



Global Business Tax Alert Sharp Insights

Interest on tax refund is not covered by definition of 'interest' under article 12(4) of India-Italy tax treaty

Issue no: GBTA/78/2015

In this issue:

Upcoming Dbriefs - Register
Contacts

The Chennai Tribunal in the case of *Ansaldo Energia SPA v DDIT* (63 taxmann.com 280) has held that income by way of interest on refund of income tax is not 'interest' as defined under Article 12(4) of the India-Italy tax treaty, and is therefore subject to a higher rate of withholding tax (TDS).

The assessee, a tax resident of Italy, engaged in the business of designing, building and supplying full range of plant solutions on different types of packages such as turnkey, engineering and individual components, executed certain contracts in India. The assessee was eligible for interest on refund under the Income-tax Act, 1961 (Act). Upon payment of refund, the Assessing Officer (AO) effected TDS at a rate of 42.024%. However, the assessee claimed that such interest should be exempt under the India-Italy tax treaty. The Commissioner of Income-tax (Appeals) [CIT(A)] upheld the order of the AO.

In the appeal filed before the Chennai Tribunal, the assessee contended that the interest was covered under Article 12(4), and the issue had been considered by the Delhi Special Bench in the case of *Clough Engg. Ltd.* wherein, it was held that even if the debt was connected with the receipts of the PE, it could not be said to be 'effectively connected' with such receipts on the basis of the asset-test or the activity-test so as to subject it to net basis of taxation. The assessee also relied on the decision of the Bombay High Court in the case of *DHL Operations B.V. v. Dy. DIT (IT)* and Mumbai Tribunal in the case of *Bechtel International Inc. v. ADIT (International Taxation)*

The tax authorities relied on the decision of the Delhi Tribunal in the case of *B.J. Services Co. Middle East Ltd. v. ACIT* to contend that the interest was taxable as business profits.

The Tribunal held that the interest on refund of tax is not envisaged in the definition of interest under Article 12(4) of the India-Italy tax treaty. Further, the Tribunal held that the case laws relied by the assessee were not relevant as these were not rendered in the context of the India-Italy tax treaty. Accordingly, the Tribunal upheld the order of the CIT (A).

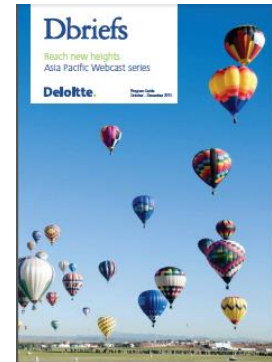
The ITAT has not provided any reasons for considering the interest as effectively connected to the PE of the assessee and only limited its observation to Article 12(4) of the tax treaty. Further, it is noteworthy that the *BJ Services Co. Middle East Ltd* decision relied upon by the tax authorities did not have any dispute regarding existence of 'effective connection' which was also noted by the Delhi Special Bench in *Clough Engineering* case. The Tribunal's approach of not considering decisions rendered on a similar issue in the context of other tax treaties entered into by India may require a reconsideration.

Upcoming Dbriefs – Register

BEPS: Implementation of Transfer Pricing Changes (Part 2: India and Southeast Asia)

On 8 December 2015 from 11:30 AM to 12:30 PM IST

As the OECD / G20 BEPS project has moved into the implementation phase, we will provide an update of domestic legislative activities and timelines to incorporate the various BEPS transfer pricing changes into specific domestic tax regimes. We will also cover harmonization efforts for transfer pricing documentation rules and requirements from local perspectives. In this Part 2 webcast, our focus will be on India and Southeast Asia. For more information, visit the [Dbriefs](#) page



Register Now

Contacts

Ahmedabad

Heritage, 3rd Floor,
Near Gujarat Vidyapith,
Off Ashram Road,
Ahmedabad – 380 014.
Tel: + 91 (079) 2758 2542
Fax: + 91 (079) 2758 2551

Bangalore

Deloitte Centre, Anchorage II,
100/2, Richmond Road,
Bangalore 560 025.
Tel: +91 (080) 6627 6000
Fax: +91 (080) 6627 6010

Chennai

No.52, Venkatanarayana Road,
7th Floor, ASV N Ramana Tower,
T-Nagar,
Chennai 600 017.
Tel: +91 (044) 6688 5000
Fax: +91 (044) 6688 5050

Coimbatore

Shanmugha Manram
41, Race Course,
Coimbatore
Tamil Nadu - 641018
Tel: + 91 (0422) 439 2801
Fax: +91 (0422) 222 3615

Delhi/Gurgaon

Building 10,
Tower B, 7th Floor,
DLF Cyber City,
Gurgaon 122 002
Tel : +91 (0124) 679 2000
Fax : + 91 (0124) 679 2012

Hyderabad

1-8-384 and 385, 3rd Floor,
Gowra Grand S.P.Road,
Begumpet,
Secunderabad – 500 003.
Tel: +91 (040) 6603 2600
Fax: +91 (040) 6603 2714

Kolkata

Bengal Intelligent Park Building Alpha,
1st floor, Block EP and GP Sector V,
Salt Lake Electronics Complex,
Kolkata - 700 091.
Tel : + 91 (033) 6612 1000
Fax : + 91 (033) 6612 1001

Mumbai

Indiabulls Finance Centre,
Tower 3, 28th Floor,
Elphinstone Mill Compound,
Senapati Bapat Marg, Elphinstone (W),
Mumbai – 400013
Tel: + 91 (022) 6185 4000
Fax: + 91 (022) 6185 4101

Pune

106, B-Wing, 7th Floor,
ICC Trade Tower,
Senapati Bapat Road,
Pune – 411 016.
Tel: + 91 (020) 6624 4600
Fax: +91 (020) 6624 4605

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee, and its network of member firms, each of which is Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited, a UK private company limited by guarantee (“DTTL”), its network of member firms, and their related entities. DTTL and each of its member firms are legally separate and independent entities. DTTL (also referred to as “Deloitte Global”) does not provide services to clients. Please see www.deloitte.com/about for a more detailed description of DTTL and its member firms.

This material and the information contained herein prepared by Deloitte Touche Tohmatsu India LLP (DTTI LLP) is intended to provide general information on a particular subject or subjects and is not an exhaustive treatment of such subject(s). This material contains information sourced from third party sites (external sites). DTTI LLP is not responsible for any loss whatsoever caused due to reliance placed on information sourced from such external sites. None of DTTI LLP, Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively, the “Deloitte Network”) is, by means of this material, rendering professional advice or services. This information is not intended to be relied upon as the sole basis for any decision which may affect you or your business. Before making any decision or taking any action that might affect your personal finances or business, you should consult a qualified professional adviser.

No entity in the Deloitte Network shall be responsible for any loss whatsoever sustained by any person who relies on this material.

©2015 Deloitte Touche Tohmatsu India LLP. Member of Deloitte Touche Tohmatsu Limited

Registered office: 12, Dr. Annie Besant Road, Opp. Shiv Sagar Estate, Worli, Mumbai – 400 018, India. Deloitte Touche Tohmatsu India Private Limited (U74140MH1995PTC093339), a private company limited by shares, was converted into Deloitte Touche Tohmatsu India LLP (LLP Identification No. AAE- 8458), a limited liability partnership, with effect from October 1, 2015.

[Home](#) | [Add Deloitte as a safe sender](#)

Follow us on:

