

Reimbursement to parent Co. for expatriate employee's salary couldn't be taxed as FTS: ITAT

INTERNATIONAL TAXATION : Where assessee-company had paid certain amount being reimbursement of salaries paid to employees seconded to it by parent company, since employees were working under exclusive control, direction, and supervision of assessee in India and there was employee-employer relationship between assessee and such employees, payments made by assessee to said employees as salary was chargeable to tax as salaries under section 192 in hands of aforesaid employees and not as FTS under section 9(1)(vii)

Section 9, read with sections [192](#), [195](#) and [40\(a\)\(ia\)](#), of the Income-tax Act, 1961 and article [13](#) of the DTAA between India and UK - Income - Deemed to accrue or arise in India (Royalty or fees for technical services - Reimbursement of expenses) - Assessment year 2011-12 - Assessee, a wholly owned subsidiary of Serco UK, had paid certain amount being reimbursement of salaries paid to employees seconded to Serco UK - It had deducted tax on salary under section 192 - Assessing Officer was of view that payment made was in nature of fee for technical services (FTS) and was taxable both under section 9(1)(vii) and article 12(4) of India-USA DTAA and, thus, liable to TDS under section 195 - Since assessee had not deducted tax at source on such payment, Assessing Officer made disallowance under section 40(a)(i) - It was observed that these employees were working under exclusive control, direction, and supervision of assessee - Employees under consideration had employee-employer relationship with assessee only - Assessee was legal and economic employer of these employees - Whether, therefore, payments made by assessee to said employees as salary, was chargeable to tax as salaries in hands of aforesaid employees and not as FTS - Held, yes - Whether since assessee had reimbursed salaries amount paid to its employees seconded through Serco UK and not FTS, therefore, was not liable to deduct TDS under section 195 and had correctly deducted TDS under section 192 - Held, yes [Paras 20.3, 23 and 24] [In favour of assessee]

Click below link for the judgment:

<https://www.taxmann.com/research/international-tax/top-story/101010000000337838/reimbursement-to-parent-co-for-expatriate-employees-salary-couldnt-be-taxed-as-fts-itat-caselaws>

(Source: Taxmann.com)