

Onus on AO to prove that non resident assessee has a PE in India:
ITAT Mumbai

Taj TV Limited (ITA No. 6588/Mum./2019)

Facts:

1. The assessee is a foreign company registered under the Mauritian Law and is engaged in the business of telecasting its sports channel, Ten Sports. The assessee is considered as Resident for tax purpose in Mauritius as it is Registered in Mauritius.
2. The assessee had appointed Taj Television (India) Pvt. Ltd. (Taj India) as an advertising sales agent and distributor to sell commercial advertisement time to prospective advertisers and other parties in India in connection with business of programming and telecasting
3. Taj India had entered into agreement with distributors or cable operators on its own account as principal distributor and not on behalf of the assessee.
4. AO held that Taj India was functionally and economically dependent on the assessee and thus, is a dependent agent of the assessee within the meaning of Article-5 of India Mauritius DTAA and so assessee had a permanent establishment in India.

Note: As per Article 5(4)(i) of the DTAA, it is only when the person in a Contracting State has and habitually exercises the authority to conclude contracts in the name of the other enterprise, such person shall be deemed to be the P.E. of the other enterprise

ITAT Mumbai held as below:

1. The AO has neither established nor brought anything on record, either at the assessment stage or before us, that Taj India had habitually exercised the authority to conclude the contract on behalf of the assessee.

2. Thus, the Revenue has failed to discharge the burden casted on it to prove that the twin conditions provided in Article 5(4)(i) of the DTAA are satisfied.
3. The appeal filed by the assessee is allowed.