

## Delhi ITAT decision: Payment received from Delhi Airport Metro for engineering & project management is not Business Income.

MTR Corporation Ltd [TS-261-ITAT-2023(DEL)]

## New Delhi, May 19, 2023

In the present case the Assessee is a tax resident of foreign country having headquarter in that foreign country. The Assessee was engaged by the Delhi Airport Metro Express Pvt Ltd. (DAMEPL) to provide engineering and project management consultancy service for the airport line of Delhi Metro. The Assessee considered the payment received by the DAMEPL as FTS and filed its ITR accordingly.

The AO contended that the income of Assessee should be treated as Business income and not as FTS because the Assessee was working from a Permanent establishment in India and made an addition of income U/s 44DA.

## The Hon'ble ITAT of Delhi held:

That the addition made by the AO U/s 44DA are invalid, the following are the conditions which are to be satisfied to attract section 44DA:

- Income must be in nature of royalty or FTS.
- It must be received by a non-resident or a foreign company from an Indian entity as per an agreement executed after 31st day of March, 2003.
- The business carried by the non-resident or foreign company in India through a permanent establishment (PE).
- The payment of said royalty or FTS is paid is effectively connected with such PE or fixed place of profession.

Hence, the contention of Assessee that the contract assigned to Assessee was neither extendable nor extended and post completion of project it had to withdraw from India, was allowed and the addition made by revenue U/s 44DA was deleted.



