

"Support services" taxable as FTS both under Income-tax Act and under tax treaty - make available condition fulfilled

Summary – The Delhi ITAT in a recent case of H.J. Heinz Company., (the Assessee) held that "Support services" would be taxable as FTS both under Income-tax Act and under tax treaty since the make available condition is fulfilled

Facts

- The assessee Company is a tax-resident of the United States of America (USA) and it allocated to its Indian subsidiary company certain costs without any mark up and received a cost reimbursement towards the same.
- Assessing Officer taxed the receipts as FTS.
- On objections before the DRP, the DRP directed the Assessing Officer to tax the said receipt at rate of 10 per cent.
- On appeal to the Tribunal:

Held

- The Tribunal held that the payments could be governed by article 12 - 'Royalties and fees for included services' or article 7 - 'Business Profits'.
- Based on analysis of the support services agreement the ITAT held that the underlying objective of the agreement is to achieve consistency of approach and economies of scale for the group entities in the area of supply chain Human Resources, Strategic Planning and marketing, Finance and information systems.
- The Assessing Officer has observed that services have been utilized by the Indian Company and the concept of make available is getting fulfilled in the present case.
- Thus, the consideration qualifies as fees for technical services (FTS) both under the Income Tax Act and under the tax treaty as well. Thus, this ground is dismissed.