

Delhi HC to take call on Pizza Hut tax exemption

The Delhi High Court is set to rule whether a US company can simultaneously avail of the benefit of a lower tax rate under the Indo-US Double Tax Avoidance Agreement (DTAA) and exemptions on payments of royalty under the Income Tax (I-T) Act.

The issue came up before the court on a dispute between Pizza Hut International and the I-T department. Pizza Hut International, a US tax resident, earns income in the nature of royalty from Yum Restaurants India, which operates 180 Pizza Hut restaurants across India.

The US company, in December 2003, had filed returns for the assessment year 2003-04, showing total income of Rs 2.45 crore from royalty earnings paid by Yum for using Pizza Hut's trademark, service marks, trade names and other trade secrets under a technical licence agreement.

In its returns, the US firm had claimed that a lower tax rate of 15% under the DTAA was applicable on its income. During the course of assessment, the I-T officer found that Pizza Hut had also claimed exemption in respect of tax on royalty borne by Yum under section 10(6A) of the I-T Act.

Subsequently, the I-T department concluded that since Pizza Hut had claimed an exemption under the I-T Act, its income should also be taxed as per the 20% rate provided by the Act, and not at the 15% rate under the DTAA.

Aggrieved by the order, Pizza Hut approached the ITAT contending that section 90 (2) of the I-T Act grants option to non-resident companies to opt for beneficial tax treatment under the Act, adding that the section “does not provide that if such a provision is availed of, the rate provided in the treaty will cease to have effect”.

However, the ITAT concluded that “both under the Act and the treaty, the tax paid by the licensee (Yum) on behalf of the assessee (Pizza Hut) will have to be included in the “gross amounts”, chargeable to tax. Therefore, the assessee has an option to be taxed at the rate of 15% of the gross amount or tax rate applicable under the Act on the net amount after claiming exemption u/s 10(6A), which is 20%”.

(Financial Express)