Held

- In view of the admitted fact that the issue has been settled under the MAP proceedings arrived at settlement between Government to Government level and therefore, honouring the same, it is to be held that such a borrowed services is not part of FTS/FIS and hence not taxable in India. Not only this, the department in the appeal filed before the High Court in the earlier years under section 260A have later on withdrawn the appeal on the ground that the issue has been settled under MAP. Further, the Tribunal invariably in the cases of the assessee have been consistently holding that the services rendered by the assessee do not fall within the ambit of FTS as defined in article 12(4) of Indo-US DTAA. These orders have been followed in the subsequent year in assessment year 2009-10 by the Tribunal *vide* order dated 17-4-2015. Accordingly, respectfully following the judicial precedents and also the fact that in the instant cases, the issue has been settled under the MAP proceedings, it is to be held that the services rendered by the assessees are not taxable in India under article 12 and also it is an admitted fact that the assessee do not have any PE in India and therefore, the same is not taxable under the Treaty.