

Diverse income sources, eligible to claim benefit under DTAA or Act - 'independently & mutually exclusively'

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With constantly evolving business dynamics, there is always a quest for something more! With the 'customer is king' being the motto, businesses always thrive to provide numerous services to a customer as 'one-stop shops'. However, just like any other businesses, taxation dilemmas also hover over 'one-stop shop' businesses especially in case of cross border transactions, wherein multinational corporations provide various services to their customers in India.

Under cross border transactions, a taxpayer is entitled to consider the provisions of the Income-tax Act, 1961 ('Act') or the provisions of a tax treaty, of which it is a tax resident, whichever is more beneficial to it, while determining taxability of its India sourced income. Such choice is provided to a taxpayer by the provisions of section [90\(2\)](#) of the Act. Usually, tax authorities aggregate various types of services, rendered by a non-resident taxpayer, while determining the beneficial provisions out of the two i.e. the Act or the tax treaty. On the other hand, taxpayers claim that for the purposes of applicability of the provisions of section 90(2) of the Act i.e. before determining whether provisions of the Act are more beneficial or the provisions of a tax treaty are more beneficial, such provisions should be applied separately & individually to each service rendered by it or for each type of its source of income. The dilemma has been resolved recently by the Mumbai Bench of the Income Tax Appellate Tribunal¹ ("Tribunal" or "ITAT"). Mumbai Tribunal has held that the advantageous of the provisions of the Act or a tax treaty, can be applied independently & distinctively for each service rendered by the non-resident assessee or for each of its source of income².

Brief Facts

The assessee is a company incorporated in Singapore and is engaged in the business of providing management support services to its group entities in the Asia Pacific region. The assessee has a wholly owned subsidiary in India- Dimension Data India Ltd. ("DDIL"). DDIL received a contract from BSNL for setting-up of 6 data centers in India. During the relevant assessment years (i.e. AY 2012-13 & AY 2013-14), the assessee provided both management support services as well as necessary assistance and guidance to DDIL for setting-up of 6 data centers in India under the contract with BSNL. A brief description of the services rendered to DDIL and the related fee arrangement with DDIL is tabulated hereunder: -