

No withholding tax requirement on payment of professional fees to CA firm located in Germany: ITAT

INTERNATIONAL TAXATION : Where assessee made payment to a partnership firm of Chartered Accountants located in Germany towards professional fee for due diligence of a client, payment was for professional services rendered by firm and it had to be treated as business profits at hands of recipient and in absence of permanent establishment of recipient in India, there was no obligation on assessee to withhold tax at source on such payment

Section 9, read with section 40(a)(i), of the Income-tax Act, 1961 and articles 12 and 14 of the India-Germany DTAA - Income - Deemed to accrue or arise in India (FTS/Royalty - Advisory Service) - Assessment year 2013-14 - Assessee provided international accounting and advisory services to various clients within India and abroad - It made payment to a partnership firm of Chartered Accountants located in Germany, who had no permanent establishment in India, towards professional fee for due diligence of a client and for valuation of shares of another client and claimed deduction of same - Assessing Officer opined that payment made was in nature of fee for technical services falling under article 12(4) of India-Germany Treaty and since assessee had not deducted tax at source on such payment, he disallowed amount by invoking provisions of section 40(a)(i) - Whether payment made by assessee was for professional services rendered by firm of Chartered Accountants and it would not fall either within definition of fee for technical services under article 12(4) or article 14 of India-Germany Treaty - Held, yes - Whether in absence of any other provision in treaty specifically dealing with such payment, it had to be treated as business profit at hands of recipient - Held, yes - Whether in absence of permanent establishment of recipient in India, payment was not taxable at hands of recipient in India - Held, yes - Whether since there was no obligation on assessee to withhold tax at source on such payment, disallowance made under section 40(a)(i) deserved to be deleted - Held, yes [Para 12] [In favour of assessee]

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