

ITAT: Receipts from cloud-native machine data analytics solution, not FTS; Refers Coursera Inc. ruling

Dec 30, 2024

Sumo Logic, Inc. [TS-951-ITAT-2024(DEL)]

Conclusion

Delhi ITAT holds that Assessee's receipts from Indian customers towards provision of cloud-native machine data analytics solution to various customers in India, did not qualify as FTS under Article 12(4) of the India-USA DTAA; Relies on co-ordinate bench ruling in [Coursera Inc](#) wherein it was held that subscription fee received by the Assessee towards provision of global online learning platform, wherein, various courses and degrees from leading universities and companies are provided, cannot be considered as a FTS or royalty as the contents of such courses and degrees are created by the concerned universities and companies and not the Assessee; Concurs with Assessee's submission that the said receipts from Indian customers did not constitute consideration for the use or right to use of any copyright or equipment or for information concerning industrial, commercial or scientific knowledge/ experience etc and the same are not in consideration of make available any technical knowledge/ skill etc. to the customers, thus the said revenues are neither taxable as royalty nor as fees for technical services; Takes note of the Tax Residency Certificate as furnished by the Assessee and notes that the Assessee offered income generated in India in the resident country; Observes that it does not make any difference whether the global income assessed to tax are income or loss, as long as, the income generated are offered in the resident country as business income which is the requirement of law; On the issue of TDS credit, ITAT observes that TDS credit granted by Revenue and claimed by the Assessee are different, thus directs the Revenue to verify the same and allow the TDS credit as per law; On the issue of refund, ITAT notes that the Revenue claimed that Assessee was paid a refund of Rs. 2.69 Lacs however the Assessee denies the same as no such refund was granted; Thus remits the issue back to the Revenue to verify the same and allow after verification as per law.:ITAT DEL

Decision Summary

The ruling was delivered by the Division Bench of Delhi ITAT comprising Shri Saktijit Dey, Vice President and Shri S. Rifaur Rahman, Accountant Member.

Advocates Sachit Jolly and Aditya Rathore appeared for the Assessee and the Revenue was represented by Mr. Vijay B. Basanta, CIT(DR).

Assessee, a US based entity, is engaged in operating a cloud-native machine data analytics solution and offers a software platform that enables organizations to address the challenges and opportunities presented by digital transformation, modern applications and cloud computing; Assessee also enables to automate the collection, ingestion and analysis of application, infrastructure, security and IT data to derive actionable insights. During the course of assessment Revenue concluded that the income in the hands of the Assessee is in the nature of FTS and that the income received from Indian customers and end-users was not effectively taxed in USA; Revenue observed that the said income has not suffered tax anywhere, neither in India nor in USA, accordingly he treated the income received by the assessee in the nature of consultancy and its taxability as FTS under the provisions of Income-tax Act under the relevant provisions of India-US DTAA. Thus the Revenue made addition of Rs. 14.09 Cr and the same was confirmed by the DRP. Aggrieved, the Assessee preferred the present appeal.

Case Law Information

Taxpayer Name

- Sumo Logic, Inc.

Judicial Level & Location

- Income tax Appellate Tribunal Delhi

Appeal Number

- ITA No. 3350/DEL/2023

Date of Ruling

- 2024-12-27

Ruling in favour of

- Assessee

Nature of Issue

- Fees for Technical Services (FTS)

Judges

- Saktijit Dey, Vice President
- S. Rifaur Rahman, Accountant Member

Counsel for Tax Payer

- Mr. Sachit Jolly
- Aditya Rathore

Counsel for Department

- Vijay B Vasanta