

ITAT: ABSENT A SERVICE COMPONENT, THE SALE OF SOFTWARE IS NOT TAXABLE AS A FTS

Sep 27, 2023

SoftwareONE Pte. Ltd [TS-559-ITAT-2023(DEL)]

Facts of the case

The case involves the issue in which the assessee has filed the appeals challenging assessment orders for the assessment years 2018-19 and 2019-20.

The central dispute revolves around the taxability of the amount received from the sale of software as fees for technical services (FTS) under the India-Singapore Double Taxation Avoidance Agreement (DTAA).

Assessee's contention

The assessee argued that a precedent had been set in a prior assessment year, affirming that receipts from the sale of software are not taxable as royalty.

They maintained that no change in factual circumstances occurred in the impugned assessment years, making the re-characterization of the receipts as FTS unjustifiable.

The company emphasized that for a receipt to qualify as FTS, there must be a provision of technical knowledge to the service recipient.

Revenue's contention

The revenue contended that certain invoices presented by the assessee to Indian customers revealed a service component, implying that part of the receipts should be taxed as FTS.

Held:

The Income Tax Appellate Tribunal (ITAT) observed that the Assessing Officer had not provided valid or cogent reasons for re-characterizing the receipts as FTS.

They found that the invoices were exclusively related to the sale of software and did not encompass any service element.

The ITAT stressed the importance of meeting the "make available" condition under the India-Singapore DTAA for income to be classified as FTS.

Consequently, they ruled that the additions made by the Assessing Officer were unsustainable and directed their deletion.

AMRG Take

The case underlines the necessity of substantiating re-characterizations of receipts with valid and well-founded reasons. Additionally, it emphasizes that adherence to specific conditions outlined in tax treaties, like the "make available" condition, is crucial for income to be categorized as Fees for Technical Services (FTS).

The case highlights the importance of providing valid justifications for re-classifying income and ensuring compliance with treaty provisions to determine appropriate tax liabilities.