



Since the income attributable to the PE of a non resident engaged in the business of computer reservation system was less than the remuneration paid to the distributor, no further income was taxable in India

Recently, the Delhi Income-tax Appellate Tribunal (the Tribunal) in the case of Sabre Inc.¹ ruled on the taxability of the income earned through Computer Reservation System (CRS) in India. The Tribunal after following the decision of the Delhi High Court in the case of Galileo International Inc² held that since the income attributable to the Permanent Establishment (PE) in India was less than the remuneration paid to the distributor in India by the taxpayer no income was taxable in hands of Sabre Inc.

Facts of the case

- The taxpayer company was incorporated in USA. It had developed, owned and operated CRS located in USA which can facilitate airline reservations for participating airlines.
- The taxpayer entered into Participating Carrier Distribution and Service Agreement with various travel agents (subscribers) for booking and reservation, sale of the carrier air services, etc. through CRS.
- The subscribers to the agreement were provided equipment and connection to the CRS through local National Marketing Companies (NMC) which was generally a locally incorporated company like Air India Limited and Indian Airlines under a contract directly between these two airlines and their subscribers.
- A subscriber earns a commission per booking from the airlines on which booking was made. This commission was earned pursuant to

¹ Sabre Inc. v. DCIT (2009-TIOL- 488-ITAT-DEL)

² Galileo International Inc. v. DCIT [2009] 180 Taxman 357 (Del)

an agreement between the subscriber and the airlines, and the taxpayer was not a party to such an agreement. Pursuant to the PCA, the taxpayer charged a booking fee per ticket segment to the airlines. The taxpayer was paying 60 percent of the booking receipts to the distributors.

- The Assessing Officer (AO) held that as per the article 5 of the India USA tax treaty (tax treaty) the taxpayer had PE in India in the form of equipment installed at the location of the travel agent. It was also held by the AO that the dependent agent PE was established by the distributor of the taxpayer. Accordingly, the AO taxed entire air booking fees arose in India after reducing certain expenditure like fees paid to the distributor, communication expenditure, etc.

Issue before the Tribunal

- Whether the taxpayer formed PE under the provisions of the tax treaty?

Taxpayer's contentions

- The taxpayer after relying on the decision of the Galileo International Inc. contended that profits were not attributable to India since it was paying 60 percent to the distributor in India.

Tribunal's Ruling

- The Tribunal after relying on the decision of the Delhi High Court in the case of Galileo International Inc. held that since remuneration paid (60 percent) to the distributor in India by the taxpayer was more than the income attributable to the PE in India (15 percent) no income was taxable in hands of the taxpayer in India.

Our Comments

The Tribunal has followed the decision of the Delhi High Court in the case of Galileo International Inc where Galileo had developed a CRS for reservation, ticketing, distribution and related functions. The High Court had held that no further income was required to be apportioned since the commission paid to the Indian agent was more than the revenue attributed i.e. adequately compensated at an arms length.

The above decision is in line with the decision given by the Supreme Court in the case of Morgan Stanley³ and Bombay High Court in the case Set Satellite (Singapore) Pte.Ltd.⁴

³ DIT v. Morgan Stanley and Co. Inc. [2007] 292 ITR 416 (SC)

⁴ Set Satellite (Singapore) Pte.Ltd v. DDIT [2008] 218 CTR 452 (Bombay)

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