

Key ITAT Ruling on Cross-Border Intra-Group Services and DTAA Interpretation

The Hyderabad Bench of the Income Tax Appellate Tribunal (ITAT), in the case of ***Sheladia Associates Inc. vs. ADIT*** (ITA No. 1401/Hyd/2024, dated 22-May-2025), has delivered a significant ruling on the taxability of payments made by an Indian branch of a US company to its Head Office for certain services. The case highlights important nuances in interpreting cross-border service payments under domestic and treaty provisions.

This tax alert provides a brief summary and analysis of the judgment as outlined below:

Brief Facts:

The assessee, a branch office/PE of a US-based company, made payments to its Head Office for services such as project identification, technical feasibility analysis, presentations, price negotiations, and supervision of Indian operations. During the Revenue Audit (assessment proceedings), the assessee admitted that these services qualify as "technical services" under Section 9 of the Income Tax Act, 1961 (Act) but argued they do not fall under "technical services" as per Article 12 of the India–USA DTAA.

Issues:

1. Whether the task of identifying, choosing projects, analyzing technical feasibility, making technical presentation, price negotiations, monitoring, supervising of projects were technical services in terms of Article 12 of India-USA DTAA?
2. Whether withholding (TDS) under Section 195 of the Act will be applicable on payment for above services?

Judgment:

1. The matter was decided in favor of revenue and it was held that the services as specified in issue 1 fall in the category of technical services provided in Article 12 of India-USA DTAA.
2. It was held that since these are technical services provided in Article 12, withholding under Section 195 will be applicable.

Deciding Factors:

Issue 1:

1. The assessee has not produced any communication between the assessee PE and the Head Office to throw some light on the nature and scope of services rendered by the Head Office.
2. It was not a case that the assessee has outsourced some of the activities to the Head Office, but the entire technical and skill work has been undertaken and carried out by the designated

team of Head Office, comprising of technical experts and even managerial services were provided while monitoring and supervising the project activities in India.

3. It was not the case of seeking a review or evaluation of the proposed projects but the entire services right from selecting the project to the bidding and completion of the projects are provided by the Head Office.

Issue 2:

1. Since, the services fall under the definition of technical services defined in Article 12, withholding of tax (TDS) under Section 195 will be applicable on the payments for these services.

MCA Comments:

This ruling by the Hon'ble Hyderabad Bench of the ITAT significantly reshapes the compliance landscape for multinational enterprises operating in India through branch structures. The Tribunal's interpretation of "fees for included services" under Article 12 of the India–USA DTAA, especially in the absence of formal service contracts, emphasizes a substance-over-form approach that tax authorities are increasingly adopting. The judgment reinforces the importance of maintaining detailed documentation, not just of transactions but of the economic substance behind them. Intra-group support activities, once treated as routine cost allocations, now face greater scrutiny under transfer pricing and withholding tax regulations.

US Companies must proactively assess whether managerial, supervisory, or technical inputs from overseas offices—irrespective of formal agreements—could give rise to taxable income in India under treaty provisions. This decision also puts a spotlight on the obligations under Section 195 of the Act, urging foreign branches to reassess their tax withholding strategies on head office reimbursements or allocations. Team MCA would be happy to assist you in evaluating your existing contracts and revisiting the intra group arrangements between US companies and their Indian presence.

We hope this information is useful and of interest to you.