

## **Business Support Services are not FTS as per DTAA between India and Netherland: ITAT Delhi**

**Inteva Products Netherlands BV Versus ACIT (ITA No.7963/Del./2019 ITA No.7964/Del./2019 ITA No.119/Del./2021 ITA No.822/Del./2022)**

### **Facts:**

1. The assessee is a non-resident corporate assessee incorporated in Netherland and is a tax resident of Netherland. Officer noticed that in the year under consideration, assessee had provided business support services to its Indian group entity but was not offered for tax.
2. The assessee has filed an appeal on the ground that on the facts and circumstances of the case and in law, the Id. AO pursuant to the directions of DRP erred in treating the receipts of fees for business support services of Rs.11,85,39,571/- as Fees for Technical Services (FTS) as per Article 12 of the Double Taxation Avoidance Agreement (DTAA) between India and Netherlands without appreciating that the services are managerial in nature and hence do not fall within the definition of FTS.
3. The AO on the other hand maintains that concluded that the payment of Rs.11,85,39,571/- received by the assessee from foreign company on account of business support services is held to be taxable as FTS taxable @ 10% plus surcharge and education cess and added to the total income of the assessee.

### **ITAT Delhi held as below:**

1. Reading of Article-12 (5) of India-Netherlands DTAA reveals that it does not include managerial services within FTS. Therefore, the payment received by the assessee cannot be treated as FTS under India- Netherlands DTAA.

2. Even, assuming for the sake of argument that payment received for certain kind of services is in the nature of FTS, however, the make available condition needs to be satisfied.

3. Neither the AO nor learned DRP have established on record that by rendering the services, the assessee has made available technical knowledge, know-how, skill etc. to the recipient of services, which would have enabled the recipient of such services to utilize it independently without the aid and assistance of the assessee.

4. The payment received in this case cannot be treated as FTS under Article 12 (5) of India Netherlands DTAA. Hence, this ground of assessee stands allowed.