



Taxpayer is a beneficial owner of royalty and interest income and therefore eligible for beneficial tax rate under the India-Singapore tax treaty

Background

Recently, the Pune Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Imerys Asia Pacific Pvt. Ltd.¹ (the taxpayer) held that the taxpayer is a beneficial owner of royalty and interest income and therefore eligible to claim beneficial rate of tax under the India-Singapore tax treaty (the tax treaty). The Tribunal observed that the taxpayer had entered into the know-how agreement with U.K. based company which in turn was sub-licensed by the taxpayer to an Indian company and received royalty income on the same. The royalty income has been received in its own right as the beneficial owner. Similarly, the interest income earned by the taxpayer was also received in the capacity as a beneficial owner.

Facts of the case

- The taxpayer, a company, incorporated in Singapore, was 100 per cent subsidiary of the French company. The principal activities of the taxpayer were to act as a headquarters for Asia-Pacific region, rendering administrative, marketing and sales services to the group and affiliated companies, trading in paper and performance minerals and other related business activities including project work.
- A U.K. based company (a group company of the taxpayer) developed know-how for manufacture of products. The U.K. company wants to develop the sub-licensing market in the Asia Pacific Region for its know-how and wished the taxpayer to act as sub-licensor in order to develop its market. Therefore, UK company entered to know-how agreement with the taxpayer.
- The taxpayer in lieu of this license granted, entered into a technology agreement with an Indian company. Under the technology agreement, the taxpayer undertook to provide a non-exclusive, non-transferable, non-assignable and revocable license to an Indian company. Such license was provided to use the technology and know-how in connection with the development, manufacture, use and sale of calcium carbonate and calcium carbonate products in the geographical territory of India.
- During the year under consideration, the taxpayer had received payment on account of royalty and interest income. The receipt was offered to tax at the beneficial rate prescribed under the tax treaty.

¹ Imerys Asia Pacific Pvt. Ltd., v. DDIT (ITA No.233/PN/2014) – Taxsutra.com

- The Assessing Officer (AO) held that the taxpayer was not the beneficial owner of the royalty and interest, and therefore, it was not eligible to claim the lower rate of tax for interest and royalty under the tax treaty. The AO held that beneficial owner of royalty was the U.K. company. The know-how was actually transferred to the Indian entity by the U.K. company, and the taxpayer was only acting as an agent for taking the benefit of the lower rate as per the tax treaty.
- The Dispute Resolution Panel (DRP) confirmed the order of the AO.

Tribunal ruling

- In order to avail the benefit of reduced rate of tax for interest and royalty under Articles 11 and 12 of the tax treaty, the recipient shall be the beneficial owner of interest and royalty. In other words, the recipient should have received the interest and royalty in its own right.
- Based on facts of the case, the Tribunal held that the taxpayer was the beneficial owner of royalty in line with the provisions of Article 12 of the tax treaty and the same was to be taxed at 10 per cent.
- The Tribunal relied on the Authority for Advance Rulings² (AAR) wherein it was held that though applicant would be acquiring expertise and technical know-how from third parties for which it was to pay royalties and technical fees, but the said expertise and technical know-how would be belonging to the applicant. A similar ratio has also been laid down by the Pune Tribunal in the case of Shaan Marine Services Pvt. Ltd.³.
- The benefits available under the tax treaty should be granted to the taxpayer based on valid Tax Residency Certificate (TRC). The said proposition was also approved by the Supreme

Court in the case of Azadi Bachao Andolan⁴. Further, relying on the decision of the Punjab and Haryana High Court in the case of Serco BPO Pvt. Ltd.⁵ it has been held that the benefit of the tax treaty is available to the taxpayer.

- With regard to interest income received by the taxpayer, it has been held that since the amount was advanced by the taxpayer as ECB loan to an Indian company, the interest income received by the taxpayer being the beneficial owner, taxable at 15 per cent under Article 11 of the tax treaty.
- In the facts of the present case, it is not the case of tax department that the amount has not been remitted to Singapore, but the benefit of tax treaty have been denied to the taxpayer since the said amount has not been remitted in the current fiscal year i.e. the financial year 2009-10. Where the amount has been remitted to Singapore and has been subject to the tax, there is no merit in the orders of the lower authorities in denying the benefit of tax treaty provisions to the taxpayer in taxing the income at lower rates. In this regard, the Tribunal relied on the decision of the Rajkot Tribunal in the case of Alabra Shipping Pte Ltd⁶.
- Accordingly, it has been held that where the taxpayer who had entered into an agreement with its principal in U.K. and received the know-how, which in turn, provided to Indian sub-licensee and received sub-licensee fees, then such royalty income having been received by the taxpayer non-resident company in its own right as the beneficial owner of the same, such royalty income is to be subject to tax at concessional tax rate at 10 per cent.

² P.No.13 of 1995 [1997] 228 ITR 487 (AAR)

³ Shaan Marine Services Pvt. Ltd. v. DDIT [2014] 165 TTJ 952 (Pune)

⁴ Union of India v. Azadi Bachao Andolan [2003] 263 ITR 706 (SC)

⁵ Serco BPO Pvt. Ltd. v. AAR [2015] 60 taxmann.com 433 (Punjab & Haryana)

⁶ Alabra Shipping Pte Ltd., Singapore v. ITO [2015] 62 taxmann.com 185 (Rjt)

- Similarly, the interest income earned by the taxpayer was also received by it being its beneficial owner and which in turn, has been remitted though not in the instant year, is taxable at the concessional rate of taxes.

Our comments

In the instant case, the Tribunal has held that royalty income is eligible for the beneficial rate of taxation under the tax treaty. Similarly, the interest income earned by the taxpayer was also received in the capacity as a beneficial owner and hence it is taxable at a beneficial rate of tax under the tax treaty.



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