ITAT: MLI provisions unenforceable sans separate notification; Relies on Nestle, highlights Revenue's contradicting stand

Aug 20, 2025

Sky High Appeal XLIII Leasing Company Limited [TS-1085-ITAT-2025(Mum)]

Conclusion

In a ruling that is a big setback to Revenue, Mumbai ITAT in a 100+ pages of ruling in case of Sky High Appeal XLIII Leasing Company (Assessee) rejects Income tax Department's attempt to deny India - Ireland treaty benefits by invoking Principal Purpose Test provisions enshrined through MLI; Relying heavily on Apex Court judgment in *Nestle* on the issue of MFN, ITAT rules that " *...any subsequent treaty-based modification of an existing DTAA can be enforced under municipal law only where a specific Section 90(1) notification has been issued incorporating that modification into Indian law*"; ITAT notes that in the present case, the original bilateral tax treaty i.e., India–Ireland DTAA (DTAA) was duly notified and equally, the subsequent multilateral instrument (MLI) had been formally notified but " *the consequence/impact of the MLI on the India– Ireland DTAA is not admittedly and separately notified.*"; Rejecting Revenue's contention of automatic application of Article 6 and 7 (i.e. PPT suite) of MLI since the DTAA is a covered tax agreement, ITAT observes that it doesnot reconcile with the constitutional and statutory mandate as articulated by Apex Court in Nestlé; Tribunal soundly rejects Revenue's arguments that both the India–Ireland DTAA and the MLI have been duly notified under Section 90(1) of the Act, that the DTAA is a Covered Tax Agreement under the MLI, and that no further notification is required for Articles 6 and 7 to operate; ITAT remarks that the so-called synthesised text which incorporates the MLI provisions into the covered tax agreements is nothing more than an expository compilation intended to facilitate understanding but has neither been notified in the Official Gazette under Section 90(1) nor admitted by the Revenue to be a binding legal instrument; Thus, the Revenue cannot rely on the synthesised text to apply the PPT provisions, for that text has no greater legal sanctity than the unincorporated MLI provisions themselves; Against this settled backdrop, ITAT opines that the approach adopted by the AO and the DRP in treating the PPT under the MLI as self-executing in relation to the DTAA, is wholly unsustainable; ITAT, enforcing the binding SC judgment of Nestle, observes that "*... the Revenue recognises that the MLI modifies tax treaties, yet it sidesteps the very legal requirement that Nestlé SA describes as an indispensable precondition, namely, a separate Section 90(1) notification incorporating those treaty modifications into Indian law*."; Thus, ITAT holds that Articles 6 and 7 of the MLI cannot be invoked against the Assessee in the present AY, inasmuch as there is no Section 90(1) notification incorporating those provisions into the India–Ireland DTAA:ITAT Mum

Decision Summary

The ruling was delivered by a Bench of Mumbai ITAT comprising Shri Amit Shukla, Judicial Member and Ms. Padmavathy S., Accountant Member.

Senior Advocate Sachit Jolly along with Mr. Mrunal Parekh, Ms.Disha Jham & Mr. Hardeep Singh Chawla appeared for the Assessee and the Revenue was represented by Mr. Vivek Perampurna, CIT DR and Mr. Krishna Kumar, Sr.DR.

Click here to read a detailed analysis, and click here to read the 50+ Key Excerpts.

Case Law Information

Taxpayer Name

- Sky High Appeal XLIII Leasing Company Limited

Judicial Level & Location

- Income tax Appellate Tribunal Mumbai

Appeal Number

- ITA No. 1122/Mum/2025

Date of Ruling

- 2025-08-13

Ruling in favour of

- Assessee

Section Reference Number

- 90(1)

Nature of Issue

- Treaty Benefits

Judges

- Amit Shukla, Judicial Member
- Padmavathy S, AM

Counsel for Tax Payer

- Mr. Sachit Jolly
- Shri Mrunal Parekh
- Ms. Disha Jham
- Mr. Hardeep Singh Chawla

Counsel for Department

- Shri Vivek Perampurna
- Mr. Krishna Kumar.