

Business support services are not technical services as per Article 13 of DTAA between India and UK

Shell India Markets Private Limited (WP No 10788 of 2012)

Facts:

1. Assessee 'Shell India Markets Private Limited' is engaged, inter alia, in the business of operating chain of retail fuel stations in India.
2. Assessee entered into cost contribution agreement for availing general business support services from its group company, Shell International Petroleum Company Limited, a UK resident.
3. It filed an application before AAR seeking determination of the tax liability on the payment to AE wherein it was held that the subject payment is taxable as FTS and thus, Assessee was held liable to withhold taxes under Section 195. Aggrieved, the Assessee preferred the instant writ petition.

Hon Bombay HC held as below:

1. The support services which have been provided are related to managerial services and are not of a technical nature.
2. As per Article 13 between India and UK, 'consultancy' necessarily relates to consultancy which makes available technical or any other knowledge, experience, skill, know-how or processes and does not relate to consultancy on managerial issues.

3. As per Article 13(4)(c)“consultancy services which are not of a technical nature are not taxable as fees for technical services. Thus, these business support services are not taxable as fees for technical services.