

Technical services held as not taxable since make available condition not satisfied

Summary – The Mumbai ITAT in a recent case of Nielsen Company, (the Assessee) held that Technical services are not taxable since make available condition is not satisfied

Facts

- The assessee was a tax resident of USA and received payments for providing services under General Service Agreement.
- The Assessing Officer 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 then 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 ITAT held that in the assessee's own case of an earlier AY, the Tribunal held that the Assessing Officer had erred in taxing the receipts as 'fee for included services' as per Article 12(4) of the India - USA DTAA even though the make available clause of the DTAA was not satisfied.
- Hence, considering the above-mentioned decision, the assessee's appeal is to be allowed.